

UGANDA / JUDGMENT

Twijukye v Tugumisirize (Divorce Cause 28 of 2021) [2023] UGHCFD 139 (17 November 2023) [2023] UGHCFD 139

COURT

HC: Family Division (Uganda)

BEFORE

Nagawa, J

CASE / FILE NUMBER

Divorce Cause 28 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (FAMILY DIVISION)

DIVORCE CAUSE NO.028 OF 2021

TWIJUKYE FRED ::::::::::::::::::::::::::: PETITIONER

VERSUS

TUGUMISIRIZE ANNET ::::::::::::::::::::::::::: RESPONDENT

BEFORE HON. LADY JUSTICE CELIA NAGAWA

JUDGMENT

1.0 Introduction

- 1.1 Twijukye Fred (hereinafter referred to as "the Petitioner") filed Divorce Cause No. 028 of 2021 against Tugumisirize Annet (hereinafter referred to as the "Respondent") seeking the following orders.
- a) The marriage between the Petitioner and the Respondent be dissolved.
- b) The Petitioner be granted custody of the issues to the marriage namely; Ahereza Melissa and Aturinda Martha.

- c) The Petitioner to be granted any other relief as this Honorable Court deems fit.

2.0 Representation

2.1 The Petitioner was represented by Mr. Michael Akampurira together with Mr. George Sentalo of M/S Akampurira & Partners.

2.2 The Respondent was represented by Ms. Rachael Nyakecho from M/S Omara Atubo & Co. Advocates.

3.0 Background of the Petition.

- 3.1 The Petitioner and the Respondent solemnized a Church Marriage on 6th December, 2014 at St. Stephen's Kitara Church of Uganda, Katwe, Kampala District. Following the said marriage, the parties lived in several places but eventually settled and lived together in Lubugumu Zone, Ndejje, Wakiso District and that was considered as their matrimonial home. The parties exhibited the Marriage Certificate, marked PEX1.
- 3.2 The parties have two children namely; Ahereza Melissa, aged 15 years and Aturinda Martha, aged 19 years.
- 3.3 Throughout the subsistence of their marriage, both the Petitioner and the Respondent provided maintenance, health care and school fees for their children.
- 3.4 According to the Petitioner, their marriage developed challenges in 2018 when the respondent became unruly, abusive and cruel towards him. The respondent abandoned their matrimonial bed and denied him conjugal rights thereby subjecting him to psychological torture and suffering. This kind of conduct from the respondent led to the marriage to irretrievably break down and he was compelled to leave the matrimonial home for his own safety. He further claimed that the respondent indulged in other activities and could not provide love, care, affection towards him and the children.
- 3.5 The Petitioner averred that their matrimonial home was sold off by Equity Bank upon a loan that they defaulted as a result of

family disagreements that led to the collapse of this family business. Efforts to reconcile were futile and the Petitioner believes that the marriage has irretrievably broken down. He further testified that since their separation the children have been in the custody of the Petitioner he has been paying their school fees, medical care and providing accommodation for them.

- 3.6 On her part, the Respondent stated that she had been providing for the family fully with little support from the Petitioner. The Parties used to live together until the Petitioner deserted her and the issues of the marriage in October, 2018 taking with him several household items needed for the children's care, causing gross mental and psychological suffering to her. She contended that she neither abused nor deserted her marital obligations as alleged by the Petitioner.
- 3.7 The Respondent avers that she never engaged in any activities outside the ambits of marriage of a working woman and that she duly cared for and provided for the children as expected of a good wife and mother in a marriage, instead the Petitioner just abandoned the home with the children and has since denied the Respondent access to the children who are girls and need her involvement in raising them up.
- 3.8 The Respondent cross petitioned and prayed that the petition be dismissed and the cross-petition be allowed, that the matrimonial house should be sold and the proceeds equally shared between the parties, alimony, custody and maintenance proceeds.

4.0 Evidence of the Parties.

4.1 Petitioner's Evidence

- 1. The Petitioner was married to the Respondent at St Stephen's Kitara Church of Uganda, Katwe, Kampala on 6th December, 2014. (A copy of the marriage certificate is attached to the petition, marked "PEX 1").
- 2. The Petitioner stated the bank sold off their matrimonial property and exhibited a sale agreement marked "PEX 2".

4.2 Respondent's Evidence.

1. The Respondent relied on the marriage certificate which had already been exhibited by the Petitioner.

5.0 Burden of proof.

5.1 The Petitioner by virtue of **Section 101- 103 and 106 of the Evidence Act, Cap. 6** and **HCCS No. 197 of 2008 George William Kakoma Versus Attorney General** has the burden of proving the facts alleged by him in the Petition on the balance of probabilities.

6.0 Issues for Court's determination.

- 1. **Whether the Petitioner and the Respondent are guilty of matrimonial offences?**

- 2. Whether the marriage between the Petitioner and the Respondent has irretrievably broken down?
- 3. What remedies are available to the parties?

7.0 Submissions by Counsel.

7.1 Counsel for the Petitioner filed written submissions on 08th June, 2023 and Counsel for the Respondent delayed to file her written submissions in Reply which she did a day before the

date scheduled for delivery of this Ruling on 13th July, 2023, no rejoinder was filed by Counsel for the Petitioner. This court has carefully perused these submissions and considered them in determination of this Divorce Cause.

8.0 Decision of Court

- 8.1 In any Divorce Proceeding, court has the duty to establish whether there was a valid marriage between the Petitioner and Respondent. The Petitioner produced a copy of their marriage certificate to support his case that he was legally married to the Respondent in a church, a marriage that was conducted on 06th December, 2014, at St. Stephen's Kitara Church of Uganda, Katwe, Kampala.
- 8.2 The provisions of **Section 33 of the Marriage Act, Cap 251** are to the effect that, "Every certificate of marriage which shall have been filed in the office of the registrar of any district, or a copy of it, purporting to be signed and certified as a true copy by the registrar of that district for the time being, and every entry in a Marriage Register Book or a copy of it, certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any court of justice or before any person now or hereafter having by law or consent of parties authority to hear, receive and examine evidence".
- 8.3 A church marriage is one of the forms of marriage that are recognized under the Marriage Act, Cap. 251 in Uganda. Thus, this court finds that there was a valid marriage between the Petitioner and the Respondent.

Issue 1: Whether the Petitioner or Respondent is guilty of matrimonial Offences?

- 8.4 The question to address is whether the facts reveal any of the grounds for divorce set out under **Section 4 (2) of the Divorce Act, Cap. 249**. Initially Section 4 of the Divorce Act set out separate grounds for divorce for men and women and was therefore declared unconstitutional by the Constitutional Court in **Uganda Association of Women Lawyers (FIDA) & 5 Others Versus Attorney General Constitutional Petition No. 2/2003**. This was on the basis of Article 31(1) (b) of the Constitution which provides that a man and a woman are entitled to equal rights in marriage, during marriage and at its dissolution, in essence

restating the Constitutional prohibition of discrimination on the basis of sex enshrined in Articles 21 and 33 of the same Constitution. The legislature is yet to fill the gap created by the Constitutional Court's decision. Courts have since been looking at the facts in totality to determine whether a marriage has irretrievably broken down.

- 8.5 **Following Uganda Association of Women Lawyers (FIDA) & 5 Others Versus Attorney General Constitutional Petition No 2/2002** it is sufficient for either spouse to allege one ground for divorce as set out in Section 4 of the Divorce Act for a petition or cross petition to succeed.
- 8.6 This means that the Petitioner must sufficiently prove that there was Cruelty, Desertion or Adultery, or a combination of two grounds or all three grounds. This Petition is based on the ground of Cruelty and a cross petition on cruelty and desertion

and this court will examine whether the facts sufficiently prove that the Respondent subjected him to Cruelty during the subsistence of their marriage and whether the Petitioner/Respondent deserted and was cruel to Tugumisirize Annet (the Respondent).

Cruelty

- 8.7 Cruelty has been defined in the locus classicus case of **Habyarimana Versus Habyarimana (1980) HCB 139**, to mean any conduct that produces actual or apprehended injury to mental health. Cruelty also means the intentional and malicious infliction of physical suffering upon another human being or the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions of another. Cruelty may be mental and it may include injuries, reproaches, complaints, accusations, taunts, denial of conjugal rights among others. Mental cruelty is a state of mind, it is the feeling of deep anguish, disappointment, or frustration in one spouse caused by the conduct of the other over a long period of time.
- 8.8 The spouse does not have to intend to hurt the other spouse for it to be cruelty. It is the effect that their actions have on their spouse that is considered.
- 8.9 To bring a successful application, the Petitioner must prove, on the balance of probabilities; behavior by the respondent, which means that, it would be unreasonable for the Petitioner to have to continue to live with the Respondent and that the marriage has irretrievably broken down.

- 8.10 The behavior complained of could be deliberate, if it could be unintentional. This court also has to determine whether or not the behavior is of a type or level that makes it unreasonable to expect the petitioner to live with the respondent. The fact that the petitioner may him or herself find the situation unbearable is not determinative.

- 8.11 In **Lang V Lang** [1955] AC 402, 418 (**Privy Council**), the Privy Council noted that "A husband's irritating habits may so get on the wife's nerves that she leaves him as a direct consequence of them, but she would not be justified in doing so. Such irritating idiosyncrasies are parts of the lottery in which every spouse engages on marrying, and taking the partners of the marriage "for better, for worse".
- 8.12 The test that was applied, per **Dunn J in Livingstone-Stallard Vs Livingstone –Stallard** [1974] 2 ALL ER 766,771, is "would any right- thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the Parties?".
- 8.13 There is therefore an objective element ('would any rightthinking person') and a subjective element that enables the court to consider the cumulative effect on the petitioner. The court, does, and must, try to read the minds of the parties in order to evaluate their conduct. In matrimonial cases, we are not concerned with the reasonable man as we are in cases of negligence. We are dealing with this man or woman and the

fewer a priori assumptions we make about them the better. Moreover, [w]hat may be regarded, as trivial disagreements in a happy marriage could be salt in the wound in an unhappy marriage. It is therefore important to state how the behavior has affected the petitioner, as in the particulars of behavior contained in the wife's petition in **Owens V Owens** [2017] EWCA Civ 182, [41] (**Munby P**).

- 8.14 The Petitioner testified that the Respondent abandoned the matrimonial bed and denied him conjugal rights. According to the Petitioner this caused him mental and physical anguish. The petitioner further testified that the Respondent could not provide love, care and affection towards the children. As a result, the marriage irretrievably broke down. The denial of conjugal rights and general conduct of the Respondent could cause psychological torture which amounts to cruelty.
- 8.15 On her part, the Respondent denied having been cruel to the Petitioner. She submitted that with respect to the Petitioner, denial of conjugal rights in itself has never been a ground for divorce in any law. In addition, the law on evidence is clear, he who asserts that a fact is true has the burden to prove that it is true. Counsel for Respondent relied on the case of **Sarah Kiyemba Versus Robert Batte (Divorce Cause No. 127 of 2018)** that denial of companionship and a right to conjugal rights, both imbedded in the marriage contract; without reason, would in the judge's opinion cause suffering and mental torture and therefore amounts to cruelty. To this court therefore, the cited case by counsel for the Respondent

concedes to the fact that denial of conjugal rights amounts to cruelty.

- 8.16 In the same vain, the respondent averred and clearly explained the circumstances as to why she left the matrimonial bed, she stated that without any consultation, the Petitioner bought a mattress HD 5 by 6 and it caused her severe backache which she explained to the Petitioner who seemed adamant about it, she instead had to buy a soft mattress which she lay on the floor next to the marital bed and slept there for not more than 4 (four) nights, once the Petitioner complained, she immediately returned to the marital bed against all odds.
- 8.17 The respondent during her testimony averred that she left the marital bed with reason and only for a few nights. Yet during this time she was subjected to a lot of torture, not explaining why he changed the mattress. The Petitioner just kept fuming and blasting the Respondent and blackmailed her to go back on the bed despite her discomfort.
- 8.18 This court continues to emphasize that in regard to proceedings for divorce, the conduct complained of as amounting to cruelty should be "grave and weighty" so as to come to the conclusion that the petitioner cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life".
- 8.19 The respondent submitted that once the Petitioner abandoned the matrimonial home with the children, she was mentally tortured and scared for her life, that after some months, she

had to leave the house and stay somewhere else. To live in fear and uncertainty of what someone can do at any time and to hold a spouse as a slave in her home is grave and goes beyond mere wear and tear of a marriage.

- 8.20 This court finds that the behavior of the Petitioner instead amounts to Cruelty and instead the respondent could not be expected to continue enduring it.
- 8.21 The parties relied on the ground of desertion but I will not engage in it, since one ground is good enough to dissolve the marriage. This court has considered the testimonies and submission therein in resolution of this divorce cause.
- 8.22 The evidence on record shows that the Petitioner and the Respondent are leading separate lives and at different places of residence. The Petitioner was candid that he has no intention whatsoever of ever going back to live with the Respondent as husband and wife or at all. The Respondent conceded that all attempts at reconciliation failed. It is evident that the marriage between the Petitioner and the Respondent has irretrievably broken down.
Kayhul Versus Kayhul (Divorce Cause No. 123 of 2016) [2020].

- 8.23 The parties averred that there was no condonation, collusion or connivance between them. In **Y. Mugonya Versus Trophy Nakabi Mugonya [1975] HCB 297**, it was stated that proof of condonation requires evidence of forgiveness and reinstatement of the relationship, although further commission of matrimonial offences revives the condoned offence. As to the standard of proof required to establish that the ground for

divorce has been condoned, it was held by **Lord Denning in Blyth Versus Blyth [1966] AC 643**, that so far as the bars of divorce are concerned, like connivance or condonation, the petitioner need only show that on balance of probability he did not connive or condone as the case may be.

- 8.24 Under **Section 8 of the Divorce Act, Cap 249**, a petition for divorce shall be granted if the court is satisfied that the petitioner's case has been proved, and does not find that the petitioner has been accessory to, or has connived at the going through of the form of marriage or the adultery, or has connived at or condoned it, or that the petition is presented or prosecuted in collusion.
- 8.25 Based on the above, this court finds that the Marriage between the Petitioner and the Respondent has irretrievably broken down. The petitioner's actions are hereby found to have been cruel to the Respondent. This court cannot force adults who chose to live together "for better for worse" any more when they have proved beyond reasonable doubt that they are no longer interested in living as marrieds. Therefore, the ground of cruelty has been proved and the issue of matrimonial offence is answered in the affirmative.
- 8.26 This issue equally resolves issue number 2 on whether the marriage has irretrievably broken down. The finding is affirmative.
- **9.0 Issue 3: What the remedies available to the parties? Custody.**

- 9.1 On the issue of custody, **Section 1(q) of the Children's Act, Cap. 59 (as amended)**, defines a custodian as a person in whose care a child is physically placed. **Article 31(4) of the Constitution of the Republic of Uganda 1995 (as amended)** provides that a parent is given the right and duty to care for and bring up their children. The children in this petition are aged 19 and 15 years of age.
- 9.2 **Section 29 of the Divorce Act, Cap. 249** provides that, "In suits for dissolution of marriage, or for nullity of marriage or for judicial separation, the court may at any stage of the proceedings, or after a decree absolute has been pronounced, make such orders as it thinks fit, and may from time to time vary or discharge the orders, with respect to the custody, maintenance and education of the minor children of the marriage or for placing them under the protection of the court".

- 9.3 Section 4 of the Children Act, Cap. 59 provides for a Child's rights to stay with their parents except for situations where a competent authority determines in accordance with the laws and procedures applicable that it is in the best interest of the child to separate him or her from his or her parents or parent.
- 9.4 **Section 3 (1) of the Children Act** is to the effect that; "The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child's property, or the application of any income arising from that administration.

- (2) In all matters relating to a child, whether before a court of law or before any other person, *regard shall be* had to the general principle that any delay in determining the matter is likely to be prejudicial to the welfare of the child.
- 9.5 The welfare of the child is the paramount consideration in most court adjudicated disputes in the child's upbringing. This means that rights and interests of others are relevant only in so far as they bear upon the child's interest. Alternatives to the welfare principles remain closely wedded to its basic premises; that children should be afforded special consideration in the decision making process. Children's rights play an increasingly important role in family law and are now widely recognized and respected.
- 9.6 The meaning of "Paramount" has been interpreted by the House of Lords in **J V C [1970] AC 668, 710-11 by Lord MacDermott** who gave the clearest judgement as to the meaning to be attributed to the term; the second question of construction is as to the scope and meaning of the words "shall regard the welfare of the infant as the first and paramount consideration.
- 9.7 The function of the judge in a case like this, is to act as the 'judicial reasonable parent', judging the child's welfare by the standards of reasonable men and women today in 2023, having regard to the ever changing nature of our world including, crucially for present purposes, changes in social attitudes, and always remembering that the reasonable man or woman is receptive to change, broadminded, tolerant, easy-going and slow to condemn. We live, or strive to live, in a tolerant society. We live in a democratic society subject to the rule of law. We live in a society whose law requires people to be treated equally and where

their human rights are respected. We live in a plural society, in which the family takes many forms, some of which would have been thought inconceivable well within living memory.

- 9.8 In the matter of **Twesiga (Infant) (Miscellaneous Application 4 of 2008) [2008] UGHCFD 1 (16 September 2008)** Court stated that while the primary right of the child is to grow up under the tutelage of his or her parents, or parent, for the obvious reason of emotional attachment; if it is shown to the satisfaction of a competent authority, and in this case the Court, that it would serve the best interest of the child, then it would be proper for this Court to make an order removing such child from the parent.
- 9.9 Article 31 of the Constitution provides for the right and duty of the parents to care for and bring up their children and that children may not be separated from their families or the persons entitled to bring them up against the will of their families or those persons except in accordance with the law. This is read alongside Article 34 (1) and other Conventions on the rights of the child.
- 9.10 In the case of **Rwabuhemba Tim Musinguzi Versus Harriet Kamakume (Civil Application 142 of 2009) [2009] UGCA 34 (25 August 2009)** court stated that parents have a fundamental right to care and bring up their children. This is a constitutional right. Of course it is not considered in isolation. The welfare of the child is a consideration to be taken into account, and most times it is the paramount consideration. A parent can only be denied the right to care for and raise her children when it is clear and has been determined by a competent authority, in accordance with law, that it is the

best interest of the child that the child be separated from the parent.

9.11 'Parenthood is for life' and it is for this reason that the custody of the child namely; Ahereza Melissa aged 15 years old is granted to both the Petitioner and the Respondent. This court has not considered the custody of Aturinda Martha, because she is of majority age now. Custody of the child shall therefore be joint for both parents.

Child Maintenance

- 9.12 **Section 5 of the Children Act, Cap. 59** provides that it shall be the duty of a parent, guardian or any person having custody of a child to maintain that child and, in particular, that duty gives a child the right to education and guidance, immunization, adequate diet, clothing, shelter; and medical attention.
- 9.13 The parties testified that they are both in gainful employment although the Respondent stated that she had just started a small business of making snacks. The Petitioner testified that he has been maintaining the children ever since he left the matrimonial, and in his petition he indicated that he had no problem taking care of his children, he will continue maintaining the children including taking care of their health, education and necessities of life until completion of university education for as long as they are in school. Hence this responsibility will be carried out by the Petitioner.

10.0 Matrimonial property, whether it does exist and if so, should it be equally distributed?

10.1 Matrimonial Property was defined in the case of **Charman v. Charman (No 4) [2007] EWCA Civil 503; [2007] 1 FLR 1246**

to mean "property of the parties generated during the marriage otherwise than by external donation". In **Julius Rwabinumi Vs. Hope Bahimbisomwe, S. C. Civil Appeal No.10 of 2009** Court stated that while **Article 31 (1) of the Uganda Constitution (1995)** guarantees equality in treatment of either the wife or husband at divorce, it does not, in my opinion, require that all property either individually or jointly acquired before or during the subsistence of a marriage should in all cases be shared equally upon divorce.

- 10.2 In **Essa v. Essa, Kenya Court of Appeal Civil Appeal No. 101 of 1995** it was held that there is no presumption that any or all property acquired during subsistence of the marriage must be treated as being jointly owned by the parties. It is therefore fully possible for the property rights of parties to the marriage to be kept entirely separate. Whether the spouses contributing to the purchase should be considered to be equal owners or in some other proportions must depend on the circumstances of each case. (See **Rimmer Vs. Rimmer [1953] 1 QB.63**).
- 10.3 In the instant case, in the petition the petitioner contends that the parties have no joint property whereas in his summary of evidence the Petitioner stated that they have joint property. In her reply, the respondent averred that they had a matrimonial property at Ndejje- Lubugumu, off Entebbe Road, Wakiso District and that the house they were living in was on the land they jointly purchased while staying together during the substance of their marriage. The respondent/cross petitioner prayed that the property should be distributed equally.

- 10.4 The Petitioner testified during cross examination that he left the matrimonial house in October, 2018. He has not gone back to live with the Respondent and when he was leaving the home, he just left the house and he did not say where he was going. He took with him the children but left the property in the house. He stated that the Respondent acquired a loan from Letshego Microfinance and the property was taken by the Letshego a money lending company which took the sofas and beds. That after he left the house, he returned to the home, and also the bank people went to the house and marked the property "for sale".
- 10.5 During re-examination the Petitioner stated that a Microfinance by the name and style Letshego through one lady whose name was never disclosed to this court, called the Petitioner informing him that they were going to take the property and she called from the Kajjasi branch. He also testified about the mortgage that it was clearly explained to the Respondent by a gentleman called Julius. The matrimonial property was taken by the bank

and the bank sold it. The Petitioner left the house in August 2018 *(court also noted the October, 2018)* and he paid until he had no money and the business had collapsed.

- 10.6 It was the Petitioner's testimony the bank sold the house, on instructions of the Respondent, the bank called the Respondent but she never appeared when requested to appear to give her reason as to why the bank should not sell the property.

- 10.7 The respondent testified that the matrimonial home was sold off by the petitioner and therefore does not exist. This was as a result of payment default.
- 10.8 This court considers the monetary and non-monetary contributions of the parties to the matrimonial home juxtaposed with the fact that the land was purchased by both parties. Court also considers the role of all non-monetary contributions of the Respondent as the mother in the home in case these were the circumstances. In **Muwanga v. Kintu, High Court Divorce Appeal No. 135 of 1997, (Unreported), Bbosa, J** (as she then was), adopted a wider view of nonmonetary indirect contributions by following the approach of the Court of Appeal of Kenya in **Kivuitu versus Kivuitu, [1990 – 19994] E. A. 270**. In that case, Omolo JA found that the wife indirectly contributed towards payments for household expenses, preparation of food, and purchase of children's clothing, organizing children for school and generally enhanced the welfare of the family and that this amounted to a substantial indirect contribution to the property.
- 10.9 This Court also took note that this was not a stay home spouse, she testified that she had worked, she had a shop, much as her earnings were never disclosed and the quantum of her contribution computed. Which could equally mean that the Respondent could refund her contribution to the said property if at all.
- 10.10 Under her paragraph 59 of her witness statement, the Respondent stated that the house in which they lived and the

land was jointly purchased and she indeed signed on the purchase documents as a co-purchaser and as a spouse giving consent, she did not consent to any bank takeover of their property and she is not aware of any bank take over.

- 10.11 The petitioner relied on a property sale agreement **PEX2** between Equity Bank Uganda and Mugunya Darius dated 10th June, 2019. The document is entitled "In the matter of the Registration of Titles Act, Cap. 230 and In the matter of the Mortgage Act, No. 8 of 2009". "Agreement for Sale of Land". Unregistered Land at Lubugumu Zone, Ndejje, Wakiso District.

- 10.12 As indicated on the said agreement this land is not registered. There is no evidence adduced that the bank took unregistered land against a loan, the petitioner did not bring to court any evidence to show that he obtained a loan facility from the bank (Equity Bank), he did not adduce any evidence of the mortgage deed towards the said land nor did he produce an original of the said document of the sale agreement.
- 10.13 Under Clause 4 of the said Property Sale Agreement dated 10th June, 2019 "Transfer of Property" "*Upon full payment of the consideration in Clause 2 herein, the vendor shall present to the purchaser duly signed transfer forms and any other instruments necessary to transfer the subject land to the purchaser and the purchaser shall conclude the transfer at its costs".*
- 10.14 From the above clause, it is stated that the duly signed transfer forms and any other instruments included therein but the description of this land is unregistered land meaning that it is not titled land and it even does not fall under the category

of the Registration of Titles Act, Cap 230. Secondly, one wonders where Equity Bank registered the mortgage, on which title was it encumbered to protect its interests as a bank. Lastly it is stated under paragraph 3 of the property Sale Agreement that the Vendor (Equity Bank) is the registered and legal Mortgagee of the land comprised in the above captioned description with all the developments thereon.

- 10.15 Under paragraph 4 of the said agreement for sale of land, "And whereas the borrower/ mortgagor, Twijukye Fred defaulted on his loan obligations and was unable to service the Mortgage in accordance with the terms of the Mortgage *AND the vendor is selling the property by Powers conferred on it vide the Mortgage Deed and the Mortgage Act, 2012 on as "as is basis". There is no Act such as Mortgage Act, 2012, instead there is a Mortgage Regulations, Statutory Instrument, No. 2 of 2012.*
- 10.16 I find the Agreement of Sale of Land lacking in quality and with due respect having failed to produce as witness the said bankers and buyer of the property. This evidence of sale cannot be relied on by this court. A lot was left out by the Petitioner, the loan facility was crucial in this case, no reasonable man can be convinced that the bank forced the sale without the mentioned paperwork being present.
- 10.17 In consideration of all the above, this court being cognizant of all contributions from both parties, this court finds that the Respondent is entitled to 50% of the proceeds of matrimonial property and the Petitioner is entitled to 50% of the said property as compensation for her monetary and non-monetary

contributions. The Petitioner shall reimburse the 50% of the proceeds of the said sale to the Respondent.

1.0 Conclusion

- 1.1 In the final result, the following Orders are made:
- 1. A decree Nisi is hereby pronounced dissolving the marriage between the Petitioner and the Respondent.
- 2. The Petitioner and the Respondent shall have joint custody of the child, Ahereza Melissa aged 15 years old.
- 3. The Petitioner shall have the responsibility to provide maintenance, education and health care for the child Ahereza Melissa until completion of her university education.
- 4. The Respondent is entitled to 50% of the proceeds to that matrimonial property that was sold off by the Petitioner.
- 5. The Petitioner shall pay alimony amounting to UGX. 20,000,000/= to the Respondent.
- 6. Each party shall bear its costs.

Dated, signed and delivered by email this 17th day of July, 2023.

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