

UGANDA / JUDGMENT

Namukasa v Kakondere (Divorce Cause No. 30 of 2010) [2015]

UGHCFD 49 (10 April 2015)

[2015] UGHCFD 49

COURT

HC: Family Division (Uganda)

BEFORE

Luswata, J

CASE / FILE NUMBER

Divorce Cause No. 30 of 2010

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

DIVORCE CAUSE NO. 30 OF 2010

NAMUKASA JOWERIA..... PETITIONER

VERSUS

KAKONDERE LIVINGSTONE..... RESPONDENT

JUDGMENT

BEFORE LADY JUSTICE EVA K. LUSWATA

Background;

By her petition, Namukasa Joweria the petitioner seeks *inter alia* the dissolution of her customary marriage to the respondent, custody of, and maintenance for the four issue of that marriage, a portion of the matrimonial wealth, a claim to property she obtained as an individual during the marriage including an order to protect her entitlements from interference by the respondent and a restraining order to protect her and the issue of the marriage from physical contact with the respondent, as well as custody and maintenance for those issue. She prayed in the alternative, for an order of judicial separation.

The brief facts are that the petitioner and respondent were customarily married on the 20/8/99 at Kabalungi village Rwashamire Trading Center in Ntungamo District in the home of the petitioner's brother. Four issue aged between 17 years and 13 years are the result of that union. That during the marriage, the parties jointly and severally acquired several properties in Rwashamire and Kampala districts.

The petitioner complained of extreme physical and psychological abuse by the respondent which on occasion resulted into serious physical harm and eventual desertion by the respondent when he left the matrimonial residence in 2010.

The respondent in answer to the petition, denied all the allegations by the appellant and cross petitioned on the grounds that he has never married the petitioner, the petitioner does not profess the Christian religion and that he has suffered physical abuse at the hand of the petitioner. He stated further that being in charge of an income generating business, he was better placed to have custody of the issue of the marriage than the petitioner who is unemployed. He further prayed for a restraining order against the petitioner, the petitioner be restrained from claiming ownership of his properties, a declaration that the petitioner and respondent are not husband and wife, and reimbursements from the petitioner in respect of rent collections from his properties and sale of his goats.

There was no reply to the counterclaim by the petitioner.

Despite having been served with the petition, the respondent and his lawyers did not turn up at the hearing of the case and upon application by counsel for the petitioner, I allowed **ex parte** proceedings. However, before the **ex parte** hearing could commence, on 6/2/14, I chose to review that order under Section 98 CPA and the respondent was granted another chance to be heard. Specifically, on that date, I ordered service to be made upon the respondent, his lawyer or an adult member of his family at his home in Nyakihanga and further, substituted service in the Orumuri Newspaper which orders were followed by the petitioner and a return of service duly filed. The respondent still failed to appear in court to oppose the petition or present the counter petition. Only then did I permit **ex parte** proceedings which commenced on 11/4/14.

The petitioner adduced evidence of three witnesses to wit; PW1 Namukasa Joweria (the petitioner), PW2 Bitirahare Moses and PW3 Buyungo Elias Sultan who presented evidence by witness statements and oral testimony. Written submissions were filed in which five issues were raised for determination, to wit:

1. ****Whether there is a valid customary marriage between the petitioner and the respondent?****
2. ****Whether the respondent committed a matrimonial offence?****
3. ****Whether the petitioner is entitled to the custody of the children and if yes what is the reasonable contribution the respondent should make?****
4. ****Whether the parties have matrimonial property and if yes, whether the petitioner is entitled to a share in the matrimonial property?****

5. ***What remedies are available to the parties?***

Issue one;

Whether there is a valid customary marriage between the petitioner and the respondent?

Article 31 (1) of the Constitution of the Republic of Uganda 1995 states that, “*men and women of the age of 18 years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.”* In the case of **Alai Vs. Uganda [1967] E. A 596** Sir Udo Udoma held that “*marriage is a ceremony by which a man and woman become husband and wife thereby creating the conditions of belonging to a particular class of persons to whom the law assigns certain equal capacity as qualified.”*

The petitioner claimed to have been married to the respondent under custom on the 20/8/99 at Kabaluni village Rwashamire trading center in Ntungamo District.

Section 1 of the Customary Marriages Registration Act Cap 248 (hereinafter referred to as the Customary Marriage Act) defines customary marriage as “*a marriage celebrated according to the rites of an African community and one of the parties to which is a member of that community, or, any marriage celebrated under Part III of this Act. “*

It is now settled law in our courts that payment of the full bride price requested by the bride’s family is proof that a customary marriage has been celebrated between two parties, see for example **Aggrey Awori Vs Rosette Tagire HCCS 178/2000** and **Uganda Vs. Olinga & Anor [1974] HCB 87**. This same principle was considered in the cases of **Mifumi (U) Limited & 12 Ors Vs. Attorney General and Anor (Constitutional Petition No. 12 of 2007)** where Hon. Justice S. B. K Kavuma recognized that payment of bride price is widely practiced in Uganda. In **Nemezio Ayiyya Pet Vs. Sabina Onzia Ayiyya (Divorce Petition No. 8 of 1973)** court held that before all dowry is paid, a man and a woman cohabiting can be regarded as husband and wife but (the customary) marriage is not valid until all dowry is paid.

In the case in point, the petitioner in her evidence stated that she first cohabited with the respondent but on 20/8/99, the respondent together with his father, uncle, two brothers, two other gentlemen and Katafa went to the her brother’s home for a formal introduction. They brought and paid to her family Shs.200,000/= and 3 cows as bride price. A feast was served and the ceremony was attended by the petitioner’s family members, residents and elders of the village. This evidence was corroborated by PW2 who testified that the ceremony was held at the home of the petitioner’s brother because her parents died the day she was born. As such, as an elder of the family, he agreed with the petitioner’s brother to have the ceremony at the latter’s house and all the gifts were given to PW2 as he stood in for the petitioner’s parents.

There was no serious evidence to rebut that a ceremony to celebrate a customary marriage between the parties ever took place. The respondent only offered a general denial of the marriage stating that he was prevented to marry the petitioner by her family because he declined to convert to Islam. Indeed, the name Joweria would connote one who professes Islam. However, in the customary Marriages Act, there is no restriction against Muslims or those professing any

other religion to contract a customary marriage. What is required is that the couple celebrates the marriage according to the culture and marriage norms of any indigenous tribe of Uganda. That notwithstanding, it appears in fact that the petitioner did convert to Christianity on the day she was baptized at the All Saints Church, Rukungiri and assumed the new name of “Precious Nimusiima” on 24/9/06. Thus she professed the Christian religion at the time the petition was filed.

From the above, would there have been any doubt that a customary marriage subsists between the parties, such doubts would be erased by the evidence of PW4 that after the marriage ceremony, he and PW2 called on the respondent and gave him the gifts of three cows, as the *‘emihingiro’* which is the norm after celebration of a traditional Kinyankole marriage, I therefore hold that a valid customary marriage was contracted between the respondent and the petitioner.

Issue two;

Whether the respondent committed a matrimonial offence?

The agreed position of many courts and authors on custom is that a customary marriage is ended when bride price is returned to the husband’s home. In fact, there is previous authority to the effect that the **Divorce Act Cap 249** (hereinafter referred to as the Act) does not apply to customary marriages. See **John Kintu Muwanga Vs Myllious Gafabusa Kintu HCDA 135/97**, where Justice Bossa was of the view that proceeding under the Act would be superimposing a foreign regime of law upon spouses who chose to contract a marriage under custom.

With much respect, I believe that position has been overtaken by the new legal regime in our Constitution that advocates for equality of spouses at the dissolution of marriage and the general equality paradigms that follow through that important legislation. More important though, have been subsequent judgments in the courts of record on the issue of bride price as a binding factor in customary marriages. In particular the Supreme Court in **Mifumi (U) Ltd and 12 others Vs The Attorney General (supra)** found the practice of return of bride price as demeaning to the dignity of women and in violation of a married woman’s constitutional right to be equal co-partners to men. Therefore, this practice as a form of dissolution of a customary marriage is repugnant to natural justice, equity and good conscience and incompatible with the Constitution. By implication therefore, the ground known in custom for ending a customary marriage was eliminated.

Nonetheless, it cannot be the purpose of our law that persons in a customary marriage may not seek for good reason, its dissolution. The principal law, the Customary Marriage (Registration) Act (hereinafter referred to as the Customary marriages Act), makes provision for validity and registration but not dissolution of customary marriages. On the other hand, the Divorce Act which in its preamble is an Act relating to divorce did not specifically provide for the types of marriages it would apply to. Since customary marriages are provided for by statute, I see nothing in the law, excluding their dissolution under the Divorce Act and therefore hold that this marriage can be dissolved under the divorce Act. Even the mode of the pleadings by both parties

connote a divorce being sought under the Act.

Having found that this particular marriage can be dissolved under the Act, I would turn to **Section 4 of the Act** which provides the grounds under which a husband and wife can petition for divorce. However our courts have pronounced themselves on the unconstitutionality of those grounds when in the case of **Uganda Association of Women Lawyers and Ors Vs. Attorney General Constitutional Petition (No. 2 of 200) (FIDA)** case. It was held that the provisions of Section 4 of the Divorce Act are null and void in as far as it required women to prove many grounds for divorce as opposed to men who were required to prove only one. The court considered this as discrimination on the basis of sex and in violation of the equality provisions under the 1995 Constitution of Uganda. It was the view of the Learned Justices that all the grounds of divorce mentioned in Section 4(1) and 4(2) are available to both parties to the marriage.

Unfortunately, since that Judgment, there has not been statutory amendments to provide for this development, and the practice of courts therefore has been to adopt either the view of the Constitutional Court in FIDA case (supra) that all grounds are equally available to spouses who seek divorce, or, that the provisions of Section 4 have been expunged altogether. See for example **Masiko Gershom Vrs Masiko Florence HCD 8/11**.

In the instant case, the petitioner alleges that the respondent has been unbearably cruel to her since the solemnization of their marriage, has deserted the marriage and is currently living in adultery.

In **Habyarimana Vs. Habyarimana [1980] HCB 139** it was held that there is no definition of cruelty in the Divorce Act but case law has established that no conduct can amount to cruelty unless it has the effect of producing actual or apprehended injury to the petitioners' physical and mental health. That there must be danger to life, limb or health, bodily or mental or reasonable apprehension of it to constitute cruelty.

The petitioner's evidence was a gruesome tale of physical, social and physiological abuse by the respondent. She suffered battery and never ending insults some in the presence of her children. She was not spared even when pregnant, that one time while resting during confinement, the respondent hit her on the back with a big stick and as a result, she suffered a miscarriage.

That as a result of the excessive and frequent battery, the petitioner filed several complaints with the Nateete Police station. The acts of violence culminated into a particular incident on 30/6/2010 when the respondent hacked the petitioner with a panga inflicting serious injuries. The respondent was as a result, charged, tried and convicted at the Buganda Road Court for causing grievous harm vide Criminal Case No. 570/10 and at the same time convicted of threatening violence vide Criminal Case No. 569/10. The petitioner substantiated that testimony with photographs (Exhibit 19) a medical report and the judgments of the court. The petitioner further revealed that the respondent has continued to threaten her life even after three years of their physical separation. Her fears are not unfounded for she testified that during December 2013, the respondent hired two men, Ramson Benjamin and Tusiime Amon to kill her. Fortunately, these

two suspects after being arrested at the petitioner's home confessed their criminal intentions to police and were later released on police bond. Efforts to arrest the respondent have been in vain.

This evidence of the petitioner was corroborated with that of PW2 and PW3. PW2 stated that the petitioner informed him that the respondent used to beat her but when he called the respondent to explain the allegation he refused to turn up. He also testified that the petitioner reported to him when the respondent injured her with a panga. He advised her to report the matter to police. PW3, the chairperson of Nateete where the parties once resided together, testified that around 2009, the parties started having misunderstandings and during one incidence of violence the petitioner called him at mid night. That when he arrived at their home he found the respondent holding a stick which he removed from him and tried to calm him down.

Save for the general denial in his reply to the petition, there was no serious rebuttal by the respondent against those serious allegations of cruelty. The respondent also did not rebut the evidence that he is living in desertion and adultery or that he stole or unlawfully carried away, the merchandise in the petitioner's shop at Ntinda.

In the case of **Habre International Co. Ltd Vs. Ebrahim Alakaria Kassam and others SCCA No. 4 of 1999** it was held that whenever an opponent declines to avail himself of the opportunity to put his essential and material case, in cross examination, it follows that they believed that the testimony given could not be disputed.

There is no doubt in my mind therefore that the respondent's behavior towards the petitioner was cruel. The acts of physical and psychological violence in the form of beatings, cuttings, and verbal abuse, threats to take her life and stealing from her, could put any marriage at risk. This was a "union on the rocks" that was unbearable and even dangerous for the petitioner. There would be no lawful or justification to compel the petitioner to continue with such a union. I am convinced that the respondent committed all the matrimonial offences he was accused of and I do agree that the marriage between the petitioner and respondent is irretrievably broken down with no hope of reprieve. I thereby order that it be dissolved by court decree.

Issue three;

Whether the petitioner is entitled to the custody of the children and if yes, what is the reasonable contribution the respondent should make?

Article 31 (4) of the Constitution provides that "it is the right and duty of parents to care for and bring up their children." **Section 29 of the Act** provides that "in dissolution of marriage, the court may at any stage of the proceedings make such orders with respect to the custody, maintenance and education of minor children of the marriage." Again, according to **Section 3 Children Act** the welfare principles and the children's rights set out in the 1st schedule to the Act shall be the guiding principles in making any decision with regard to children.

In the Matter of **Ali Issa & F. Yusuf (Misc Application No. 904 of 1999)** court stated *inter alia* that "custody concerns essentially the control and preservation of the child's person, physically, mentally and morally." In the case of **Pulkeria Nakagwa Vs. Dominiko Kiggundu [1978] HCB 310**,

Odoki Ag J (as he then was) stated that welfare in relation to custody of children should take into account all circumstances affecting the well being and upbringing of the child and the court has to do what a wise parent acting for the best interest of the child ought to do. I am aware that, although no parent is preferred in law, courts have tendered to grant custody of children of tender years to their mothers except where exceptional circumstances dictate otherwise. See for example in **Samwiri Massa Vs. Rose Achen [1978] HCB 297**.

The facts in issue indicate that at the time of filing the petition, the parties had between them four children aged eight and 14 years respectively. In that case they would be aged nine, twelve, fourteen and fifteen years and I would thereby consider the younger two of tender age. The petitioner testified and it was not rebutted, that ever since the respondent abandoned the matrimonial home in 2010, it is she who has been single handedly providing for the children's needs which include education, clothing, feeding and medical care. The petitioner adduced evidence of bank slips for the children as Exhibit P17(1) to (20) which illustrate that since 2009, it's the petitioner who has been depositing and remitting the children's school fees.

Taking into account the tenets of the welfare principle, Section 3 **Children Act** and decided cases, in my view, it would be in the best interest of Ampaire Shafin, Nayebare Shafra, Namanya Ivan and Nasasira Gilbert for their custody to be granted to their mother the petitioner who is willing to take care of them and having stayed with them for the last four years has shown that she has the mental physical and social capacity to do so. I would also concur with counsel for the petitioner that since two of the children are young adolescents and the other two young children, they need to be guided morally, spiritually and psychologically as they ascend into the critical puberty stage and a mother's love and care for reassurance and security purposes to enable them grow well.

Conversely, the respondent has nothing to offer them as a father. He has been cruel and abusive towards their mother, sometimes in their presence and declined to provide for them even when he professes to have the means of doing so. His presence in their lives will only be destructive and one of fear and resentment. I thereby decline to grant him custody and instead grant custody to the petitioner who has proved to be the present and most reliable parent of the two. Also, both the petitioner and the children must be protected from further acts of violence and as such, a restraining order in the form of a permanent injunction is also issued against the respondent with conditions.

With regard to maintenance, under **Section 76 Children Act**, any person who has custody of a child including a parent, is permitted to make an application for a maintenance order against the father or mother as the case maybe

In the **Matter of Ayla Mayanja (an infant) Misc Application No. 20/2003 (unreported)** it was noted that the rights of a child as laid out both in the Constitution and the Children Act must be provided by the person entrusted with the parental responsibility of the child. This person must be a parent of a child or guardian. Apart from the psychological and emotional wellbeing, children are entitled to other rights that involve financial expenditure, e.g. school fees, shelter, medicare, clothing, entertainment, etc.

In the instant case, counsel for the petitioner submits that due to the hostility and violent tendencies of the respondent, and has unwillingness to provide for the welfare of the children, the petitioner is willing to provide for the children's welfare as long as she and the children are given the properties in Kiwatule and Nateete which constitute rental houses whose income can support the petitioner in meeting the children's needs, especially school fees. I see much sense in those arguments but it cannot be ignored that maintenance is always a joint responsibility of both parents.

In conclusion, although custody has been granted to the petitioner, the respondent as a father to the children still has a responsibility to make a contribution towards their wellbeing. He will thereby forfeit all his interests in the two houses at Kiwatule and Nateete to the petitioner. These will be utilized solely by the petitioner to provide for the children's wellbeing.

Issue four;

Whether the parties have matrimonial property and if yes, whether the petitioner is entitled to a share in the matrimonial property?

An attempt was made to define the term “matrimonial property” by Lady Justice Esther Kisakye in the case of **Rwabinumi Vs. Bahimbisomwe Civil Appeal No. 10 of 2009** where she cited with approval the case of **Muwanga Vs. Kintu (supra)** in which Bbosa J observed that;

“matrimonial property is understood differently by different people. There is always property which the couple chose to call home. There may be property which may be acquired separately by each spouse before or after marriage. Then there is property which a husband may hold in trust for the clan. Each of these should in my view be considered differently. The property to which each spouse should be entitled is that property which parties chose to call home and which they jointly contribute to”.

According to the evidence on record, the petitioner testified that upon her marriage to the respondent, they resided in Rwashamire Trading Centre working together as a family running a whole sale retail shop and later jointly bought land from a one Hajji Badru Sande which had a house on it. The agreement of sale was adduced in evidence as EXHP1. She further stated that when they moved to Rukungiri, they bought more pieces of land which include, land from a one John Kabareebe, (Exhibit P2), another bought by the respondent from John Kabareebe, (Exhibit P3) and yet another jointly purchased from F. Mugondo where they built the matrimonial home (see Exhibit P4). She also exhibited photographs of the home as EXHP20 and receipts of some of the items she purchased in the house as EXHP21 (a), (b) and (c). She in addition adduced

EXHP5 as an agreement for land bought by the respondent from Mugume Polly on which they have a banana plantation, EXHP6 as land bought jointly from W. Rushakama which also has a banana plantation and EXHP7 as land bought by the respondent from Nshijja . G where they cultivated sweet potatoes.

The petitioner also testified that the couple later moved to Kampala and during their stay together started dealing in selling cars from whose proceeds they purchased a taxi which they also sold off and later started running a shop. They then purchased 6 pieces of land two of which have houses and the rest plantations. The first piece of land (EXHP8) which is located at Nyakihanga was bought by the petitioner from a one Bataringaya, EXHP9 is the agreement for the other piece of land which was a gift from one Bakasharebwa and Kirabo to the respondent and currently has a banana plantation. That EXHP10 is an agreement for land bought by the petitioner from a one Byangwanye Obed, yet EXHP11 is for land bought jointly from the children of the late Levi Butumanya, EXHP12 as land bought jointly from Kalumba Faisal which has residential premises at Nateete and EXHP13 as evidence of land at Kiwatule jointly purchased from Kalyegira Adone and which has land and houses.

The petitioner further adduced evidence of an agreement (EXHP14) by which the respondent handed over the shop in Ntinda to her and also adduced evidence of receipts for the rent she paid for the shop as EXHP15 (a) and (b). She testified that after the respondent was released from prison, he broke the shop, loaded much of merchandize in it onto a truck and took them to Rwashamire where he set up another shop, but later moved the goods to Rukungiri. She adduced evidence of photographs showing the entrance of the shop the Fuso truck upon which the goods were loaded with some of the neighbors watching the exercise as EXHP 16 (a), (b) and (c). She reported that incident as theft at Kiira road Police station vide SD Ref.71/06/08/2010.

From the above there is strong and un rebutted evidence that the parties acquired and owned property either individually or jointly throughout the marriage. It is evident though, that, irrespective of the type of ownership; the various properties were acquired by the parties out of proceeds acquired from businesses into which both expended time and effort. For the properties that were jointly acquired, I would have no doubt of their ownership, or distribution. They are jointly owned properties to be shared in equal proportion.

However, for those properties solely acquired and owned by the respondent, the petitioner would in law have acquired a spousal interest and vice versa. The Supreme Court in **Rwabinumi Vs. Bahimbisomwe** (*supra*) citing with approval the authority of **Kagga Vs Kagga (High Court Divorce Cause No.11/05)** did recognize the un monetized contribution of wife where Justice Mwangusya observed that, “*Our courts have established a principle which recognizes each spouse’s contribution to acquisition of property and this contribution may be direct, where the contribution is monetary or indirect, where a spouse offers domestic services.....when distributing the property of a divorced couple, it is immaterial that one of the spouses was not financially endowed as the other as this case clearly showed that while the first respondent was the financial muscle behind all the wealth they acquired, the contribution of the petitioner is no less important than that made by the respondent.*”

The court above proceeded to order registration of 50% in the parties' matrimonial house, and for the transfer of several other houses in favour of the wife, despite the judge's finding that the wife had only rendered domestic services as opposed to the respondent who was the financial muscle behind all the wealth.

In this case, the petitioner showed by her testimony, that she actively participated in acquiring all the properties and maintaining them. She was a witness to some agreements, worked at the two shops in Rwashamire and Ntinda thus adding value and protection even to those properties solely paid for by the respondent. Thus her contribution as a wife and companion to the respondent, although not monetized, is recognized as a tangible contribution to the matrimonial wealth. I therefore hold that all the properties whose agreements were presented as having been purchased by each party singly, are jointly owned by the two parties to be shared in proportions to be given later in this judgment.

The above notwithstanding, it was the petitioner's preference that she be awarded only the two houses in Kampala (Nateete and Kiwatule) to cater for the children's school fees and since the respondent was now remarried and his partner now occupies their village matrimonial home, to give her the house in Rwashamire Trading Centre to act as her village home with the children. She also asked court to order the respondent to return to her the goods he had taken from the shop in Ntinda.

There was no rebuttal by the respondent that the matrimonial wealth was acquired, and managed in the terms stated by the petitioner. Owing to the protracted violence that has long existed in the marriage and in order to maintain peace and harmony, and also in the best interests of the children, it will be practical, equitable and just that definite distribution of the matrimonial wealth is made, to enable each party to fully own and manage their property in separation from the other.

Accordingly, the petitioner is awarded the two houses in Kampala District Nateete, sole and that in Kiwatule (with the children) see EXHP12 and EXHP13 which can be utilized by the petitioner to provide for both hers and the needs of the children. If the respondent was collecting rent from any one of the two properties, he must stop doing so forthwith. The petitioner is also awarded the house in Rwashamire Trading Center to act as their village home. She is in addition awarded one property in Nyakibanga Cell 1, Kakiika Parish, and Bwongera and also permitted to retain all the properties she solely acquired. On the other hand, the respondent is allowed to retain all the other properties.

In addition, the respondent is ordered to return all the goods that he unlawfully carried out of the shop in Ntinda to the petitioner which she can also utilize to provide for the children.

For the avoidance of doubt, the petitioner shall within 14 days of this judgment return to the respondent all the original agreements in respect of the properties that he is entitled to upon dissolution of the marriage.

Issue five;

What remedies are available to the parties?

The petitioner has succeeded on all four issues raised in her advocate's submissions and granted remedies accordingly. The respondent did raise a cross petition for which no response was made. However it was still incumbent upon him to adduce evidence to prove his claims which he did not do. None of his remedies are thereby awarded and the counter petition fails. On the other hand, the petition succeeds and Judgment is entered in favour of the petitioner in the following terms:-

1. A decree nisi is granted dissolving the marriage between the petitioner and respondent.
2. Custody of the children is granted to the petitioner.
3. The matrimonial property is divided in the following terms;
 - i) The petitioner shall take absolutely the houses in Nateete and Rwashamire Trading Center both which shall be registered in her name.
 - ii) The petitioner shall own jointly with the children of the marriage the property in Kiwatule
 - iii) The petitioner is in addition granted the land at Nyakibanga Cell 1, Kakiika Parish, and Bwongera purchased from F. Mugondo in 2004.
 - iv) The petitioner shall retain the two properties at Nyakibanga, Kakiika Parish that she purchased herself.
 - v) The respondent retains and owns all the other properties raised in evidence whether purchased jointly with the petitioner or on his own.
 - vi) The petitioner is to utilize the rent collected from the two properties at Nateete and Kiwatule to cater for the needs of the children for as long as they remain in school.
 - vii) The respondent shall make a contribution of Shs. 500,000 per month to assist the petitioner maintain the four children until the youngest has completed their formal tertiary education. This amount may be varied on formal application.
1. The petitioner shall hand over to the respondent all the original agreements of purchase for those properties granted to him within 14 days of this judgment.
2. The respondent is directed to hand over to the petitioner all the goods that were taken from the shop in Ntinda.
3. A permanent injunction is issued restricting the respondent from accessing any of the properties given to the petitioner, or having any contact with the petitioner or the children of the marriage until as hereafter ordered. This order specifically restricts him from collecting rent from the properties at Kiwatule and Nateete with effect from the date of this Judgment.

4. My order No. six above with respect to the children, shall remain in force for eighteen months from the date of this judgment. Should at the expiration of that period, the respondent require to visit the children, or obtain access to them, he shall first go through evaluation of a Probation and Social Welfare Officer within the jurisdiction of their residence. That officer shall after such evaluation make a recommendation on whether such access is suitable or not and whether it should be allowed with or without supervision.
5. The respondent permits the petitioner with protection of the police to collect her personal belongings remaining in the family's residential house in Ntungamo and/or in the custody of the respondent.
6. Costs of the petition are granted to the petitioner.

I so order.

Signed

EVA K. LUSWATA

JUDGE

10th April 2015

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