

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
[FAMILY DIVISION]**

DIVORCE CAUSE NO. 103 OF 2023

HOPE KYOMUGISHA ::: PETITIONER

VERSUS

FRIDAY HERBERT MUGISHA :::RESPONDENT

JUDGMENT BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.0 INTRODUCTION.

1.1 The Petition was brought by Hope Kyomugisha on 23rd June, 2023 against Friday Herbert Mugisha seeking the following orders:

- (a) A decree for dissolution of marriage.
- (b) Equal distribution of properties.
- (c) Alimony pending dissolution.
- (d) Permanent alimony,
- (e) Any other relief as court deems fit.

1.2 The Petitioner was represented by Counsel Rwalinda Jambo Godfrey of M/s Jambo & Co. Advocates while the Respondent was represented by Counsel Oboth Alex Kiracho of M/s Lex Uganda Advocates & Solicitors.

2.0 BACKGROUND.

2.1 The Petitioner's case is that she and the Respondent are both adult Ugandans who were married on 2nd May, 1992 at St. James Cathedral, Ruharo, Mbarara, a marriage solemnized under the Marriage Act. They were blessed with four children now aged 30, 27, 24 and 18 years.



- 2.2 The Petitioner contends that since 1992, the Respondent turned violent, cruel and constantly abused her both at home and in public. The Respondent resorted to drunkenness, deserted her by not sleeping at home and coming home in the wee hours of the night. In early 2000, the Respondent started battering her. In May 2005, while returning home at Gabiro, the Respondent seriously beat her up after pushing her out of the car, causing her to fall in a roadside trench where he kicked her terribly, damaging and rupturing her right kidney. The Petitioner has undergone several operations in Kibuli hospital, Nairobi and India and has become physically weak and unable to perform heavy duties.
- 2.3 In January 2010, the Respondent beat up the Petitioner shamelessly at a wedding party. In November 2009, the Respondent threatened to kill her and chased her away in the wee hours of the night from the matrimonial home in Bugolobi, later calling her father to go and pick her up. The Petitioner alleges that the Respondent had sex with the housemaid Mucureezi Lydia in their matrimonial home, and she caught them several times in flagrante delicto.
- 2.4 The Petitioner filed an earlier divorce petition in 2012 which was not prosecuted as she had to be rushed to India for treatment. She was deprived of her restaurant business "Family Bucket" in Bugolobi when the Respondent pushed her out while she was on treatment in 2009.
- 2.5 During the marriage, they accumulated properties including: a condominium at Bugolobi flats Block 32C6; a storied commercial house in Kajjansi; residential houses in Kirombe Luzira, Mbuya and Kitintale Zone Luzira; residential quarters in Mutungo Zone 8; a plot in Kinawataka measuring 25 decimals; and a farm in Omungali, Kiruhura District totaling 250 hectares.



- 2.6 The Petitioner asserts the properties were acquired through savings from her restaurant business and the Respondent's salary as an accountant with Brigadier Mugenyi, a job he obtained through her influence as Brigadier Mugenyi is her uncle. As a result of being chased away, she has lived as a pauper with her children for 14 years without maintenance from the Respondent, solely looking after the children until they became adults.
- 2.7 The Respondent denies the allegations. He contends he was a loving husband and never subjected the Petitioner to cruelty. He claims the Petitioner deserted the marital home leaving him alone. He denies committing adultery and states the Petitioner committed serial adultery. The Respondent states he is not interested in divorce since his Christian faith does not allow it but the Petitioner is free to continue living with him.
- 2.8 The Petitioner filed a Rejoinder reaffirming her averments and denying the Respondent's counter-allegations. She maintains she was chased away from the marital home by the Respondent in the middle of the night with the Respondent calling her father to collect her.

3.0. ISSUES FOR DETERMINATION.

3.1. The following issues were framed for determination:

- a) Whether there exists a valid and subsisting marriage between the Petitioner and Respondent capable of being dissolved?
- b) Whether there are any grounds for dissolution of the marriage?
- c) What remedies are available to the parties?

3.2. BURDEN OF PROOF.



3.2.1. In all civil matters, he who alleges bears the burden to prove his or her case on a balance of probabilities. The Petitioner therefore has the burden to prove the facts alleged by virtue of **Sections 101, 102 and 103 of the Evidence Act, Cap. 8.**

3.3. DETERMINATION

3.3.1. **Issue 1: Whether there exists a valid and subsisting marriage?**

3.3.2. The Respondent admitted that both parties are adults of sound mind, profess the Christian religion, are Africans domiciled in Uganda with a matrimonial home at Bugolobi, and that the Petitioner was married to the Respondent via church marriage at St. James Cathedral on 2nd May 1992 solemnized under the Marriage Act.

3.3.3. **Section 31 of the Marriage Act, Cap. 146** provides that marriage certificates are admissible as evidence of marriage. Section 60 of the Evidence Act, Cap. 8 provides that documents may be proved by certified copies. In **Kintu Muwanga vs. Myllious G. Kintu, Divorce Appeal No. 135 of 1997**, it was held that proof of marriage is by marriage certificate, proof of ceremony and cohabitation.

3.3.4. The Petitioner annexed a copy of the marriage certificate showing she contracted a Christian marriage with the Respondent on 2nd May 1992 at St. James Cathedral-Ruharo. This fact has been admitted by the Respondent. It is not disputed that the parties cohabited as husband and wife at Bugolobi flats, Block 32C6 and that four children were born of this marriage.

3.3.5. This Court finds that a valid marriage exists between the Petitioner and Respondent celebrated on 2nd May 1992 at St. James Cathedral in accordance with the Marriage Act. This issue is determined in the affirmative.



3.4. **Issue 2: Whether there are grounds for dissolution?**

3.4.1. **Section 4 of the Divorce Act, Cap. 144** provides that a petition may be presented on the grounds that the respondent: (a) has been guilty of adultery; (b) has changed his or her profession of Christianity for the profession of some other religion, and gone through a form of marriage with another man or woman; c) has been guilty of bigamy; d) has been guilty of rape, sodomy or bestiality; e) has been guilty of cruelty; or f) has been guilty of desertion, without reasonable excuse, for two years or upwards.

3.4.2. The Petitioner seeks dissolution of marriage on three grounds: adultery, cruelty and desertion.

3.5. **a) ADULTERY**

3.5.1. The Petitioner alleges the Respondent had sex with a housemaid named Mucureezi Lydia in their matrimonial home and she caught them several times. The Respondent categorically denies this.

3.5.2. In **Ayiko Mawa Solomon Versus Lekuru Annet Ayiko, Divorce Cause No. 0001 of 2015**, Hon. Justice Stephen Mubiru held that the Petitioner must adduce evidence of facts from which the court can conclude that adulterous sexual intercourse took place. The exculpatory facts should be incompatible with the innocence of the spouse and incapable of explanation upon any other reasonable hypothesis. The circumstances must produce near moral certainty to a standard above mere preponderance.

3.5.3. The Petitioner has not provided any documentary evidence, witness statements, photographs, correspondence, confession or other circumstantial evidence from which this Court could infer that adultery took place. The Respondent has categorically denied the allegation. While adultery is often proved by circumstantial evidence,



the circumstances must produce near moral certainty. Mere allegations without supporting evidence cannot suffice.

3.5.4. This Court finds that the ground of adultery has not been proved by the Petitioner on a balance of probabilities.

3.6. **b) CRUELTY.**

3.6.1. In **Veronica Habyarimana Versus Habyarimana (1980) HCB 139**, it was held that no conduct can amount to cruelty unless it has the effect of producing actual or apprehended injury to the Petitioner's physical and mental health. There must be danger to life, limb or health, bodily or mental, or reasonable apprehension for it to constitute cruelty.

3.6.2. Cruelty need not be physical. If from the conduct of the spouse an inference can be legitimately drawn that the treatment causes apprehension in the mind of the other spouse about mental welfare, then this conduct amounts to cruelty. 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.

3.6.3. The Petitioner alleges multiple acts of cruelty including: violence and abuse since 1992; drunkenness and desertion by not sleeping at home; battering from 2000; severe beating in May 2005 at Gabiro where she was pushed from a car and kicked in a trench causing kidney damage requiring multiple surgeries; public beating at a wedding in January 2010; and in November 2009, death threats and expulsion from the matrimonial home with the Respondent calling her father to collect her.

3.6.4. The Respondent denies these allegations claiming he was a loving husband and that the Petitioner deserted the marital home. The Respondent admits the Petitioner "deserted her marital home" but does



not explain the circumstances or deny calling her father to pick her up.

3.6.5. This Court observes that the Petitioner's pleadings contain detailed and specific allegations spanning many years with specific dates and locations. The Petitioner filed an earlier divorce petition in 2012, the existence of which has not been denied, showing longstanding marital problems. The Petitioner has lived separately from the Respondent for approximately 14 years without maintenance and filed two divorce petitions demonstrating irretrievable breakdown. In addition to medical records as exhibited and marked PEx4.

3.6.6. In family law matters, particularly where allegations of domestic violence are made, victims often lack documentary evidence due to the private nature of abuse, fear of the perpetrator, cultural factors or lack of resources. The law does not require cruelty be proved beyond reasonable doubt. The standard is proof on a balance of probabilities.

3.6.7. This Court finds the following facts significant: the Petitioner filed detailed allegations with specific dates and locations; the Petitioner filed an earlier petition in 2012 indicating longstanding problems; the Petitioner consistently maintained in her Rejoinder that she was chased away in the middle of the night with the Respondent calling her father; the Petitioner lived separately for 14 years without maintenance despite multiple properties; the Respondent's Answer to the Petition contains general denials without alternative explanation for the breakdown; the Respondent admits the Petitioner "deserted" but provides no context or denial of calling her father; and the Respondent's vague statement about being "free to continue living when they were young" demonstrates no genuine reconciliation effort.



- 3.6.8. The Petitioner's account presents a consistent narrative of violence, humiliation and eventual expulsion from the matrimonial home. The Respondent's defense consists largely of bare denials without coherent alternative explanation. In matrimonial cases, the Court is entitled to draw inferences from conduct and overall pattern of behavior pleaded.
- 3.6.9. The fact that the Petitioner has lived separately for 14 years and filed two separate divorce petitions demonstrates that the marriage has irretrievably broken down and that it would be unreasonable to expect the Petitioner to return to live with the Respondent.
- 3.6.10. Based on the totality of the evidence, this Court is satisfied that the Petitioner has proved the ground of cruelty on a balance of probabilities. The pattern of alleged behavior, physical violence over many years, public humiliation, threats to life and ultimate expulsion from the matrimonial home, clearly constitutes cruelty of a grave nature that has produced actual injury to the Petitioner's physical and mental health.
- 3.6.11. The ground of cruelty is therefore established.

3.7. **c) DESERTION**

- 3.7.1. The Petitioner's case on desertion is that the Respondent chased her away from the matrimonial home in November 2009, which would constitute constructive desertion or expulsion rather than desertion by the Respondent. She also alleges the Respondent "deserted the Petitioner by not sleeping at home and coming home in the wee hours of the night."
- 3.7.2. **Section 4(1)(b) of the Divorce Act** provides that desertion is a ground for divorce where the respondent has deserted the petitioner without cause for at least two years. Desertion is the unjustified withdrawal



from cohabitation without consent of the other spouse and with intent to bring cohabitation permanently to an end.

3.7.3. Constructive desertion occurs when one spouse's behavior is so unreasonable that it forces the other spouse to leave the matrimonial home. In such cases, the spouse who leaves is not considered to have deserted; rather, it is the spouse whose behavior caused the departure who is deemed to have deserted.

3.7.4. If the Court accepts the Petitioner's account that the Respondent was violent, abusive, came home drunk and ultimately chased her away from the matrimonial home, then the Respondent's conduct amounts to constructive desertion. The Petitioner has been living separately from the Respondent since November 2009, approximately 14 years, which far exceeds the two-year period required.

3.7.5. However, where cruelty has been established, it is not necessary to make a separate finding on desertion as cruelty alone is sufficient ground for dissolution under **Section 4(1)(e) of the Divorce Act**. Nevertheless, for completeness, this Court finds that the Respondent's conduct in making it impossible for the Petitioner to continue living in the matrimonial home amounts to constructive desertion.

3.7.6. The ground of desertion (constructive desertion) is therefore also established.

4.0. **Issue 4: What remedies are available to the parties?**

a) DECREE FOR DISSOLUTION OF MARRIAGE.

4.1. This Court, having found that the Petitioner has proved the grounds of cruelty and desertion against the Respondent, finds that there is sufficient justification to grant a Decree Nisi dissolving the marriage between the Petitioner and the Respondent.



4.1.1. Section 36(1) of the Divorce Act, Cap. 144 provides that no decree nisi of dissolution or nullity of marriage shall be made absolute until after the expiration of six months from the date of the decree. Consequently, the Decree Absolute will await the expiration of six months in accordance with the Divorce Act.

4.2. A Decree Nisi is accordingly granted, dissolving the marriage between Hope Kyomugisha and Friday Herbert Mugisha celebrated on 2nd May 1992 at St. James Cathedral, Ruharo, Mbarara.

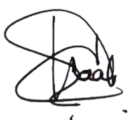
b) . DISTRIBUTION OF PROPERTIES.

4.3. The Petitioner seeks equal distribution of properties allegedly acquired during the marriage including: the matrimonial home at Bugolobi flats Block 32C6, storied commercial house in Kajjansi, residential houses in Kirombe Luzira, Mbuya and Kitintale Zone Luzira; residential quarters in Mutungo Zone 8, land plot in Kinawataka measuring 25 decimals; and a farm in Omungali, Kiruhura District totaling 250 hectares.

4.3.1. **Article 31(1) of the Constitution** provides that men and women are entitled to equal rights in marriage, during marriage and at its dissolution. In **Kabuye Robert vs. Nanyonga Teopista (Civil Appeal No. 57 of 2022)**, it was held that equity demands that property acquired during marriage belongs to both parties, with distribution varying depending on circumstances.

4.3.2. Relevant factors include: direct financial contributions; indirect contributions such as domestic labour, childcare and homemaking; duration of marriage; relative earning capacity; timing of acquisition; needs of children; and conduct of parties.

4.3.3. The Petitioner pleads that the properties were acquired through her restaurant income, the Respondent's salary and joint efforts during



the 17 years from marriage in 1992 to separation in 2009. The Petitioner contributed through her restaurant "Family Bucket", and the Respondent obtained his job through her uncle, Brigadier Mugenyi. The parties were married for 17 years, during which they had four children and cohabited as husband and wife.

4.3.4. However, property distribution requires specific evidence regarding, exact nature and extent of each property, when each property was acquired, in whose name each property is registered, source of funds for acquisition, any improvements made; any debts or encumbrances, the current market value, and respective contributions of each party.

4.3.5. The property at Bugolobi flats Block 32C6 is matrimonial property where the parties cohabited and raised four children; properties acquired between 1992 and 2009 are presumptively matrimonial property, and the Petitioner's contribution through running the restaurant, homemaking and raising four children constitutes significant contribution.

4.4. **Orders regarding properties:**

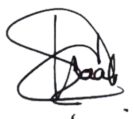
a) It was the testimony of the Petitioner that she forcefully entered the house in Kirombe Luzira once she found the gate open and she has resided there since then. She broke the locks and eventually replaced them with new ones. She has been residing there with her children. She will therefore retain this property given that it has become her home. The residential house at Kirombe Luzira shall belong to the Petitioner.

b) According to the testimony of the Petitioner during cross examination she informed this court that the storied Commercial property in Kajjasi was sold by the Respondent in 2024 (the respondent indicated 2023) and the property in Kinawataka



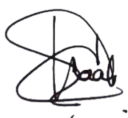
Nakawa Division measuring approximately 25 decimals was also sold by the Respondent. Therefore, these two (2) properties no longer belong to either party in this petition they are not subject to distribution.

- c) The properties that are subject to distribution are therefore;
- i. A residential house in Mbuya Nakawa Division.
 - ii. A commercial and residential house in Kitintale Zone, Luzira.
 - iii. Residential quarters in Mutungo Zone 8 in Nakawa.
 - iv. A farm with heads of Cattles in Omungali, Rwenziramere, Kazo, Kihurura District totaling to 250 hectares of land.
- d) The Petitioner contended in the Petition that upon being chased out of the matrimonial home, she left the matrimonial home and has singlehandedly raised her children for the last 14 years. The children are now adults and live on their own but before that she paid their school fees and raised them through rent obtained from some of her properties. *(See Paragraph 18 of the Petitioner's Witness Statement).*
- e) The Petitioner further averred that out of her kindness and concern, she requested her uncle Brigadier Mugenyi to give the Respondent a job, which job he obtained and served the uncle as his accountant. It was out of her effort that the Respondent was occupied.
- f) It was the testimony of the Respondent during cross examination that other than the property at Bulogobi Block 20 the rest he obtained after the marriage from 1992. All the properties as testified were obtained during the marriage.



His response; “No property was bought before 1992”. However, he added that the farm at Kazo was family property with his siblings. In as much as he had a house in Bukiro-Engari- Kazo District on about 50 acres of land.

- g) The Respondent further testified that he gave the house in Kirombe Luzira worth Uganda Shillings 500,000,000/= (Five Hundred Million Shillings) to the Petitioner. He continues to reside at the flat in Bulogobi 32C6 acquired through a mortgage.
- h) The Respondent further testified that he sold off most of the properties including;
 - i. The residential houses in Mutongo Zone 8.
 - ii. The restaurant “family bucket” was sold as a “Good Will”. This was a family business according to the Respondent. It operated both day and night. He did not have a direct hand in the business it is the Petitioner who was operating the restaurant business. She run the business from 2007 and left the home in 2010.
- i) The properties that remain in existence following the testimony of the Respondent are therefore; a commercial and residential house in Kitintale Zone Luzira and the residential house in Mbuya Nakawa Division. These are therefore due for distribution.
- j) This court therefore finds that since the petitioner raised the children at a time when the respondent chased her out of the home, she had to find accommodation for the children and cater for all their basic needs. This was never disputed by the Respondent. In addition out of the proceeds of sale, the



Respondent testified that he never shared any money with the Petitioner despite her circumstances.

- k) The commercial and residential house in Kitintale Zone, Luzira, Kampala District shall therefore belong to the Petitioner whereas the Respondent shall retain the residential house in Mbuya Nakawa Division.
- l) The farm land in Kazo remains undistributed since its ownership was not clearly presented to this court. This includes the cows thereon and the banana plantation.
- m) Since the Respondent has continued to reside at Bugolobi Block 32C6 he will keep this property.

C. ALIMONY.

4.5. Taking all the above factors into account, this Court is not satisfied that the Petitioner has established a basis for an award of alimony. While alimony is intended to meet the reasonable needs of a spouse who is unable to support herself, the evidence before Court does not demonstrate that the Petitioner lacks the capacity for self-support. The Petitioner contended under paragraph 18 of her witness statement that she had rented premises. In addition the Petitioner has not presented any evidence that she suffers from any disability that forbids her from gaining employment. No proof of incapacity or inability to engage in gainful activity.

4.5.1. Further, the Petitioner's own testimony indicates that she has supported herself and the four children of the marriage for



approximately fourteen years. This fact points to the existence of some earning capacity or means of sustenance, notwithstanding the Respondent's alleged failure to provide maintenance during that period. All the children are now adults and there is no continuing obligation of child support.

4.5.2. In addition, this Court has awarded the Petitioner a home in Kirombe Luzira in addition to a commercial and residential house in Kitantale Zone, Luzira Kampala District properties of a considerable value. In the circumstances, and bearing in mind the absence of evidence of the Respondent's financial capacity, this Court finds that an award of alimony is neither necessary nor justified.

4.5.3. Accordingly, the prayer for alimony is declined.

4.5.4. **F. COSTS**

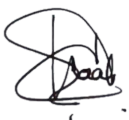
4.6. The general rule is that costs follow the event, meaning the successful party is entitled to recover costs from the unsuccessful party. However, in matrimonial causes, courts often exercise discretion to depart from this rule.

4.6.1. The Petitioner has substantially succeeded in her Petition. However, this has been a long and difficult marriage ending after 17 years of cohabitation and 14 years of separation. Both parties have undoubtedly suffered.

4.6.2. In the exercise of the Court's discretion and taking into account the nature of this case as a family matter, each party shall bear their own costs of this suit.

5.0. CONCLUSION AND ORDERS

5.1. Consequently, the Court finds and orders as follows:



1. A Decree Nisi is hereby granted dissolving the marriage between Hope Kyomugisha (Petitioner) and Friday Herbert Mugisha (Respondent) celebrated on 2nd May 1992 at St. James Cathedral, Ruharo, Mbarara.
2. The matrimonial home at Bugolobi flats, Kyadondo Block 32C6 shall belong to the Petitioner.
3. The residential house in Kirombe Luzira where the Petitioner resides shall remain as her property.
4. The Respondent shall retain the property in Kazo District including the heads of cattle, banana plantation, house and the land.
5. The commercial and residential house in Kitintale Zone, Luzira-Kampala District shall belong to the Petitioner.
6. The residential house in Mbuya Nakawa Division Kampala District shall belong to the Respondent.
7. The prayer for alimony is denied.
8. Each party shall bear their own costs of this suit.

I so Order.

Dated, Signed and Delivered electronically this 28th day of January, 2026.



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**CELIA NAGAWA
JUDGE**