

UGANDA / JUDGMENT

Hedwig Hall v George Hall (Divorce Cause No. 3 of 1947 (Mombasa District Registry)) [1954] EACA 123 (1 January 1954)

[1954] EACA 123**COURT**

East African Court of Appeal

BEFORE

Cram J

CASE / FILE NUMBER

Divorce Cause No. 3 of 1947 (Mombasa District Registry)

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DIVORCE JURISDICTION**Before CRAM, Ag. J.****HEDWIG HALL, Petitioner**

v.

GEORGE HALL, Respondent**Divorce Cause No. 3 of 1947 (Mombasa District Registry)**

Matrimonial Causes Ordinance (Cap. 145), section 24 (2)—Application for permanent alimony—Matrimonial Causes Rules, rule 44 (2)—Respondent failing to file an affidavit of means—Rules 9 (1) and 9 (2)—Service outside jurisdiction-Practice under Order 5, rule 24-Insufficient time allowed for return-Adjournment—Order on respondent to file affidavit of means.

The applicant obtained a decree of divorce against her husband and applied for permanent alimony in terms of section 24 (2) of the Matrimonial Causes Ordinance (Cap. 145). The respondent failed to file the affidavit of particulars required by rule 44 (2) of the Matrimonial Causes Rules. The application was set down for hearing, as provided by rule 48, on 15th January, 1954, but the respondent was not served until 11th January, 1954 and that at Kampala, Uganda, where he resided. The respondent did not appear at the hearing, but his advocate telegraphed asking for an adjournment. The applicant had a right to serve out of the jurisdiction in terms of rule 9 \$(1)\$, without leave, but, rule 9 \$(2)\$ lays down that the return should be made in accord with practice under Order 5, rule 24.

Held (18-1-54).—(1) The practice of the Court was to allow 21 days for return after service in Uganda, as provided for by Order 5, rule 24 and in any event, natural justice demanded a longer period than three days to answer when the respondent resided out of the jurisdiction. Hearing of application adjourned.

(2) That, in the absence of an affidavit of means, it might be impossible for the appellant to prove the amount of the respondent's income. Order on respondent to file affidavit of means within 21 days.

Snowdon v. Snowdon, (1871) L. R. 2 P. & D. 200 followed.

Wilcock for applicant.

RULING.—The applicant was successful in obtaining a decree against her husband. In her petition, as amended, she applied for permanent alimony in terms of section 24 (2) of the Matrimonial Causes Ordinance (Cap. 145). A notice, in terms of rule 44 of the Matrimonial Causes Rules, was duly served upon the respondent, who has failed to file an affidavit of particulars, as required by rule 44 (2). Next, the Registrar fixed an appointment for the hearing of the application in terms of rule 48 and notice was served, as required by that rule, upon the respondent's advocates. This notice fixed, for the date of hearing, 15th January, 1954, but was served upon the said advocates as late as 11th January, 1954, and this in Kampala, Uganda, that is out of this jurisdiction. Neither the respondent nor his advocate appeared at the hearing, but a telegram was received from the latter asking that the hearing be stood over generally, pleading a criminal circuit. The respondent is entitled to very little sympathy, for delay has characterised his actions throughout the long period this cause has depended. On the other hand, even although he has failed to file an affidavit, it is essential to inquire whether or not injustice may be done when three clear days only are allowed between a

service in Kampala and appearance in Nairobi. Rule 9 (1) permits service of notices out of the jurisdiction without leave and rule 9 (2) lays down that the period within which return should be made ought to be contained in the notice and be fixed in accord with the practice of this Court under rule 24 of Order 5. That practice requires 21 days. Even if this were not so, I should be inclined to hold that, in the circumstances, natural justice requires a longer period for return after service than three clear days. There is a further difficulty. No evidence of the husband's means is before the Court. The Court has to exercise a discretion and this exercise must be judicial and therefore such exercise implies evidence, either oral or in the form of affidavits. I am, therefore, inclined to the view that, in spite of the long and apparently wilful delays caused by the respondent, further orders will have to be made, even although those may result in loss of time. I am inclined to follow Snowdon v. Snowdon, (1871) L. R. 2 P. & D. 200, where it was said that, while there seemed no doubt the husband had an income, it might be impossible for the petitioner to prove the amount, whereupon the husband having failed to disclose his means, the court made an order that he should within eight days file an answer. I propose therefore to make an order that the respondent shall within 21 days of this date file an affidavit of means as required by rule 44 (2) and that the hearing of this application be adjourned until 15th February, 1954 this

will enable the wife to file an affidavit in answer if necessary—failing which the hearing of the application will proceed and the Court will then fix alimony in accord with the testimony of the applicant. I shall require the attendance of the applicant in the absence of affidavits being filed.

ORDER.—The respondent shall, within 21 days of this date, file an affidavit setting forth full particulars of his property and income in terms of rule 44 (2) of the Matrimonial Causes Rules. This application is adjourned until 15th February, 1954. Should the respondent fail to file an affidavit as ordered then the Court will require the presence of the applicant and shall proceed to fix alimony in accord with its investigations. No further adjournment to be allowed unless on strictest cause shown. A copy of this order to be served on the respondent's advocates forthwith, by acknowledged registered post, by the Registrar, Supreme Court, Nairobi.

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