

Chapter 11

Divorce on Account of Violence

Case 11.1 Kirungi Doreen v Mugabe Ronald

(Divorce Cause No. 48 of 2013¹)

High Court of Uganda at Kampala

Aspects relevant to VAWG: Domestic violence, cruelty, psychological and mental torture

Summary of facts

This is a petition for divorce filed by the petitioner against the respondent for a decree that the marriage between her and the respondent be dissolved and that custody of the only child of the marriage be granted to her. She also sought an order for maintenance. The parties got married in church on 19th July 2008 in accordance with the provisions of the Marriage Act, had their matrimonial home in Massachusetts in the United States of America and were blessed with one child (Evana) who was three years old at the time of the judgement.

The case of the plaintiff (wife) was that the marriage had been rocky and had irretrievably broken down on account of the respondent's extreme cruelty and desertion, leading to the petitioner's mental torture. The husband did not file any reply within the required time, though he was served with the summons to answer petition. Consequently, the registrar of the court, on application by the petitioner, entered an interlocutory judgement against the husband on 23rd September 2013. When the matter came up for formal proof, the court granted the petitioner's prayer to proceed in camera.

It was her testimony that the marriage was not peaceful and after cohabiting for only two years, they separated and lived apart. Within two years of their marriage, the husband was cruel to her, beating her all the time in addition to coming home drunk and abusing her. He denied her sexual intimacy from the time they got married, and would sleep in the sitting room while the petitioner slept in the bedroom. The petitioner decided to leave the matrimonial home, but their families and other elders intervened and reconciled them. Following the reconciliation, the petitioner conceived and gave birth to their only child, a daughter called Evana Busingye. The husband went back to his old habits when the petitioner conceived.

He resumed sleeping in the sitting room and was not involved in the petitioner's pregnancy, neither did he provide anything for the child. He eventually left the matrimonial home and went to live with his mother in Methuen area, which is 45 minutes' drive from Woburn. Life became too hard for the petitioner as a single mother in the United States and she discussed the matter with her family. Consequently, her family brought her back to Muyenga in Uganda, where she was living with her daughter at the time when the petition was heard. She catered for her daughter's needs, including her education, single-handed.

At the request of the court, the petitioner submitted in evidence pay slips for purposes of guiding the court in making appropriate awards. The two pay slips showed that she paid US\$1,310,000/= (one million three hundred thousand and ten) on 15 March 2013 and US\$1,300,000/= (one million three hundred thousand) on 27 August 2013 as fees for the child at Swan Academy, Muyenga. She asked the court to dissolve the marriage and grant her full custody of the child, and to make the respondent pay maintenance for the child. She told the court that personally she did not need alimony from the petitioner and that all she needed was for him to maintain his daughter. She testified that though the respondent was agreeable to ending their marriage, the petition had not been filed in collusion with him or with any other person.

The court noted that there was evidence adduced under oath by the petitioner that the respondent was on several occasions cruel to her. This was manifest in his denial of sexual intimacy, physical and verbal abuse, heavy drinking, and unreasonable abandonment of the matrimonial bed and home. This conduct caused mental and psychological torture to the petitioner. There was further evidence that the parties were no longer living together, with the respondent having moved out to live with his mother. The court found that the respondent had neglected the petitioner when she was pregnant with their daughter, Evana Busingye, never contributed to the child's maintenance when she was born and had never provided for the child, who was in school at the time of the case with the petitioner meeting all her expenses. The court found that the evidence of the petitioner had not been denied and that on the authority of *Eridadi Ahimbisibwe v World Food Programme & Others*, a party who does not file a defence is deemed to have admitted the allegations.²

The court was therefore satisfied and found that the respondent was guilty of cruelty manifest in his denial of sexual intimacy to the petitioner, physical and verbal abuse, and heavy drinking and desertion, and that this conduct had caused mental and psychological torture to the petitioner and amounted to cruelty by the respondent.

On the undisputed testimony of the petitioner, the court granted decree nisi for dissolution of the marriage. On custody of the child, the court took note

of Article 34 of the constitution and section 3 of the Children Act which provide that the best interests of the child shall be the primary consideration in all matters concerning children. On maintenance of the child, section 5 of the Children Act puts a duty on parents to maintain their children. That duty gives the child a right to education and guidance, immunisation, adequate diet, clothing, shelter and medical attention. The court took the age and welfare of the child into account, as well as the fact that the child has always been in the custody of the petitioner, and granted the petitioner custody of the child. The petitioner was ordered to pay maintenance for the child at the rate of \$400 (four hundred dollars) or its equivalent in Uganda shillings, per month.

Ratio Decidendi

- (a) Whether a marriage has irretrievably broken down is deduced from the circumstances of a particular case.

Contribution to jurisprudence/Point to note

- We note that in Uganda, the doctrine of irretrievable breakdown of a marriage is not found in any statute. However, the judge formulated a principle that in determining whether marriage had irretrievably broken down, Courts should consider the facts of the case in their entirety. The judge therefore effectively dealt with an existing gap in the law.

Notes

- 1 In the High Court of Uganda at Kampala, Divorce Case No. 48 of 2013.
- 2 {1998} IV KALR 32.