

UGANDA / JUDGMENT

Johan Drecgembrcek v Kerin Coolen & Another (Divorce Cause 11 of 1992) [1992] UGHC 30 (22 October 1992) [1992] UGHC 30

COURT

High Court of Uganda

BEFORE

Kireju, J

CASE / FILE NUMBER

Divorce Cause 11 of 1992

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

DIVORCE CAUSE NO. 11 OF 1992

Jr.n onuuabirow *t* c : PETITIONER

V E R S U S

1* KERIN COOLEN <sup>J</sup> 2. G. GIBBONS <sup>0</sup> ::: RESPONDENTS

BEFOREi The Honourable Lady Justice M. Kireju

JUDGEMENT

This is ^a' to as a petitioner. seeking the dissolution of a marriage contracted between him and ^t-rin Anno Jean Cooler, his wife, hereinafter referred to as the respondent* One Gay Gibbons was sued as a The marriage was solemnised on 3/6/1988 in Borgerhout District, Mty of Antwerp Belgium* Co-respondent^o petition by Johan Drc-eg ombre ek, hereir.oft rof "red

It is the petitioner's contention that the marriage in question of Antwerp, the copy of the marriage certificate was exhibited as P.l. After the said marriage the petitioner lived and cohabited. with the respondent at various places in different countries such as Kenya, Zaire, Rwanda and Uganda* He cohabited with the respondent at Bunga in Kampala, Uganda and there are no issues of the said marriage* was solemnised under the provisions of the law in the District

At the hearing of the petition, the petitioner was represented by Mr© Tumusingize of M/S Sebalu & Lule Advocates, the respondent was present in court but chose not to call any evidence and said that she was not opposing the petition* The Co-respondent although I he was duly served he did not appear at the hearing allowed the petition to be *z* presented in his absent since he • 0 ft/2» 9

did not appear or send a representative. was properly served and there was no reason known to court why he

The petition gave evidence that he is aged 29 years, of Belgium nationality and currently employed by DHL Uganda Ltd. as Managing Director, and has lived in Uganda for almost 3 years. He stated that he loved Uganda very much. He has acquired property in **Muyenga**, currently he was living at Mackenzie Vale Plot 5 Kololo. He was investigating with Uganda Investment Authority to see what incentives would be given to him if he invested in Uganda. He had instructed his sister in Belgium who is managing his property in Belgium to find a buyer. He would like to use the proceeds from the sale to start up a company in Uganda with his friends. This plan would take place within two years time after his contract with DHL has ended. He stated that he was interested in becoming in future but could not apply at the moment as he has not attained the minimum age of 5 years in Uganda required before one can apply for citizenship under our law. a Ugandan citizen

The petitioner testified that his application for divorce was based on ground of adultery by his wife. On 12/12/91 he went on a business trip to London and Los Angeles for weeks. However, the meetings ended earlier than expected'so he returned?-' **without** informing his wife of his earlier return. Ho arrived back to Uganda only to find his wife and the co-respondent sitted in a sofa in his house. He ordered them to leave and **that** was the end of his stay with the respondent. When he asked his house maid by the name of Connie, P. W.2 she on 21/12/Q1 at 3p.m. When he inquired from the respondent as to what was going on, she started crying and admitted that she was having an affair with the co-respondent.

• ... */? ••

On being asked by court whether there was no chance. confirmed that the co-respondent wns staying at the house when h° was away on business. He testified that he knew the co-respondent as a friend and he used to do some charter for DHL and was employed by company called Barley. was any chance of recociliation, he said that there He said that he did not have any girl*' friend before or after the alleged adultery by his wife.

The next witness vns P. W.2 Connie Najjabwe who testified that cook and she stayed at Kololo• She knew the respondent as her mistress at one time. She said that in December, 1991, the petitioner went away on holiday but did not go with his wife the respondent. She testified that the night the petitioner went away, the respondent ordered her to remove the bedsheets from her bed. The same night a man by the name of Gay Gibbons driving a red car came at the house, he ate super there and stayed for the night. The following morning she was told by the respondent to prepare breakfast for two people which she did. A.fter preparing the breakfast she knocked on the

bedroom door of her master's bedroom and the respondent and the co-respondent came out. car. Th co-respondent came back in the afternoon around 2p.m. and he went back and came back in the evening and stayed for the night. She testified that all the days the petitioner was away the co-respondent spent the nights at the house and she used to see him going to the petitioner's bedroom. Sho used to wash the co-respondent's clothes. mistress. Since the respondent went away, she has not had a new When they finished breakfast, each one left in his/her own she was employed- by the petitioner as a

The t&irdwitness to-be called was P. W. J, Caroline Nabusa who testified that she was employed as a housegirl b£; the respondent and stayed at Mbuya. She has been working for the respondent since March, 1992. She said that there is a whiteman who drives a red car with a white line who comes to visit at the house. That when

... A.. I:

: 3 :

this gentleman visits he spends the nights in the respondent's bedroom. She said that she was not asked by the respondent to •ome and give evidence. She said that she was picked from her home by a driver dressed in DHL uniform. The petitioner's case was closed after this witness.

As already stated, the respondent did not call apy evidence. submitted on the following issues:-
Mr. Tumusingiz^

- Ci) Whether this court has jurisdiction to entertain this petition.
- (2) Whether sufficient cause has been established to justify an order of the 'Jlvcrce Decree N*je\'

mhe petitioner exhibited ^a marriage certificate written in the Flemish language but was translated into English. From the certificate it is clear that the respondent and the petitioner got married on 30/6/88 in the City of Antwerp. Counsel referred me to the case of Taylor vs. Taylor /19^1/ T. L. R. 737 for contention that marriage can be proved by a marriage certificate. The fact that the petitioner and the respondent were married was not disputed and the marriage certificate was enough proof.

Counsel also submitted that thif. was a marriage recognised under vs. Renzo Scn.gliosi in Italy in accordance with Catholic faith was recognised under our Laws Cap 211 and could be dissolved under the Divorce Act. r-The marriage in this case was before a Registrar and this is one of the marriages recognised under our Laws. S.27 of Marriage Act refer. This marriage can therefore be dissolved under our Divorce Act. The first real The divorce law in Uganda is governed by the Divorce Act Cap 215 and 5.2 (a) thereof is as follows issue before this court is whether this court has jurisdiction to *i* entertain this divorce petition. our own laws and referred me to the Divorce Cause 1/90 Jolei Scagliosi where Justice Ki:yo ruled that a marriage solemnistu.

¿/ 1 .../5..

...

"2. Nothing in this Ant contained shall authorise:-

\$(a)\$ the making of any decree of dissolution of marriage unless the petitioner is domiciled in Uganda at the time when the petition is presented;

The issue now is whether the petitioner is domiciled in Uganda. The petitioner being a Belgium national cannot claim domicile of origin here, as this is the domicile one acquires at birth. Counsel for the petitioner submitted that the petitioner has proved that he had acquired domicile of choice. That the petitioner has proved that he has stayed in this country for almost 3 years, he was therefore resident and that for continued staying in this country the following evidence was given. The petitioner possessed property in Muyenga, Kampala, he intended to stay in Uganda after the contract with his employer has expired. Making arrangements with Uganda Investment Authority for possible investment in Uganda. Selling off his assets in Belgium in order to come and invest here. His intention to apply for citizenship at the requisite time. Counsel contended that the points given show enough proof of the petitioner's intention to stay in the country for an indefinite period of time and thus making him acquire a domicile in this country which in effect gives this court jurisdiction to try this petition.

The burden of proving that the petitioner has acquired a domicile in Uganda is on him. In the case of *Bater v. Bater* /1950 / All E. R. at page 459 Denning L. J. as he then was said that a change from domicile of origin to one of choice is always a serious matter and the standard required is accordingly a high one. The case was cited with approval in the case of *Field vs. Field* 1964 E. A. 43. It is now trite law that any person under disability may at any time change his existing domicile and acquire for himself a domicile of choice by the fact of residing in a country other than that of his domicile of origin with the intention of continuing to reside there indefinitely.

no more than personal presence in a locality, regarded apart from any of the circumstances attending it. If this physical fact is accompanied by required state of mind neither its character nor its duration is in any way material. The aforesaid was expressed in the approval in the case of *Aslanidis* It has been argued that intention by itself is not enough to change the domicile, the intent must be followed by a definite act, for example residence by itself is not enough, there must be a definite act, for example residence by itself is not enough, there must be an intention for permanent or indefinite residence. It was put in the case of *Gulbenkian vs. Gulbenkian* /1937. 25 T. L.46 vs. *Islay Thonhill and Another* 1965 E. A. 268 and I agree with the law as expressed. The same principle case of *Thornhill* was also and for this purpose residence is a mere physical fact, and means

I

•K

t

I

in character*. "The intention must be a present intention to: reside permanently, but it does not mean-that such intention must necessarily be irrevocable. • It must be an intention /unlimited in. period but not irrevocable'

Applying the above ^authorities to the present petition. ^I am The should not effect He has acquired property and plans, to invest in this country. change of nationality may be evidence of intention to change one's domicile, in general nationality is distinct from domicile in our law. ¹ fact that the. petitioner has not qualified yet, to apply for citizenship his intention, it in fact supports his case of intending Although to stay permanently in this country. • I find that the petitioner had domicile of choice in Uganda and this court has jurisdiction over his petition. acquired a conviction that the petition has put forward sufficient evidence of a settled intention on his part to remain in this country permanently.

The next issue is whether the petitioner has proved his case to justify an order or divorce decree under * Under the Divorce Act

court for ' <3 This is the only ground at the moment in Uganda on which a husband can petition for divorce^ Cap 215 which is ^a bit out of date with modern times although it* is husband under §5(1) is free to petition to the still the law, a dissolution of his marriage on the ground that since solemnization of marriage his wife has been guilty of adultery*

was no circumstance ' evidence to prove that for the period of almost 3 That the respondent also admitted that she was having an affair with the co-respondent ^o P*W*J also testified that the affair was still continuing* Counsel referred me to the case of Edward Kakuxi Kaye, Miet Yudesi Kyoyanga 197 - ULI JS6 where the case of adultery is difficult to prove by direct evidence that it is a Counsel also contended that the standard of proof not beyond reasonable doubt * ¹ ho cited the case of SxVLuXSa--9 /T966 7 All EyJ? in support thereof » Counsel submitted that on evidence, the respondent had committed the offence of adultery* Counsel the scourge of AIDS (Acquired Immunity Deficiency ^O very rampant That the infidelity by one party not only affects the marriage but also the of the other party is at stake. Counsel submitted that the petitioner be absurd for him to lose his life because of • nfaithful wife* the moment the petitioner found out that the respondent was having ⁷⁸ /sup>;, was not staying with any other woman invited court to take judicial notice of the present situation where divorce is opportunity and circumstances required is on balance of probability and matter of inference. Counsel for the petitioner submitted that although there direct proof *vX* adultery in this case*. that there was enough young man of 29 years and it would That house built in his bedroom* weeks the co-respondent - • was not only staying in the petitioner's was an affair he sent her out of the house, cohabitation between the two* there was not This was the testimony of P*V»2© Divorce . Cause was cited with approval of the contention. that subsequent conjugal From the evidence .?! P®^2, the petitioner

I

i

I

Counsel submitted that since the respondent was present in court and not had all allegations levelled against her but chose to question be to assume that Counsel prayed for the grant of that the only assumption would then the allegations were true. decree nisi.

I agree with the authorities cited by counsel, that it is not necessary to prove adultery by direct evidence as it is usually a secret. Association, coupled with opportunity and evidence of illicit affection or familiarities, creates inference upon which court can find adultery. In the present case the cook P. W.2 testified that sharing the same bedroom. This evidence coupled with the evidence that the respondent admitted that she was having an affair with the co-respondent can be taken as enough proof of adultery on the part of the respondent. The respondent was present and chose not to dispute this evidence, I also agree with submission by counsel that adultery is now more serious offence than ever before because of the AIDS which is stated that the respondent and the co-respondent were

to be spread mainly through sex and the disease has no known cure at the moment. Where adultery is in issue the petitioner cannot be blamed for failing to reconcile with his partner as it is a matter of life and death. When the petitioner in this case learned of the adultery he sent away his wife and put an end to the conjugal cohabitation which I think was wise in the circumstances.

Having heard the unchallenged evidence adduced by the petitioner and his witnesses, I am satisfied that the respondent and the co-respondent committed the adultery upon which this application was co filed. I am equally satisfied that the petitioner has not connived or condoned the adultery complained of but that he discontinued or he learned of the adultery. conjugal cohabitation by sending the respondent away as soon as

... /9-

: 8

\$\vdots \quad 9 \quad \vdots\$

I accordingly grant the petition and HEREBY ORDER that a Divorce Decree Nisi dissolving the marriage between the petitioner and the respondent do issue forthwith.

No Order as to costs.

\$\mathcal{M}_{\{M. Kireju\}}\$
JUDGE

\$\bullet\$

\$22/10/92\$

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/1992/30/eng@1992-10-22>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/johan-drecgembrcek-v-kerin-coolen-divorce-cause-11-of-1992-1992-ughc-30-22-october-1992-and-others-unknown-topic-unknown-court-1992--6a3ea4d83b1caa91297e5298>

Prepared on 14 October 2026 · Esheria