

UGANDA / JUDGMENT

Amuge v Obalim (Divorce Cause 1 of 2021)

[2024] UGHC 864 (6 September 2024)

[2024] UGHC 864

COURT

High Court of Uganda

BEFORE

Mwaka, J

CASE / FILE NUMBER

Divorce Cause 1 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KITGUM

DIVORCE CAUSE No. 01 OF 2021

(Formerly GULU HIGH COURT DIVORCE CAUSE - No. 02 OF 2021) 5 AMUGE SALOME
PETITIONER

Versus

OBALIM WILFRED OCHOLA RESPONDENT

BEFORE HON. MR. JUSTICE PHILIP W. MWAKA.

JUDGEMENT.

10 Introduction and Background.

- [1]. The Petitioner **Amuge Salome** instituted this Petition on the 8th February, 2021 against the Respondent for Divorce thereby seeking the dissolution of their Marriage which had been contracted on the 18th April, 2009 under the provisions of the **Marriage Act, Cap. 146** solemnized at the All Saints 15 Catholic Church in Kitgum District. The Petitioner states that following the marriage the couple lived together as husband and wife during which the marriage was consummated and they had issue – **Mich Trinity Michelle** – born on the 26th April, 2011, now Thirteen (13) years old. Later the marriage deteriorated giving rise to

allegations and counter-allegations of adultery, 20 desertion and cruelty – hence the instant Petition for Divorce. The Petition is duly verified and the Marriage Certificate is attached to the Petition.

- [2]. The Declarations and Orders sought by the Petitioner are for: dissolution of the marriage on the grounds cited; custody of the child be granted to the Petitioner; maintenance Orders for the Respondent to contribute to the 25 welfare of the child; an Order of non-molestation be issued as against the Respondent; and, Costs of the Petition be provided for.
- [3]. The Respondent **Obalim Wilfred Ochola** filed an Answer to the Petition on the 20th October, 2023 incorporating a Cross-Petition. He denies the averments made by the Petitioner in the Petition - save for the description of the Parties, the fact of the marriage and the couple having issue – their 5 daughter and otherwise seeks to put the Petitioner to strict proof in regard to the allegations of domestic violence, desertion and adultery.
- [4]. The Respondent concedes to disposing of the family vehicle owing to it being in poor mechanical condition; as well as disposing of the matrimonial home in order to raise capital to start a business in Kampala – which he 10 contends was a joint decision; and, not providing for their daughter allegedly due to the Petitioner cutting off communication between 2012 until 2023.
- [5]. The Respondent filed a Cross-Petition and contends that following the Marriage the couple lived together in Kitgum District and acquired property. In 2010 the couple agreed to sell the matrimonial home – which he states he 15 acquired prior to the marriage – to start a business in Kampala and he relocated to live in Kampala with the Cross-Respondent agreeing to join him.
- [6]. The Cross-Petitioner contends that in 2011 the Cross-Respondent withdrew her consort and later stopped communication with him. In 2012 the marriage completely broke down when the Cross-Petitioner found out that the Cross-20 Respondent had begun co-habiting elsewhere and was in an adulterous relationship with a Mr. Akena Geoffrey whom she had met in Moroto and with whom she now has had Two (2) issue - thus deserting him, cutting off all communication and causing him psychological distress, shame and ridicule from his family and friends.
- 25 [7]. The Respondent (Cross-Petitioner) seeks declarations and orders for dissolution of the marriage on the grounds cited; grant of custody of the child to the Cross-Respondent; maintenance, care and control of the child being shared; a non-molestation order; and, each Party to bears its own costs.
- [8]. There is no Answer filed in response to the Cross-Petition.

Representation.

- [9]. At the Trial, the Petitioner (Cross-Respondent) who was present was represented by Counsel, Mr. Walter Okidi Ladwar.
- [10]. The Respondent (Cross-Petitioner) who was present at the proceedings was 5 represented by Counsel Mr. Ocorobiya Lloyd together with Counsel Ms. Laura Florence Atim.

Procedural Matters.

- [11]. The matter came up before the Court on the 13th March, 2024; 26th March, 2024; 12th June, 2024; and, on the 19th 10 June, 2024 for cross-examination.
- [12]. At the proceedings on the 13th March, 2024 and the 26th March, 2024 the Parties informed the Court that they had entered into a **"Consent Decree Nisi"** for dissolution of the marriage in resolution of the Petition and Cross-Petition which was presented to the Court. The Court fixed the matter for the 12th 15 June, 2024 for the Parties to address the Court on the lawfulness of a **"Consent Decree Nisi"**. However, on the date fixed the Parties conceded that it was not legally tenable. A Joint Scheduling Memorandum was filed on the 19th June, 2024 and Witness Statements on the 12th June, 2024 by both the Petitioner and the Respondent as sole witnesses.
- 20 [13]. The Scheduling Memorandum presented the following as agreed upon:
 - i. The Parties were Lawfully married on the 18th April, 2009 at All Saints Cathedral, Church of Uganda in Kitgum District.
 - ii. There is One (1) issue from the marriage, **Mich Trinity Michelle**, and the Petitioner shall have custody of the child.
 - 25 iii. The Parties have been living in separation since 2011.
 - iv. The Respondent shall provide child maintenance of Ushs. 2,500,000/- (Uganda Shillings Two Million Five Hundred Thousand) per term.
 - v. The Respondent shall be entitled to visitation upon reasonable notice.
 - vi. Each Party shall bear its own costs.

Issues.

- [14]. Two (2) issues were adopted by the Court from the Joint Scheduling Memorandum filed.
 - i. **Whether there are grounds for Divorce. (Divorce Act, Cap. 144).**
 - 5 ii. **What remedies are available to the parties.**

The Petitioner's Case and Evidence Presented.

[15]. The Petitioner testified as a sole witness. In her witness statement, she firstly alleges that during their marriage the Respondent committed adultery with 10 multiple women on several occasions which caused a lot of tension in the marriage as well as flirting with diverse women either directly or by phone in her presence - naming the women as a Ms. Carol Nyesigire with whom he allegedly travelled to China, Ms. Faith Kamagara allegedly a School mate, Ms. Alice Akot and a Kenyan lady. She observed condoms in his bag and 15 untoward messages on his phone. Secondly, he treated her with cruelty including persistent and repeated quarrels, frequent threats of physical violence, open flirtation and abandoned her in Kitgum and travelled elsewhere without informing her also failing to provide child support for the daughter whom he last saw in 2011. Thirdly, after selling off the family vehicle 20 and the matrimonial home rendering her and their daughter homeless, sometime in 2011 he withdrew from matrimonial consort, absconded from the matrimonial bed thereby withdrawing conjugal rights and deserted them up to the present day. After initially moving to Kampala City and other places she was unaware of, he declined to pick or return her telephone calls and 25 whenever he would visit Kitgum he would not stay with his family. This prompted her in 2012 and 2014 to follow him to Kampala City where he resisted return retorting that since she was homeless she should go back to live with her mother in Soroti City. As late as 2014 she enlisted the assistance of the Respondent's brother in convincing him to return home to no avail.

[16]. It is Petitioner's case that the Respondent's deliberate conduct in as far as he was adulterous, cruel and deserted his family failing to provide for their daughter caused her acute stress and anguish affecting her health and she become fearful of him thus leading to their marriage irretrievably breaking 5 down – to which she did not contribute - with no hope of revival. In those circumstances, she moved on to find happiness for herself and their child where she is comfortably settled. Most recently, the Respondent threatened the Petitioner and her companion through a telephone call that he would cause them embarrassment. The Respondent opted not to cross-examine.

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The Respondent's Case and Evidence.

- [17]. The Respondent (Cross-Petitioner) also testified as a sole witness. In his witness statement, he contends that the sale in 2010 of the matrimonial home in Kitgum Municipality which he acquired prior to their marriage was done 15 with the consent and agreement of the Petitioner who signed the house sale agreement and with the proceeds he established a trading business in Kampala City run by the Petitioner's elder sister. The Respondent initially agreed to join him in Nateete in Kampala where he resided but instead only visited him but continued to reside in the sold house at the grace of the new owner for 20 another six (6) months until 2011 when she stopped visiting him claiming that she had relocated to Moroto District for work following which she ended all communication with

him despite his efforts to contact her.

- [18]. It is the Respondent's case that in or about 2012 the marriage completely and irretrievably broke down when he found out that the Petitioner was involved 25 in an adulterous relationship with a Mr. Akena Geoffrey whom she had met in Moroto District with whom she co-habits todate and with whom she has Two (2) children. It was at that point that the Petitioner withdrew from cohabitation with him and deserted their marriage and their matrimonial home and has since kept away. These constitute the grounds in the Cross-Petition.
- [19]. The Respondent alleges that the Petitioner made it impossible for him to provide for their daughter since she had custody and she had cut off all communications with him and further contends that the Petitioner's conduct caused him psychological and emotional distress, shame and ridicule from 5 family and friends. The Petitioner opted not to cross-examine.
- [20]. In clarification sought from the Parties by the Court, they maintained their respective claims and grounds for dissolution of their marriage and the Petitioner emphasised that she would require Ushs. 2,500,000/- (Uganda Shillings Two Million Five Hundred Thousand) every term to cater for the 10 school fees and upkeep of their daughter in respect of which the Respondent agreed to provide the said sum of Ushs. 2,500,000/- (Uganda Shillings Two Million Five Hundred Thousand) per term to cater for their daughter.

The Petitioner's Written Submissions.

15 [21]. There are no Written Submissions filed on the Record of the Court by the Petitioner.

The Respondent's Written Submissions.

- [22]. The Respondent filed Written Submissions on the 10th July, 2024 and 20 addressed the issues of –
 - i. Whether there are grounds for Divorce.
 - ii. What remedies are available to the Parties.
- [23]. The Respondent went to great lengths to explain the purpose of disposal of the matrimonial home which was intended to enable the transfer of his family 25 to Kampala City from Kitgum Municipality after establishing a business. He denied the allegations of abandonment and adulterous conduct as well as engaging in quarrels, threats, fights or physical violence which he instead attributed to the Petitioner – including engaging in fights with his family.

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- [24]. It was his submission in respect of the claim of cruelty that the actions of the Petitioner in declining to join him in Kampala and stopping all communication after he had resigned his job, sold the house in Kitgum to establish the business in Kampala and subsequently relocate as well as the 5 Petitioner putting his Two (2) children from a previous relationship - with whom they had lived in Kitgum - on a bus and simply notifying him to pick them up from the bus park constituted cruelty.
- [25]. The Respondent denied the allegations of adultery with Carol, Faith and Akot. It was his submission on the claim of adultery that it was in fact the Cross-10 Respondent whom engaged in an adulterous relationship after declining to join him in Kampala instead in or about 2011 co-habiting with a Mr. Geoffrey Akena by whom she now has Two (2) children – which he prayed the Court finds constituted adultery.
- [26]. The Respondent similarly denied the allegations of desertion. It was his 15 submission that it was in fact the Petitioner whom deserted the marriage, withdrew from matrimonial consort and subsequently withdrew from the matrimonial bed and conjugal contact in 2011 to co-habit with a Mr. Akena in Moroto. He claims that his attempts to reach her were futile. It was his prayer that the Court finds in his favour on the ground of desertion.
- 20 [27]. In regard to remedies, the Respondent submitted firstly, it was agreeable to both Parties that the Petitioner retain custody of their daughter, Mich Trinity Michelle, with the Respondent having visitation rights upon giving reasonable notice; secondly, it was agreed and settled by both Parties that the Respondent provides a "quarterly" contribution of UGX. 2,500,000/- (Uganda Shillings 25 Two Million Five Hundred Thousand) towards the school fees and upkeep of their daughter; thirdly, in regard to the non-molestation orders sought by both Parties, the Respondent prayed that the non-molestation order is issued against both Parties – much as he conceded they have not been in contact; fourth and lastly, it was agreed that each Party would bear their own costs.

Considerations and Determination of the Court.

- [28]. **Section 4 of the Divorce Act, Cap. 144** provides the grounds for dissolution of marriage including – (a). adultery, ... (e). cruelty, and (f). desertion without reasonable excuse for Two (2) years or upwards.
- 5 [29]. In **Constitutional Petition No. 02/2003: Uganda Association of Women Lawyers Et Al Versus The Attorney General**, the Constitutional Court determined on the basis of equality of the sexes before the Law that any one or all the grounds are available to both Parties in a marriage thus declaring unconstitutional the earlier position in the Statute which made it more 10 onerous for women to pursue and obtain orders of dissolution of marriage.

Issue No. 1: Whether there are grounds for dissolution of the marriage.

- [30]. In the present case, both Parties cited adultery, cruelty and desertion as their grounds in both the Petition and the Cross-Petition with mutual accusations.
- 15 [31]. In their Pleadings and evidence both the Petitioner (Cross-Respondent) and the Respondent (Cross-Petitioner) accused each other of adultery as the principal ground for dissolution of their marriage. In respect of the Petition, the Court observes that - beyond generally naming individuals cited suspected of being in liaison with the Respondent; and, claims of condoms found in his 20 bag - which the Respondent insisted were intended to be used at home; as well as observing untoward text messages which testimony seemed random and unsubstantiated - there was no consistent or substantiated basis to establish adultery. Conscious of the decisions of the Courts that adultery needn't be proved by direct evidence and may be inferred, the Court finds 25 that the evidence provided by the Petitioner in respect of the Respondent was tenuous at best and could not on a balance of probabilities establish adultery. **See: Nyakairu Vs. Nyakairu [1970] HCB 261, Habyarimana Vs. Habyarimana [1980] HCB 139 and Divorce Cause No. 42/2011: Bishop Kiganda David Vs. Hadija Nasejje Kiganda.**
- [32]. Significantly, in respect of the Cross-Petition, the evidence presented to the Court established that the Petitioner after withdrawing consort and its associated factors from the Respondent in or about 2011 or not long thereafter settled down and found comfort with a Mr. Geoffrey Akena with 5 whom she now has Two (2) children. This was not contested by the Petitioner (Cross-Respondent) and is in fact admitted. The Court therefore finds that the ground has been established in respect of the Cross-Petition.
- [33]. In respect of the ground of desertion pleaded in both the Petition and the Cross-Petition, it is not contested that the Parties have lived separate and apart 10 for more than Twelve (12) years, since about 2011. An examination of the timelines indicates that over the said period the interaction of the Parties was briefly in 2014 to discuss the marriage and the children, in about 2017 when the Petitioner encountered the Respondent on a bus and then most recently during these proceedings before this Court. The Petitioner has since moved 15 on as admitted and similarly the Respondent has not been in communication with the Petitioner for years on end, about 12 years. The Court finds that the grounds of desertion are proved in both the Petition and the Cross-Petition.
- [34]. **In Habyarimana Vs. Habyarimana [1980] HCB 139** the Court held that there is no precise definition of cruelty in the Divorce Act much as case Law 20 has established that no conduct can amount to cruelty unless it has the effect of producing actual or apprehended injury to the Parties' physical and mental health and there must be a danger to life, limb or health, bodily or mental or reasonable apprehension thereof to constitute cruelty.

- [35]. Upon considering the Petition and the Cross-Petition and the evidence of the 25 respective Parties, the Court finds that the actions of the Respondent/Cross-Petitioner as well as the Petitioner/Cross-Respondent in cutting off communication and isolating themselves from each other or otherwise ignoring each other were in fact the equivalent of a juvenile a tit for tat which the Court is hard pressed to find amounts to cruelty on either side.
- [36]. The Court accepts the explanation of the Respondent in his testimony of his sacrifice in preparing to transfer his family to Kampala after selling the matrimonial home in 2010 with the Petitioner's consent and from which she was an intended beneficiary with her sister designated to run the business 5 which was not denied and leads the Court to conclude that her averments in regards to cruelty of the Respondent in the Petition do not stand.
- [37]. Similarly, the Court is not persuaded by the averments of alleged cruelty as against the Petitioner which were not explained in any detail whatsoever and comprised generalizations of no beneficial weight to be attached by the Court.
- 10 [38]. The Court observed that the Respondent's submissions in this regard were ambiguous and comprised mainly his justification for translocating to Kampala. It was not altogether unreasonable for his Two (2) children from a previous relationship who lived in Kitgum with the Petitioner to join him in Kampala - as it would be unreasonable for him to simply leave (or abandon) 15 them in the custody and care of the Petitioner which was unlikely to be in their best interests. Curiously, no testimony in respect of their mother featured. The Court notes with concern that the Respondent's Two (2) children from his previous relationship seem to have been treated as pawns in the maelstrom of the turbulent marriage.
- 20 [39]. Moreover, the Petitioner's claims of failure to provide support may not be considered to necessarily constitute cruelty and it is observed that both the Petitioner and the Respondent were self-sufficient in terms of employment and means. There was nothing to stop the Petitioner participating in the business established by the Respondent – which her sister was said to manage.
- 25 [40]. In conclusion on the first issue, the Court finds that the ground of desertion is proved in both the Petition and the Cross-Petition, while the ground of adultery is proved in the Cross-Petition. Cruelty is not proved in either.

Issue No. 2 – What remedies are available to the Parties.

- [41]. Upon establishing the grounds specified in Issue No. 1 above and considering the circumstances of the case and the individual Parties as well as giving paramount consideration to the welfare of the child involved, inevitably the 5 Court hereby issues a Decree *Nisi* dissolving the marriage between the Petitioner (Cross-Respondent) – **Amuge Salome** - and the Respondent (Cross-Petitioner) – **Obalim Wilfred Ochola**.

- [42]. The cooperation of the Parties cited in the Joint Scheduling Memorandum especially in regard to making provision for the child and other modalities has made it easy for the Court to determine the remedies to be granted.
- [43]. The Petitioner shall have primary custody of their daughter **Mich Trinity Michelle** – a minor, while the Respondent shall have visitation rights at a place and time to be agreed upon by the Parties in advance, which visitation rights shall not be unreasonably denied.
- 15 [44]. The Respondent shall provide maintenance for their daughter **Mich Trinity Michelle** – in respect of school fees and upkeep in the sum of UGX. 2,500,000/- (Uganda Shillings Two Million Five Hundred Thousand) "**Quarterly**" as stated in the Respondent's representations to the Court in his Written Submissions – for the avoidance of doubt being UGX. 10,000,000/- 20 per annum.
- [45]. The Court declines to grant any non-molestation order and sees no justification in view of the amicable nature of the proceedings and noting their limited interaction.
- [46]. Each Party shall bear their own costs as mutually and amicably agreed by the Parties.
- [47]. In the final result, the Petition is granted on the grounds specified and the Cross-Petition is granted on the grounds specified.

Declarations and Orders of the Court.

[48]. Accordingly, the Court makes the following Declarations and Orders: -

i. The Petition is granted on the grounds specified and the Cross-Petition

is granted on the grounds specified.

5 ii. A Decree Nisi hereby issues dissolving the marriage between the

Petitioner (Cross-Respondent) Amuge Salome and the

Respondent (Cross-Petitioner) Obalim Wilfred Ochola.

iii. The Petitioner shall have primary custody of their daughter Mich

Trinity Michelle a minor, while the Respondent shall have visitation

10 rights at a place and time to be agreed upon by the Parties in advance,

which visitation rights shall not be unreasonably denied.

iv. The Respondent shall provide maintenance for their daughter Mich

Trinity Michelle in respect of school fees and upkeep in the sum of

		UGX. 2,500,000/- (Uganda Shillings Two Million Five Hundred	
15			Thousand) Quarterly – for the avoidance of doubt being UGX.
		10,000,000/- (Uganda Shillings Ten Million) per annum.	
	v.	The Court declines to grant any non-molestation order and sees no	
		justification in view of the amicable nature of the proceedings and	
		limited interaction of the Parties.	
20		vi.	Each Party shall bear their own costs as mutually and amicably agreed
		by the Parties.	

It is so Ordered.

Signed and Dated on the 6th day of September, 2024. (High Court, Kitgum).

25 Philip W. Mwaka

Acting Judge of the High Court.

Delivery and Attendance.

This signed and dated Judgment was delivered in Kitgum High Court on **Friday, the 6 th day of September, 2024 at 10:00am** and the Parties present are recorded.

- 1. Counsel for the Petitioner (Cross-Respondent) Absent.
- 5 2. The Petitioner (Cross-Respondent) –Present.
- 3. Counsel for the Respondent (Cross-Petitioner) Absent.
- 4. The Respondent (Cross-Petitioner) Absent.
- 5. Court Clerk/Interpreter: Mr. Atube Michael (Present at Hearing) and later Mr. Odongo Jimmy (Present at Judgment).

Philip W. Mwaka

Acting Judge of the High Court.

6 th day of September, 2024.

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