

UGANDA / JUDGMENT

Karokora v Karokora (Divorce Cause 20 of 2020) [2023] UGHCFD 32 (18 August 2023)

[2023] UGHCFD 32

COURT

HC: Family Division (Uganda)

BEFORE

Keitirima, J

CASE / FILE NUMBER

Divorce Cause 20 of 2020

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA FAMILY DIVISION
MAKINDYE DIVORCE CAUSE NO. 020 OF 2020 ZEDEKIA
KAROKORA :..... VERSUS

KELLEN KAROKORA:..... BEFORE HON. JUSTICE JOHN EUDES
KEITIRIMA

JUDGMENT

1. The Petitioner stated that he was married to the Respondent on the 7th May 1975 in a Church Ceremony at Kihanga Church of Uganda.
2. The Petitioner stated that since the solemnization of their marriage, the respondent has been cruel to him.
3. The petitioner listed the particulars of cruelty as follows;
 - i. The respondent has since 1999 denied the petitioner conjugal rights.
 - ii. The respondent does not talk, respond or chat with the Petitioner since the year 2000.
 - iii. That the respondent abuses and humiliates the Petitioner in the presence of their children and guests.

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- /iv. That the respondent has turned the children against him especially their son and are violent against him and do not greet him or respect him at all.
- That the respondent has never been thankful for anything the \$V\$. Petitioner has done for her.

- That the respondent only prepares food for herself in the home and vi. the petitioner has to prepare his own food.
 - That the respondent defames, demeans, exploits and manipulates the vii. petitioner for selfish ends in their marriage.
 - That the respondent believes in witchcraft and black mailing of the viii. petitioner's relatives calling them witches who should not associate with their children hence severing family ties.
 - That he does not receive any care from the respondent or their ix. children when sick and relatives are prohibited from accessing him.
4. The petitioner further states that the behavior of the respondent towards him has adversely affected the petitioner's health by causing mental anguish on the Petitioner, depression and nervousness and he has since developed hypertension and diabetes.
 5. The Petitioner further contends that due to irreconcilable differences, the marriage to the respondent has irretrievably broken down.
 6. That this Petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceedings nor is he guilty of condonation.

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7. The Petitioner listed the following properties they own with the respondent;
 - Plot 3, Hill View Drive, Kampala measuring 0.093 hectares. i.
 - Unit 23, condominium Plan No. 0026 Building Block A, Luthuli ii. Rise, Bugolobi Kampala lease hold Register Volume 3268 Folio 9 covering a unit area of 102.65 square meters.
 - Farm land measuring approximately 91 acres at Kyamuhunga with iii. the main homestead, tea plantation of 60 acres, a banana plantation, a poultry farm, goats and piggy rearing.
 - 1.59 billion shillings arising out of proceeds of the sale of shares in iv. City Parents School.
 - Kera Community Counselling Services a National Non- \$V\$. Governmental Organization and Z & K business associates ltd.
- 8. The Petitioner is seeking for the following remedies;
 - The marriage to the respondent be dissolved and a decree nisi be \$i.\$ issued.
 - Orders on disposal of the matrimonial property. ii.
 - Any other remedy that this Court deems fit. iii.
9. In her answer to the petition the respondent states inter alia; -

- That she got married to the Petitioner in 1977 and not 1975. \$i.\$
- That paragraph 4 of the Petition and each of the particulars set out ii. in paragraphs (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) and (ix) are denied.

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- dii. That paragraph 5 of the petition does not disclose the material facts upon which the petitioner relies making it impossible for the respondent to respond.
 - iv. That the allegations in paragraph 6 of the petition are mere fabrications by the petitioner, totally untrue and unsubstantiated.
10. On the allegations of cruelty, inhuman treatment, mental and psychological torture she specifically responds as follows;
- a) That at all material times she has treated the petitioner with kindness, care, love and has during the subsistence of their marriage provided for the Petitioner to the full extent of her financial ability.
 - b) That she has never abused, acted cruelly nor inflicted any physical and mental injury to the Petitioner and has not in any way caused any threat to his life as alleged.
 - c) That the respondent has since the solemnization of their marriage provided for the Petitioner the best comfort and family environment and that she is a caring, loving wife and mother in all respects.
 - The respondent further states that the shares which were sold in City \$V\$. Parents School belonged solely to the respondent and the petitioner does not have an interest in the proceeds of the sale.
 - That the Petitioner has no interest in Kera Community Counselling vi. Services, a professional entity as the same is solely managed and run by the respondent based on her individual possession, training and capability.
 - That the Petitioner is not entitled to any of the reliefs sought. vii.

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- viii. That the petitioner has not exhibited any grounds to warrant the dissolution of the marriage.
- ix. The respondent further states that the petitioner has not exhibited any grounds to warrant the dissolution of the marriage.
- That the allegations raised by the Petitioner do not meet the standard \$X\$. of the above ordinary wear and tear of a marriage to warrant the dissolution of the marriage.

- The respondent prays that the petition be dismissed with costs. xi.
 - 11. In his reply to the answer to the petition the petitioner states;
 - That the cruelty and its particulars as stated in paragraph 4 of the i. petition is a ground for which this Court can rely on to dissolve the marriage.
 - The Petitioner denies any kindness, love and comfort accorded to ii. him by the respondent and has since been forced to seek refuge outside the homestead due to the respondent's cruelty.
 - That the shares in City Parents School were jointly acquired with iii. joint proceeds of the Petitioner and the respondent during the subsistence of their marriage although taken in only the respondent's name.
 - That the allegations raised by the Petition meet the standards of the iv. ordinary wear of a marriage to warrant its dissolution.
12. In their joint Scheduling Memorandum the following issues were raised for determination; -

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1. Whether the petition raises any grounds for dissolution of the marriage between the Petitioner and the Respondent.
2. What amongst the properties available constitutes matrimonial property and how is it to be distributed between the parties?
3. Whether the parties are entitled to any of the reliefs sought upon such dissolution.
13. The parties adduced evidence by way of witness statements from which they were cross-examined. They also later filed written submissions the details of which are on record and which I have considered in determining this petition.

<u>Issue 1</u>: Whether the Petition raises any grounds for dissolution of the marriage between the Petitioner and the Respondent.

14. It is an agreed fact that the Petitioner and the respondent were married on the 7th day of May 1977 in a church ceremony at Kihanga Church of Uganda.
15. In the Case of *Uganda Association of Women Lawyers and 5 Others* versus Attorney General – Constitutional Petition No. 2 of 2003 it was held that Sections 4,5, 21,22,23,24 and 26 of the Divorce Act are void in so far as they discriminate on the basis of gender, so the grounds of divorce as listed are available to both sexes and the compensation for adultery, costs against a co-respondent, alimony and settlement are applicable to both sexes.

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16. Section 4 of the Divorce Act Cap 249 lists the grounds of divorce as follows;

- Adultery. i.
 - ii. Change of profession from Christianity to some other religion.
 - iii. Incestuous adultery.
 - Bigamy with adultery. iv.
 - Marriage with another man or woman with adultery. \$V\$.
 - Rape, sodomy or bestiality. vi.
 - Adultery coupled with cruelty; or vii.
 - Adultery coupled with desertion without reasonable excuse for two viii. years or upwards.
17. In his petition, the Petitioner stated that he has been denied conjugal rights by the respondent since 1999, the respondent has been cruel to him and does not receive any care from the respondent.
 18. In her evidence, the respondent denied the said allegations by the petitioner.
 19. Even if in his evidence the Petitioner could have proved cruelty and dissension on part of the respondent, those grounds alone are not sufficient to dissolve a marriage.
 20. Cruelty or desertion must be coupled with adultery.
 21. The Petitioner has not proved adultery on part of the respondent.
 22. It was held in the case of Nagidde Rebecca Versus Mwasa Charles Steven C. A. C. A No. 160 of 2018 that before a grant of a decree nisi, the

court must first be satisfied that the Petitioner's grounds as presented have been proved. Secondly, that there was no connivance or condonation or collusion with the respondent in presenting the petition. And lastly that the Petitioner is not guilty of adultery or unreasonable delay in presenting the petition or cruelty to the respondent or desertion or separation or other misconduct.

23. The Court of Appeal further held that the said provisions of the law may be archaic but they still represent the law on divorce, and no court administering the law as it is, can ignore them and instead set up its own requirements such as irreconcilable differences as a ground for divorce.
24. In this case, the Petitioner had also to prove adultery on part of the respondent on top of the other grounds he raised in the petition.
25. The grounds of cruelty and dissension cannot stand alone or even if they are coupled as grounds for divorce.

26. Therefore the petitioner has failed to prove the grounds for divorce and the petition will be dismissed.
27. I will not resolve the issue of sharing of property since it was hinged on proving the grounds for divorce which the petitioner has failed to prove.
28. I will give no order as to costs for purposes of promoting reconciliation among the parties as provided for under Article 126 (2) (d) of the **Constitution**.

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Hon. Justice John Eudes Keitirima

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