

DIVORCE AND THE LAW IN UGANDA

BY

KARUMUNA TUMWINE

LLB/16715/71/DU

SUPERVISOR:

MIYIYENDA PAULINE

**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
FULFILMENT OF THE REQUIREMENTS OF THE AWARD OF
A BACHELORS DEGREE IN LAWS OF KAMPALA
INTERNATIONAL UNIVERSITY**

JUNE, 2015

DECLARATION

I **KarumunaTumwine, LLB/16715/71/DU**, that the research report submitted is my original work and has not been submitted to any institution of learning for any award. I solemnly bear and stand to correct any inconsistency.

KarumunaTumwine

Date *27/10/2015*

KARUMUNA TUMWINE

LLB/16715/71/DU

APPROVAL

I declare that the work has been done under some body's supervision and the supervisor has approved if for submission.



27/10/2015

Date:-----

MIYIYENDA PAULINE

SUPERVISOR

DEDICATON

This work is effectively dedicated to my beloved Heavenly parents and True parents ,All Unification central blessed families, my mother and father Margret and Godfrey Tumwine ,my sisters ,Phionah and Daphine, my brothers Frank and Ivan and my loving Aunties Cissy Bagamuhunda Nyamarere and Claire Busingye.

ACKNOWLEDGEMENTS

My gratitude and honor goes first to my beloved and loving Heavenly parent and True parents who have given me the wisdom, strength and courage to undertake this research.

I am grateful to my supervisor Miyiinda Pauline who tirelessly guided me in my research and inspired me to dig deeper into the core matter.

Her kind guidance, patience and understanding assisted me a great deal.

I want to thank my loving parents Akankwasa Margret Tumwine and Godfrey Tumwine ,my brothers and sisters and my spiritual Father Bukenya Silver for contributions in my life.

I thank my loving Aunties Cissy Bagamuhunda Nyamarere and Claire Busingye and my mother who paid my fees through my levels of education.

I also owe a lot of appreciation to all those who helped me in carrying out this research.

I thank all my friends who gave me encouragement in times of difficulties.

Thanks to all lectures who imparted professionalism into my work.

I wish to thank my family for their love, financial support and inspiration during my stay in Kampala International University.

Finally I would like to thank all my respondents and those who responded with in a short notice of which without them this work would not have been possible.

May the Heavenly parents and True parents bless you all.

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
DEDICATION.....	iii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS.....	v
LIST OF STATUTES	viii
ABSTRACT	ix
CHAPTER ONE.....	1
1.0 Introduction.....	1
1.1 Background of the study	1
1.2 Statement of the problem	3
1.3 Purpose of the study.....	4
1.4 General Objectives	4
1.5 Specific Objectives.....	4
1.6 Research questions.....	5
1.7 Scope of the study.....	5
1.7.1 Time scope.....	5
1.7.2Context scope.....	5
1.7.3 Geographical scope.....	5
1.8 Significance of the study	5
1.9 METHODOLOGY	6
1.9.1 Introduction	6
1.9.2 Research design	6

1.9.4	Study population	7
1.9.5	Sampling procedure and selection.....	7
1.9.6	Sample size	7
1.9.7	Data collection instruments	7
1.9.7.1	Qualitative data collection instruments	7
1.9.7.2	Quantitative data collection instrument.....	8
1.9.8	Validity and reliability of research instruments	9
1.9.9	Data analysis.....	9
1.9.9.1	Qualitative data analysis and management.....	9
1.9.9.2	Quantitative data analysis.....	10
1.9.10	Procedure of data collection.....	10
1.9.11	Limitations.....	10
CHAPTER TWO	11
LITERATURE REVIEW	11
2.0	Introduction	11
2.1	The concept of divorce.....	11
2.2	Causes/Grounds of divorce in Uganda.....	12
2.3	Effects of divorce.....	34
CHAPTER THREE	60
LEGAL FRAME WORK	60
3.0	Introduction	60
3.1	Historical context.....	60

3.3 The effects of the law 75

3.4 Analysis of some court cases of divorce 77

CHAPTER FOUR 87

PROBLEMS INHERENT IN THE LAW OF DIVORCE 87

4.0 Introduction 87

4.1 The age 87

4.2 Evidential requirement 88

4.3 Social factors..... 89

4.4. Economic factors 89

4.5 The divorced couple and the family 90

CHAPTER FIVE..... 92

CONCLUSIONS AND RECOMMENDATIONS 92

5.1 CONCLUSIONS 92

5.2 Recommendations 92

BIBLIOGRAPHY 95

APPENDICES 96

APPENDIX 1 96

LIST OF STATUTES

- 1. The 1995 Uganda Constitution.**
- 2. The customary marriages registration Act Cap 248**
- 3. The Civil Procedure Act.**
- 4. The Civil Procedure Rules.**
- 5. The Judicature Statute**
- 6. The Magistrates Court Act**
- 7. The Divorce Act CAP 249**
- 8. The Marriage Of Africans Act CAP 253**
- 9. The Hindu Marriage And Divorce Act CAP 250**
- 10. The Marriage and Divorce Bill 2009**

ABSTRACT

The study is about divorce. Divorce is a global growing tragedy around the whole world. Many families have been victims.

The study was basically focused around the causes /grounds and effects of divorce then the solutions were looked at that is how couples and authorities solved the problems of divorce among families today.

Divorce is mainly due to adultery an evil which has been liked by several parties to a family (couples).

Divorce should be controlled and even eliminated but the parties who are responsible seem to be painfully but enjoying the evil in the main cause.

Questionnaires were the common method used in the study.

CHAPTER ONE

1.0 Introduction

This chapter highlighted the background of the study, statement of the problem, general and specific objectives, and research questions, significance of the study and the definition of the key terms.

The study was about divorce and the law in Uganda.

Over the years, there has been a high divorce rate in Uganda and as a result of failed families.

1.1 Background of the study

The number of couples seeking divorce is on the rise in Uganda. Statistics obtained from the High Court Family Division show that 32 couples have already called it quits only half way into 2013. This is up from 12 couples who divorced last year. The numbers of divorce have, however, been inconsistent over the last five years (June 9th, 2013, Sunday Vision).

In 2009, a total of 21 couples divorced, while in 2010 and 2011, the numbers stood at 43 and 42 respectively. In an interview with Sunday Vision, the acting registrar and inspector of courts, Margaret Mutonyi attributed the trend to infidelity. She explained that contrary to common beliefs that a lot of people divorce over greed for property, most of these couples had irreconcilable differences, following an affair outside the marriage (June 9th, 2013, Sunday ¹Vision).

In 2013, 32 couples have divorced a number that is more than double compared to last year's 12. At this rate, the family unit is under threat¹

¹ (Carol Natukunda, June 9th, 2013, Sunday Vision).

More women are initiating divorces in Uganda, a conservative East African country where women are becoming empowered to leave a bad marriage in a way their mothers could not, rights activists and legal experts say.

Has your marriage broken down beyond repair? That's the question Ugandan magistrate David Batema asks women in divorce proceedings against men who often are reluctant to let their wives go. Whatever the husband has to say, according to Batema, a woman who wants to leave a failed marriage shouldn't be encouraged to linger.

"I usually turn my court into a learning classroom," he said in an interview. "In this age of gender equality we are saying that ... if marriage can't be a bed of roses, it shouldn't be a bed of thorns. The major aim of the lesson should be to point out to the man that marriage, as of now, is a partnership of equals."

Women's rights activists say Batema's position is a sign of changing times in Uganda, where it used to be extremely difficult for a woman to get a divorce. Such proceedings almost always were initiated by men, a legacy of traditional beliefs that stress women should be submissive and of a now-unconstitutional divorce law.

In 2004 a Ugandan court (Family court, Nakawa) nullified a law that set the evidential bar impossibly high for women who wanted a divorce. At the time a woman was required to give evidence proving sodomy, desertion or – perhaps most strangely – bestiality on the part of her husband. He, in turn, had to prove only that the wife committed adultery.

Although Uganda's bureau of statistics doesn't compile national divorce figures, court clerks, activists and lawyers now say they are handling vastly more divorce cases now than a decade ago.

"The numbers kept going up," said Ismail Jjemba, a clerk at Uganda's High Court, referring to the effect of the Constitutional Court's ruling. "It's almost always the women who complain first."

Divorce is still stigmatized in Uganda, where church officials complain that divorce is becoming rampant. But the fairer legal climate and increased educational opportunities for women are contributing to what one activist called "the normalization of divorce" in the East African country.

Ugandan lawmakers are considering legislation, expected to pass this year, which would make it clear that a man and a woman are equal in a marriage. The bill even proposes the offense of "marital rape" and a provision for the equal sharing of matrimonial property in the event of divorce. Ugandan President Yoweri Museveni, widely seen as sympathetic to women's rights, has said the country needs such a law.

Although official statistics are not compiled in Uganda, in 2009, a magistrates court in the country's capital, Kampala, reported that pending divorce cases had doubled from 31 to 64 since 2005.

"The numbers kept going up," said Ismail Jjemba, a clerk at Uganda's High Court, "It's almost always women who complain first."

Divorce is still stigmatized act in Uganda, but the fairer legal climate and increased educational opportunities for women are contributing to what one activist called "the normalization of divorce".

1.2 Statement of the problem

Divorce has been heard and read by most people, but a few people have a good understanding of exactly what the problem is.

Although Uganda's bureau of statistics doesn't compile national divorce figures, court clerks, activists and lawyers now say they are handling vastly more divorce cases now than a decade ago.

Divorce is still stigmatized in Uganda, where church officials complain that divorce is becoming rampant. But the fairer legal climate and increased educational opportunities

for women are contributing to what one activist called "the normalization of divorce" in the East African country.

The law provisions for divorce are quit unfair in way that a woman is provided with adultery as the only ground for divorce whereas a man is provided with in addition to divorce other grounds like cruelty which makes it unfair on the side of women.

The implementation of the law on divorce is inefficient which as led to persistent and increasing divorce cases.

"The numbers kept going up," said Ismail Jjemba, a clerk at Uganda's High Court, referring to the effect of the Constitutional Court's ruling. "It's almost always the women who complain first."

There has also not been any enactment of the law on divorce to solve the problem

1.3 Purpose of the study

The purpose of this study is to identify and examine the loopholes in the laws and their implementation concerning divorce in the selected areas of Uganda in lungujja zone and give recommendations for reforms.

1.4 General Objectives

The general objectives are to identify causes, examine and access the effect of divorce and its laws and also to analyze the adequacy of the laws governing divorce in Uganda

1.5 Specific Objectives

The study will include the following specific objectives.

1. To analyse the legal framework on divorce laws in Uganda
2. To discuss the causes of divorce

3. To discuss problems hindering the implementation of the laws governing divorce in Uganda.
4. To examine the implications of the laws on divorce in Uganda

1.6 Research questions

1. What are the causes of divorce in Uganda
2. Analyse the laws governing divorce in Uganda
3. To what extent have these laws been implemented
4. What are the implications of the laws of divorce in Uganda

1.7 Scope of the study

1.7.1 Time scope

The study was carried out on the basis of the research made on divorce by different individuals, firms, organizations between 2000 and 2014.

1.7.2 Context scope

The research examined the divorce in Uganda (Lungujja Zone). It sought to investigate the causes and effects of divorce, the laws governing divorce and their implementations and the nature of problems facing married couples

1.7.3 Geographical scope

The scope of this study was conducted within the territory of Uganda in Lungujja Zone targeting courts, local councils, several women groups including divorced women.

1.8 Significance of the study

The researcher believes that once this study is completed;

1. It will help students to make references
2. It will fulfill the researchers requirement for the award of bachelors of laws degree
3. Assist legislators and policy makers to identify loopholes while formulating good laws

4. Assist human rights or nongovernmental organizations local and international for rising awareness of the problem of adultery and curbing of domestic violence which is also a cause of divorce

1.9 METHODOLOGY

1.9.1 Introduction

This chapter describes the techniques of research which were used in collecting data during the study, research design, area of the study, study population.

It also indicates the sampling procedure and selection sample size, data collection instruments validity and reliability of research instruments. Lastly, it describes data analysis, ethical considerations and limitations of the study.

1.9.2 Research design

The study used exploratory and descriptive study design. Both qualitative and quantitative research methods were used in the study. The aim was to enable the study offer and stimulate explanations about the challenges in the control of divorce.

The qualitative method was of particular importance to this research because of their ability to penetrate into the different expressions and experiences of respondents to the subject matter. The study used qualitative method because of the experiences of the key respondents like N.G.O official, local council officials who handle cases of divorce.

The quantitative method was used due to the desire of establishing the magnitude of the problems using statistical data and evidence.

This led to measure variables in numbers of cases, percentages and frequencies.

1.9.4 Study population

In this study, the target population was the victims of divorce. All these informants had knowledge about divorce inclusive hence in better positions to give appropriate information. The number of female key informants was 30 and that of female respondents in the study was 20.

1.9.5 Sampling procedure and selection.

Multi/cluster sampling procedure was used to select the sample of the study area. The study used simple sampling to choose respondents. Divorced respondents in their household were selected and those ones found on spot at the police station and Non-Government Organizations with fresh cases. Key informants based on their knowledge were purposively selected in different study area like administrators/ members from the Non-Government Organizations studied, local council officials, opinion leaders, police officers and parties were selected.

1.9.6 Sample size

The sample size of 100 respondents was selected. And this represented the population of divorce. The sample size consisted of 15 victims of divorce, 55 selected from key informants from the Non-Governmental Organizations, police officers and local council officers, 30 the parents of the victims. The researcher chose different numbers for interview due to sensitivity of the research problem and availability of respondents.

Respondents were selected on the basis of geographical dispensation and location.

1.9.7 Data collection instruments

The following research instruments were used in carrying out the study;

1.9.7.1 Qualitative data collection instruments

A number of instruments were used to collect qualitative data as indicated below;

a) Interview guide

This was used to gather information using face to face conversation between the researcher and purely selected key informants involved in issues to do with controlling divorce in families. The use of this instrument was to get data from key informants that helped in carrying out in-depth interviews on the key information relating to experiences with divorce. The key informants were administrators from Non-Government Organizations, police officers, local council officials working on divorce cases.

b) Published/unpublished materials

These were used to help in the collection of qualitative information that can be used to validate data collected from other desk review of legal instruments methods. Such information was used to get an insight into how views and opinions about how adultery has influenced the efforts for improvement in the existing control measures to prevent divorce. The methods helped in drawing appropriate conclusions about the collected information from the respondents. Materials such as academic research reports from civil society organizations dealing with adultery and divorce will be reviewed and police reports about the problem of divorce were the flows of the study.

c) Observations

This method was used in the study to help to help and capture hidden behavior of couples, police officers, officials and other respondents by watching how victims reacted when asked some questions. And also people's attitudes were observed to fill the gap of the data collected.

1.9.7.2 Quantitative data collection instrument

Different quantitative instruments were used in collecting data among which include;

Questionnaires;

These were employed to help collect the views of the couples, police officers, local council officials. These questionnaires were semi-structured and self-administered questionnaires to which the respondents required to select from options given. These Questioners for the key informants had a free response choice to try and balance up the data to give their free opinion without being influenced by the study. Report was created with respondents who created a good study environment and for more detailed information. 15 questionnaires were sampled and distributed amongst the key interviewees.

1.9.8 Validity and reliability of research instruments

i) Validity

This refers to the extent to which the measurement techniques or instruments actually measures the attributes that were intended in the research. The study used constructed instruments that were used to solicit data from the sample of respondents. The instruments were then validated through content validity index.

ii) Reliability

This refers to the level of dependability of the questions in the research instrument. To ensure this, the inter-rater reliability was used to measure the consistence of the research instruments through the use of two experts to gauge the extent to which each instrument was measuring what it expected to measure.

1.9.9 Data analysis

The study used both qualitative and quantitative data and they were analyzed as below;

1.9.9.1 Qualitative data analysis and management

The first step in analyzing the qualitative data collected was to get familiar with the data collected through reading and re-reading the text of the collected data. Key

themes and patterns that address the research questions were then identified and organized into coherent categories to help in summarizing and bringing meaning to the data collected. The outcome was presented in form of content analysis after comparing and crosschecking of the collected data for accuracy and correctness using triangulation and holistic view of the research.

1.9.9.2 Quantitative data analysis

On the other hand, the quantitative data through use of questionnaire went through a gradual process of analysis involving editing of collected data, coding and tabulation. Coding involved classifying the answers for each item into meaningful categories.

1.9.10 Procedure of data collection

Before the researcher started carrying out his research-he had to obtain a written introductory letter from the-university authority; the letter which introduced the researcher to the respondents

The data got from the respondents is always not in an orderly form so the information has to be entered into a computer, edited and analyzed by the researcher then presented.

1.9.11 Limitations

Limited time for conducting research since the research was required to be presented with in a short period of time; the researcher may not have enough time to carry out the research.

In research funds for facilitation in transport, feeding and other research materials may be hard to get.

Due to fear, some respondents may not reveal their secrets since they may think that he or she is a writer.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter reviews the literature related to the study of divorce. The chapter reviews the literature related to the study of divorce. It discusses various contributions which have been done by different scholars concerning divorce. It discusses the causes of divorce, and effects of divorce.

2.1 The concept of divorce

According to a Saturday Vision survey, an increasing number of people are suing their spouses using adultery as a ground for divorce. Currently, there are about 100 divorce cases filed by both men and women at Nakawa and Mengo courts in Kampala alone,.

Though national figures are not available, a review of records in those courts suggests the numbers have been rising as written by Anne Mugisha and Conan Busingye.

The Magistrates Court at Nakawa, for instance, registered an increase in pending cases from 31 in 2005 to 42 in 2006 and 52 in 2007. It dipped to 45 in 2008 then rose again to 64 by April 2009. The reasons for the increase are not entirely clear. One explanation may be that changes in the penal code have made it easier for women to file for divorce.

"Many people cannot tolerate adultery. It is not about the property, it is because they have been hurt. We have also had cases where the spouse has already moved on to start a new life with someone else. You feel you cannot continue," Mutonyi explains. It is estimated that five out of seven petitioners of divorce are women.

Sources in the judiciary attribute the 2012 decline in divorce rates to the Children and Family Courts handled by grade one magistrates. These professionals partly helped in counseling and sensitizing spouses to resolve conflicts. This move was introduced in

2011. However, with new reports showing the rise in HIV infection rates, a lot of Ugandans are now scared of taking any chances, a source disclosed.

"Even with counseling, someone swears, I cannot die of HIV, because of this unfaithful man or woman," says a source. Sunday Vision has learnt that the most of the divorcees are young people who have been married for a short time. "They fall in love with the beauty of the person without knowing the character. Young women are excited about the wedding without studying the person. Why spend millions of money on a wedding when you are going to divorce tomorrow?" Mutonyi wonders.

She blames the trend of unfaithfulness to poor upbringing. "Men are sleeping around with girls before marrying them. The next thing, he discards you and goes for another. There is no respect at all, and morals are lost." In the past, she stresses, couples used to be stable in their marriages, because parents were involved to ensure that their children's marriage works. This virtue was passed on from one generation to another.

2.2 Causes/Grounds of divorce in Uganda

Section 4 of the Divorce Act provides for adultery as a Grounds for divorce.

A husband may apply by petition to the court for the dissolution of his marriage on the ground that since the solemnization of the marriage his wife has been guilty of adultery.

A wife may apply by petition to the court for the dissolution of her marriage on the ground that since the solemnization of the marriage;

Her husband has changed his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; or has been guilty of incestuous adultery; bigamy with adultery; marriage with another woman with adultery; rape, sodomy or bestiality; adultery coupled with cruelty; or adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Adultery is one reason/cause or ground for divorce, the spouse seeking the divorce must prove the other spouse's wrongdoing.

Adultery is often defined as voluntary sexual intercourse by a married person with someone besides his or her spouse. While intercourse is usually required, something less may amount to adultery. State laws can vary somewhat on the elements or definition of adultery. Adultery is stated as a reason for divorce in the laws of most states with fault-based divorce.

According to a Saturday Vision survey², an increasing number of people are suing their spouses using adultery as a ground for divorce. Currently, there are about 100 divorce cases filed by both men and women at Nakawa and Mengo courts in Kampala alone. Though national figures are not available, a review of records in those courts suggests the numbers have been rising as written by Anne Mugisa and Conan Businge.

The Magistrates Court at Nakawa, for instance, registered an increase in pending cases from 31 in 2005 to 42 in 2006 and 52 in 2007. It dipped to 45 in 2008 then rose again to 64 by April 2009. The reasons for the increase are not entirely clear. One explanation may be that changes in the penal code have made it easier for women to file for divorce.

“Many people cannot tolerate adultery. It is not about the property, it is because they have been hurt. We have also had cases where the spouse has already moved on to start a new life with someone else. You feel you cannot continue,” Mutonyi (Magistrate at Magistrates Court at Nakawa) explains. It is estimated that five out of seven petitioners of divorce are women.

Mutonyi (Magistrate at Magistrates Court at Nakawa) observes that with the emancipation, Ugandan women have now become empowered to speak out and make decisions for themselves. Even for most men, she says, it is traumatic to continue in a practically nonexistent marriage.

“The immediate step a man takes when he finds his wife cheating is divorce. It is two way. Unfaithfulness hurts.

² (June 9th, 2013, Sunday Vision)

And by the time one comes to court, they have tried the church and relatives to intervene in vain. They come with a decided mind; it is over.”

Sources in the judiciary attribute the 2012 decline in divorce rates to the Children and Family Courts handled by grade one magistrates. These professionals partly helped in counseling and sensitizing spouses to resolve conflicts. This move was introduced in 2011. However, with new reports showing the rise in HIV infection rates, a lot of Ugandans are now scared of taking any chances, a source disclosed.

“Even with counseling, someone swears, I cannot die of HIV, because of this unfaithful man or woman,” says a source. Sunday Vision has learnt that the most of the divorcees are young people who have been married for a short time. “They fall in love with the beauty of the person without knowing the character. Young women are excited about the wedding without studying the person. Why spend millions of money on a wedding when you are going to divorce tomorrow?” Mutonyi (Magistrate at Magistrates Court at Nakawa) wonders.

She blames the trend of unfaithfulness to poor upbringing. “Men are sleeping around with girls before marrying them. The next thing, he discards you and goes for another. There is no respect at all, and morals are lost.” In the past, she stresses, couples used to be stable in their marriages, because parents were involved to ensure that their children’s marriage works. This virtue was passed on from one generation to another.

In the case of *Mrs. Ruhara vs Christopher Ruhara*³, is remotely relevant to the present case both in that the petitioner and the respondent are equally guilty of adultery. This case is one where there is no winner and no loser. No party should be allowed to benefit from his or her wrongs. The court, would therefore, exercise its discretion to refuse costs to both of them as none of them has come to court with clean hands.

³ (1997) HCB 86

I would also refuse to grant costs to either the petitioner or respondent on the basis of the reasoning and principles adopted by the Supreme Court in the case of **Prince J. D. C. Mpuga Rukidi vs. Prince Solomon Iguru & others**⁴ where Justice Oder held:

"It is, I think, in the interest of peace and harmony within the family and community of Bunyoro-Kitara Kingdom as a whole, that the rift or feud caused by the case, should be healed, if possible, as speedily as can happen. One side has won. The other has lost. In such circumstances it would assist the process of reconciliation within the family and the community concerned as a whole to bring to an end the possibility of one side trying to extract its "pound of flesh" from the other".

And **Judge Tsekoko**, made his concluding remarks on the same subject of costs - in the same case by stating:

"In fairness this harmony can be fostered by ordering each party to bear his own costs". I think it is a proper case where neither the petitioner nor the respondents should be penalised in costs, for he reasons that: all the parties to the petition are guilty of adultery, the parties have agreed to settle the case expeditiously thereby saving court and themselves protracted proceedings that would involve loss of money and time, the petitioner and the respondent have agreed to maintain a harmonious relationship for the good and welfare of their children, the petitioner and the respondent have accepted to have their children as a linking or joining bridge between them,

For the reasons shown above, I shall not grant any costs to any party to this petition. This includes the co-respondent. In the result, each party shall bear his or her own costs.

In **Bater vs. Bater**⁵

Notwithstanding the admissions of adultery by both the petitioner and respondent, I find that neither of them has connived with the other to bring the present proceedings,

⁴ Supreme Court Civil Appeal No. 18194

⁵ (1951) Probate 35 (C. A.)

neither of them has condoned the other partner's adultery and neither the petitioner nor the respondent have colluded with the other to institute these divorce proceedings.

Therefore this court do hereby pronounce a decree nisi for the dissolution of the petitioner's and respondent's marriage respectively.

After the decree nisi has been pronounced the court has to consider who of the parties to the marriage shall have the custody of the children. Section 30 of the Divorce Act provides that the court makes such order as to the custody, maintenance and education of the child or children as it deems fit. The guiding principle that the court must address is the welfare of that child or those children. What the welfare principal means is contained in sections 4 - 6 and the First schedule of the Children Statute.

Cruelty is a ground for divorce. In most cases, cruelty involves actions or conduct by your spouse that harms or endangers your mental or physical health.

Also, you need to show that the cruelty is so severe that you can't continue living with your spouse because it's not physically or emotionally safe for you to do so.

In the end, showing that your spouse has a temper, or "nags" you all the time or that you just don't get along anymore isn't enough to prove cruelty as a ground for divorce.

Examples of acts that usually are considered to be cruel are physical attacks upon a spouse, repeatedly yelling, screaming or displaying rage

Constantly criticizing a spouse's abilities as a homemaker, breadwinner, parent or spouse, staying away from the house too often without an explanation, publicly flaunting a relationship with another person, Wrongfully accusing the other spouse of adulterous relations with another person.

Studies show that about two-thirds of married women in Uganda have been physically abused by a partner. Activists say the traditional practice of a bride price, where the man presents gifts – usually livestock – in exchange for the bride strips women of their dignity and exposes them to domestic violence.

Often, claims of cruelty in divorces come down to "he said-she said" situations, where one spouse gives examples of cruel behavior, and the other spouse denies it and tries to explain away or excuse the behavior. Without police reports, medical records, testimony from eyewitnesses or other strong evidence you may not be able to establish cruelty.

Rwabinumi v Bahimbisomwe⁶ The brief facts of this case are that the appellant contracted a marriage with the respondent on 30th August 2003, at Our Lady of Africa Mbuya Catholic Church. Prior to their wedding, the parties had cohabited together and also produced a son, Edison Rubarema, who was born on 28th March 2003. The appellant and the respondent developed serious misunderstandings during the first year of their marriage, which culminated in the appellant chasing the respondent and her infant son out of the couple's residence in Kisasi village, Kampala District, on 30th July 2004.

The respondent subsequently petitioned for divorce on 14th February 2005 under Divorce Cause No. 4 of 2005, on grounds of the appellant's ***adultery and cruelty***, which had led to her marriage to irretrievably break down. She prayed for judgment against the appellant for the following orders: Divorce order, Maintenance order for the child, A share of the property to which she contributed, A return of all gifts and presents given during the giveaway ceremony, Cost of the petition, and Any other remedy as court may think fit.

The appellant also cross petitioned for divorce on grounds of the respondent's adultery, witchcraft and irretrievable break down of marriage.

The Petition was heard by Kasule J., who entered a Decree Nisi dissolving the respondent's marriage to the appellant and dismissed the cross-petition on 18th June 2007. He also made orders for the sharing of the parties' property.

⁶ civil appeal no. 10 of 2009

Impotence is a ground for divorce. Intimacy is the one of the reasons why people get involved in personal relationships. People are social creatures, and when a couple decides to share their intimacy for a lifetime, they usually get married.

On the opposite side of things, a spouse's inability to be intimate with the other spouse may be grounds for divorce in states where fault-based divorces are used.

Traditionally, impotence is thought of as a husband's inability to have sexual intercourse with his wife. However, impotence may be grounds for a divorce when the wife is unable to have sexual relations with her husband.

"Inability" means a physical, or perhaps psychological, medical condition makes it impossible for one spouse to engage in sexual activity. When a spouse intentionally withholds sexual contact with the other spouse, it's not impotence. Likewise, a spouse's infertility or inability to produce a child is not impotence.

The fault grounds or reasons for divorce vary from state to state, but in many states where fault grounds divorces are still recognized, impotence is grounds for divorce. As a general rule, when it comes to divorce, it doesn't matter if the spouse was impotent before the marriage or if the spouse became impotent after the marriage.

Impotence can also be grounds for annulment of a marriage if the condition existed at the time the couple got married and the impotence was discovered later. An annulment is a legal procedure for declaring a marriage null and void, as if the marriage never happened.

As with all fault grounds for divorce, impotency must be supported by evidence or testimony, or the case could be dismissed. As a general rule, the spouse suing for divorce must provide medical or other expert testimony to prove the other spouse's impotence.

In some states, a divorce will be granted only if it's proved that the spouse's impotence is permanent and incurable. Today, advances in medical technology may make it

difficult to prove to that. A divorce court may order the spouse to undergo a physical or psychological examination, and if that spouse refuses, the court may grant the suing spouse a divorce.

Divorces usually aren't pleasant to begin with, and things can only get more uncomfortable when the spouses' bedroom is brought into the courtroom. When divorce looks like the only answer, it's a good idea for both spouses to talk their attorneys about their available options.

Insanity. When someone files for divorce, a basic requirement is stating a valid legal reason for the divorce. Mental illness or insanity of your spouse is one such reason or grounds for divorce. In most states, the grounds of mental illness is grouped with other fault-based grounds for divorce. A few other states include mental illness within no-fault divorce laws.

Find out the basics about mental illness or insanity as a reason for divorce, and what it could mean in your divorce.

Mental Illness as a Reason for Divorce

The terms used to describe fault grounds for divorce based on a spouse's mental condition include: Mental illness, Insanity, Mental incompetence

Even though a state law may group mental illness with fault grounds, this reason is different from other fault-based grounds, such as adultery or cruelty. When mental illness grounds are claimed, there's no finding of your spouse's wrongdoing.

Laws allowing grounds based on mental illness or insanity are fairly recent, dating to the early 20th Century. Why? The law places duties on spouses when they marry, and one is the duty to care for and support your spouse, even if he or she is ill.

When you file for divorce, you have to prove elements of your case, including grounds. State laws vary, and you can expect you'll have to show:

Your spouse's insanity or mental illness is declared, incurable, or both

The condition has lasted a minimum period (in several states, it's five or more years)

Gathering evidence or testimony to prove your case, and avoid dismissal, can be a challenge. Expert testimony and medical or psychiatric records may be required. Proof of institutional or inpatient care may be required as well. Proving a spouse's mental condition and that the condition is incurable are reasons why grounds of insanity are seldom used.

It's also important to know that state law may not relieve you of the duty to support your spouse.

Making the decision to divorce is never easy, let alone using the grounds of insanity or mental illness. Working with your divorce lawyer becomes all the more important, allowing you to make an informed decision about how to handle your divorce.

Bigamy. When someone files for divorce, he or she will have to state a valid legal reason or grounds for the divorce. There are fault and no-fault grounds. Some states include bigamy as a fault-based ground for divorce.

Bigamy is when someone gets married and already has an existing legal marriage. Other terms to describe this situation are polygamy and plural marriage, and it's also crime. Find out how bigamy may be a ground for divorce, and whether or not it's the right choice to use in your case.

In defining Bigamy, State laws vary, but you can only have one legal spouse at a time. Generally, if a state law offers bigamy as a ground for divorce, only the innocent spouse, meaning the one who did not enter into more than marriage, may use bigamy as a ground for divorce.

Generally, the following must be true for there to be bigamy:

Existence of a valid marriage entered into by the accused spouse before the bigamous marriage

Bigamist must be aware that his or her spouse is living at the time of the second marriage

When is bigamy not present? Someone doesn't commit bigamy when a prior marriage ended through divorce or annulment before the second marriage took place. Also, under some state laws, a spouse is presumed dead if absent and unheard of for a certain number of years. In that case, remarriage by the other spouse is not considered to be bigamy.

In some states, a sincere and reasonable belief that the prior marriage ended by divorce is a defense to bigamy.

When you've come to the decision to end your marriage and bigamy could be a factor, it's wise to get help from your divorce attorney. Even if grounds of bigamy is an option in your state, it may not be the best choice for you. Other fault-based grounds, such as adultery, or a no-fault divorce may be best for you. Every case is different.

If your spouse has committed bigamy, it's also important to discuss with your attorney whether or not you can use bigamy grounds. In some states, only the innocent spouse from the prior marriage can raise the issue of bigamy. Why? You can't have a legal existing marriage with more than one person, so subsequent marriages aren't even valid in the first place.

In Birungi v Sekubwa and Ors⁷ This was a second appeal. In the High Court the 1st respondent successfully sued the appellant, the 2nd respondent, 3rd respondent and 4th respondent for damages caused to his car in a collision between it and the appellant's motor vehicle. The cause of action was founded in negligence on the part of the 3rd respondent when driving the appellant's motor vehicle in the course of his employment as her servant or agent. The appellant appealed to the Court of Appeal against the High Court decision. She lost that appeal. Consequently, she appealed to

⁷ (Civil Appeal No. 3 of 2001)

this court. We heard the appeal and dismissed it, reserving our reasons for doing so, which we now proceed to give.

The circumstances that led to the High Court action were briefly these. The 2nd respondent and Martin Emakulat, her husband, were the owners of Mazda mini bus 407 UAF, which was, in fact, registered in the former's names. They gave

the vehicle to the 4th respondent to repair and sell it, recover his costs and give them any balance of the purchase price. The appellant was also the owner of a Dutsan Pick-

up UUY 185, which she wanted to dispose of. She agreed to trade-in her pick up for 407 UAF and shs.2,000, 000=. The appellant gave the 4th respondent the registration book and keys of her pick-up, plus Shs. 1,500, 000=, and took in exchange the mini bus No. 407 UAF. The registration Card of 407 UAF was to be given to her after payment of the balance of Shs. 500, 000=. In the meantime the 2nd respondent retained the registration book of 407 UAF. The appellant took possession of the vehicle and it was being driven by her driver, the 3rd respondent when the accident happened on 12-12-94, at 10.00 p.m. involving 407 UAF and the 1st respondent's Benz saloon car. At the time of the accident, the Benz Saloon car was bearing a garage number plate No. U170 DI/UPF922. The 1st respondent was prosecuted and convicted for driving an unregistered vehicle with a garage number plate at 10.00 p.m. The 3rd respondent was also prosecuted and convicted of careless driving.

After the accident the appellant tried to repudiate the agreement to purchase the vehicle 407 UAF and used the Police and an Army Officer to force the 4th respondent to refund the Shs. 1, 500, 000= she had paid towards the purchase of vehicle 407 UAF and a return of her UUY 185. She maintained that at the time of the accident the vehicle 407 UAF was not in her possession. It was instead in the possession of the 4th respondent. She also denied that the 3rd respondent was her driver. At the trial, the following issues were agreed upon and determined:

(1) who owned the vehicle 407 UAF and was in control of it when the accident happened?

(2) whose agent or servant was in charge of the vehicle when the accident happened?

(3) was the driver in charge of the vehicle negligent?

(4) If the answer to (3) was in the affirmative, was the 2nd respondent entitled to damages and, if so, what quantum?

In his lead judgment in the Court of Appeal Berko, J.A., suggested that a fifth issue should have been whether the driver was driving the car in the course of his employment. That would have clearly brought over the issue of vicarious liability.

In the learned Justice of Appeal's view, since judgment had already been entered against the 3rd respondent, issue (3) did not arise.

The learned trial judge answered the 2nd issue that the 3rd respondent was in charge of the vehicle in the course of his employment as the servant or agent of the appellant when the accident happened; and that he was negligent because he left his lane when trying to avoid a pothole in his lane and suddenly swerved colliding with the 1st respondent in his lane. The appellant was consequently liable for the 3rd respondent's negligence.

Regarding the first issue, he found that the appellant was the owner of vehicle No. 407 UAF and that on 12-12-94, the vehicle was under her control when the accident happened. The answer to the 4th issue was that the 1st respondent was entitled to damages from the appellant for the damage to his car.

The learned trial judge proceeded to assess damages and made an award which was not challenged in the Court of Appeal. He entered judgment for the 1st respondent against the appellant and the 3rd respondent jointly and severally for the sum of Shs. 11,024,000= with interest at 8% from the time of filing the suit until payment in full. He also awarded costs of the suit in favour of the 1st, 2nd and 4th respondents.

The appellant's appeal to the Court of Appeal was unsuccessful. Hence this appeal, which we also dismissed, reserving our reasons for doing so.

Eleven grounds of appeal were set out in the memorandum of appeal to this Court. The manner in which the memorandum of appeal was drawn offended rule 81 of the Rules of this Court. We nevertheless allowed the grounds to be argued as they were. The first eight of the ground of appeal were repetitions in different forms, the substance of which was that the 1st respondent's cause of action was founded, and based, on illegality. The resistant judgment in his favour was therefore, a nullity, contrary to the principle of *exturpicausa non orituractio*.

Incompatibility. In most states, a spouse may get a no-fault divorce based on a breakdown of the marriage. Some states refer to this breakdown of a marriage as incompatibility.

Incompatibility is a statement about the condition of the marriage, and it doesn't mean that either spouse has specifically done something wrong. A claim of incompatibility means that the couple has personality conflicts that are so severe that married life is impossible and that the marriage probably should not have taken place.

You will not need to prove that your spouse was to blame for the failure of your marriage to get a no-fault divorce based on incompatibility. A court may grant you a divorce if it finds that you and your spouse can no longer live together due to your incompatibility.

Factors considered in determining a marriage breakdown or incompatibility may include the following:

Conflict of personality, Whether there is mutual concern for the emotional needs of each other, Whether the marriage is characterized by financial difficulties, Long physical separation, Difference of interests, Resentment and Distrust, Constant bickering, Irreversible antagonistic feelings

If you and your spouse cannot get along anymore and you think the marriage is over, you may want to consult a divorce attorney. Also, an attorney can make sure that you completely understand the available grounds for divorce in your state as well as any legal consequences.

Irretrievable Breakdown. Sometimes, things simply don't work out as planned. Like when a new job may not be as exciting or challenging as you thought it would be, for example. It may be time to start over again. The same thing happens with some marriages, and it's time to get a divorce.

When your marriage simply isn't working anymore, you and your spouse may be able to get a divorce based on the irretrievable breakdown of the marriage.

In most states, a spouse may get a no-fault divorce based on the breakdown of the marriage. Some states refer to this breakdown as "irreconcilable differences." It means, for all intents and purposes, the marriage is over and there's no way it can be fixed and you're not interested in making it work. It's Broken, and No One's To Blame

When a divorce is based on irretrievable breakdown, any wrong doing by the one spouse or the other doesn't matter. It's simply a statement by both spouses that the marriage won't work any longer. You don't need to prove that your spouse was to blame for the failure of your marriage.

The process varies from state to state, so it's important to check the laws in your area for specifics on no-fault divorces, but in general, most states follow the same general rules:

Both Spouses Agree. When both you and your spouse agree that the marriage is irretrievably broken, you both can sign an affidavit, under oath, stating that the marriage is broken and the reasons why it's broken. After a waiting period, which may be anywhere from 90 days to six months or more, the judge will hold a hearing.

Usually, the divorce will be granted because both of both spouses' agreement on irretrievable breakdown.

When only one spouse files an affidavit or petition for divorce and the other spouse denies that the marriage is irretrievably broken, the court will hold a hearing, after the waiting period has expired, and determine if the marriage is in fact broken.

The court may also postpone the hearing for certain period of time, usually 30 to 60 days, and may suggest, or even order, that spouses seek counseling.

Irretrievable Breakdown Factors

The courts look to a number of factors when deciding whether or not a marriage is irretrievably broken, such as:

Conflict of personality, Whether there is mutual concern for the emotional needs of each other, Whether the marriage is characterized by financial difficulties, Long physical separation, Difference of interests, Resentment, Distrust, Constant bickering, Irreversible antagonistic feelings, You Have To Agree on More than the Divorce.

In many states, when you and your spouse both agree that the marriage is irretrievably broken, you have to give the court agreements on dividing property, and if you have children, a parenting plan setting out the details of child custody, support and visitation. These need to be filed when the affidavit or divorce petition is filed.

When one spouse disagrees on irretrievable breakdown, these agreements need to be filed before the court can enter a final divorce decree. If they're not, the court will make the decisions for the spouses.

You and your spouse can handle your own divorce if you truly agree that your marriage is broken and beyond repair. But it's still a good idea to talk to a divorce attorney. An attorney can make sure your paper work is done properly, as well as explain the available grounds for divorce in your state and the legal consequences of your divorce.

Irreconcilable differences. People disagree over all sorts of things, from religion to politics, and it leads to discussions and debates. For married couples, strong disagreements, or irreconcilable differences make it impossible to live together and may be grounds for a divorce.

In most states, a spouse may get a no-fault divorce based on a breakdown of the marriage. Some states refer to this breakdown of a marriage as "irreconcilable differences." It means you and your spouse can't agree on basic, fundamental issues involving the marriage or your family, and you never will agree.

When you and your spouses completely fail to agree on how to raise your children, such as differences of opinions on discipline and religious issues some common sources of irreconcilable differences. No matter the reason, the differences must be so strong that it's clear to a judge that there's no chance the marriage can be saved.

When a divorce is based on irreconcilable differences, any wrong doing by the one spouse or the other doesn't matter. It's simply a statement by both spouses that marriage won't work any longer.

You don't need to prove that your spouse was to blame for the failure of your marriage to get a no-fault divorce based on irreconcilable differences. A court may grant you a divorce if it finds that you and your spouse can no longer live together due to your irreconcilable differences.

Irreconcilable Differences Factors

Factors courts look at in determining a marriage breakdown or irreconcilable differences may include the following:

Conflict of personality, Whether there is mutual concern for the emotional needs of each other, Whether the marriage is suffers from financial difficulties, Long physical separation, Difference of interests, Resentment, Distrust, Constant bickering, Irreversible antagonistic feelings

There's really no cut-and-dry list of things that may lead to irreconcilable differences.

You Both Have To Agree on Some Things

In most states, despite your irreconcilable differences, you and your spouse have to agree or "consent," in writing, that the marriage can't be saved because of your differences in opinion. You or your spouse will have to find another way to get your divorce if either one of you doesn't agree on irreconcilable differences.

On top of that, you both usually have to come to agreements on dividing property, and if you have children, a parenting plan setting out the details of child custody, support and visitation.

You and your spouse can handle your own divorce if you truly agree that you can't get along anymore and the marriage is over. But it's still a good idea to talk to a divorce attorney. An attorney can make sure your paper work is done properly, as well as explain the available grounds for divorce in your state and the legal consequences of your divorce.

Insupportability. No two people are alike. No matter how well a couple thinks they know each other, or no matter how much it seems they think alike, they almost always have disagreements over some things. Sometimes these differences in opinion don't come to light until after they're married, and sometimes the disagreements are grounds for a divorce.

In most states, a spouse may get a no-fault divorce based on a breakdown of the marriage. Some states refer to this as "irreconcilable differences" or "incompatibility." In Texas, the term used is insupportably. Basically, it means the spouses' personalities conflict and destroy a marriage so that there's no reasonable expectation of reconciliation.

It has nothing to do with a spouse's refusal or inability to financially support the other spouse. It simply means the spouses can't agree on basic, fundamental issues involving the marriage, and they never will agree.

"Fault" and "Blame" Have Nothing To Do With It

When a divorce is based on insupportably, any wrongdoing by one spouse or the other doesn't matter. It's simply a statement by one or both spouses that the marriage doesn't work any longer.

You don't need to prove that your spouse was to blame for the failure of your marriage to get a no-fault divorce based on insupportably. A court may grant you a divorce if it finds that you and your spouse can no longer live together due to your personality conflicts and inability to get along.

Factors courts look at in determining whether a marriage is insupportable include:

Conflict of personality, Whether there is mutual concern for the emotional needs of each other, Whether the marriage suffers from financial difficulties, Long physical separation, Difference of interests, Resentment and Distrust, Constant bickering, Irreversible antagonistic feelings

Practically anything can form the basis of insupportability, so long as the disagreement or conflict is so bad there's no chance the marriage can be saved.

Put the Conflicts Aside Temporarily.

In Texas, your divorce will go much more smoothly if you and your spouse agree that the marriage is insupportable. You can avoid court battles by agreeing that the marriage is over and by coming to agreements on dividing property, and if you have children, a parenting plan setting out the details of child custody, support and visitation.

That's not to say one of you can't get a divorce based on insupportability even if the other doesn't want the divorce. Like most states, Texas won't force people to stay married when at least one of the spouses wants the marriage to end.

You and your spouse can handle your own divorce if you both agree the marriage is insupportable. An attorney can make things easier, however, by making sure your paper work is done properly, as well as explain the available grounds for divorce in your state and the legal consequences of your divorce.

In Annette Nakalema Kironde v Apollo Kaddu Mukasa Kironde & Anor⁸

This judgment arises out of Divorce Petition No. 6/2001 in which the petitioner, Annette Nakalema Kironde seeks the dissolution of her marriage with Apollo Kaddu Mukasa Kironde. The grounds in support of her petition are contained in paragraphs 6 to 8 of her petition dated 6th June 2001.

The respondent filed his reply to the petition and cross petition; both dated 19th July, 2001. The petitioner filed a reply to the petition and cross-petition on the 30/7/2001. The co-respondent, also filed his reply to the cross-petition on the 8th of August, 2001. The summary of the facts in support of the petition and cross-petition are that the petitioner and the respondent married at Namirembe Cathedral on 1/10/1983 and a Marriage Certificate Annexure "A" was issued to them. The petitioner and the respondent cohabited at different places in Kampala between 1983 and 1991. During their stay together as husband and wife, three children, namely - Gulemye Apollo Kironde (19 years), Senteza Kaddu Mukasa Kironde (17 years) and Mpagi Kalibala Kironde (13 years) were produced by the couple.

It was the contention and grounds of the petitioner that the respondent, since the solemnisation of the marriage committed adultery with Ms Ayeta, Ms Nambasa Florence and Fatuma Nanfuka in addition to committing acts of cruelty against the petitioner and

⁸ (CIVIL DIVORCE CAUSE NO. 006/2001)

their issues. The petitioner also alleged that the respondent deserted her in 1999.

In reply the respondent accused the petitioner of committing adultery and producing a child who is not the respondent's. He admitted associating with the women mentioned by the petitioner but denies committing adultery with any of them.

The respondent Moses Zizinga was joined as a co-respondent in the cross-petition and he denied ever committing adultery with the petitioner.

The petitioner denied, in reply to the cross-petition ever committing adultery with any man, being cruel to the respondent and or deserting him. She added Safina Namigadde, Grace Majoro, Sarah Matovu, Cissy Nanfuka and Norah Lule as other and additional women with whom the petitioner committed adultery. Both the petitioner and the respondent prayed for the dissolution of their marriage on the ground of adultery committed by the respondent, then the petitioner, respectively. At the hearing of the petition, Paul Kiapi appeared for the petitioner, Nasser Lumweno for the respondent and Mathias Sekatawa for the corespondent respectively.

During the Scheduling Conference, both counsel agreed on the following facts:

The petitioner has committed acts of adultery with the co-respondent, and a child known as Joe Sebugwawo had been born out of those acts of adultery.

The respondent had committed acts of adultery with Ayeta Wangusa and Florence Nambasa and had ceased to support the family.

That the property comprised in LRV 2382 Folio 21 Plot 82, Old Kira Road, Naguru is the joint property of the Petitioner and the respondent and that any dispute touching on that property will be resolved in another forum.

The children of their marriage remain in the custody of the petitioner but that the respondent should be given access to those children while they are in the custody of the mother at Naguru or at school.

That the children of their marriage shall be at liberty to stay at the home of either the petitioner or the respondent.

That the petitioner shall bear % of the Children's maintenance, while the respondent shall bear 1/3 of the same, subject to the respondent having the financial means to meet his share of bringing up the children.

The petitioner shall take full responsibility of the Children where the respondent fails to meet his financial obligation toward the children.

This petition is brought under section 5 (2) of the Divorce Act which lays down the circumstances under which, the petitioner, in case of a wife, may petition for the dissolution of marriage, under the law (Divorce set) as it appears under the passing of the 1995 Constitution, this petition would have been incompetent for disclosing no grounds for dissolution of marriage. In other words it would be a plaint/petition that discloses no cause of action against the respondent.

Age as a Factor. Couples between the age bracket of 20-24 are seen to go in for the maximum number of divorces, with 36.6% of women wanting to end their marriage, and 38.8% of men wanting to end theirs. The second age bracket which is seen to have a high number of divorces are couples under the age of 20 years. 27.6% of women in this age bracket want to end their marriages while 11.7% of men want to end theirs. (U.S. Census Bureau, 2009)

Percentage of 1st, 2nd, and 3rd Marriages Ending in Divorce

It has been studied that 41%-50% of first marriages end in divorce, while 60-67% of second marriages and 73%-74% of third marriages end in divorce. It has also been

found that couples with no children are slightly more likely to go in for a divorce than those who have children. (U.S. Census Bureau, 2009)

Under section 12(1) of the divorce Act, The following are the grounds on which a decree of nullity of

marriage may be made; that the respondent was permanently impotent at the time of the marriage; that the parties are within the prohibited degrees of consanguinity, whether natural or legal, or affinity; that either party was a lunatic or idiot at the time of the marriage; that the former husband or wife of either party was living at the time of the marriage, and the marriage with the previous husband or wife was then in force; that the consent of either party to the marriage was obtained by force or fraud, in any case in which the marriage might be annulled on this ground by the law of England.

In Anne Musisi v Herbert Musisi & Anor⁹

The petition was based on the ground that since the solemnization of the marriage the Respondent had committed adultery with one, LORNA KIEMA with whom he is now living. KIEMA was named Co-respondent in the petition.

In reply to the petition both the Respondent and Co-respondent admit the fact of adultery. The Respondent tries to justify his adulterous behavior by the fact that his marriage with the Petitioner had irretrievably broken down before his affair with the Co-respondent, while the Co-respondent states that she was not aware that the Respondent was married to the Petitioner till she had started living with him.

At the commencement of the trial the following facts were admitted:-

That the Petitioners and the Respondent solemnized their marriage at St. Mary's Church, Toddington United Kingdom on the 19th day of January 1991. The marriage Certificate was admitted in evidence.

⁹ (Divorce Cause No.14 of 2007)

That there are four issues to the marriage as follows:-

Kiwanuka Musisi born on 08.06.1991.

Mirembe Musisi born on 08.07.1992.

Maya Musisi born on 10.03.1999.

Zara Musisi born on 02.09.2000.

That the Petitioner and the Respondent no longer live together.

That Maya and Zara Musisi attend school in Rainbow International School Kasanga, Kampala while Kiwanuka and Mirembe Musisi are students at Greensteds school in Nakuru Kenya.

That the Respondent and Co-respondent have committed adultery.

That the couple's house at Munyonyo was acquired during the subsistence of the marriage.

In addition to establishment of the ground of adultery, which under Section 4 of the Divorce Act is sufficient for dissolution of the marriage the Petitioner and the Respondent were agreed that their marriage had irretrievably broken down because of the long separation and the fact that all attempts to reconcile them had failed. As a consequence of these two factors the marriage between the Petitioner and the Respondent will be dissolved.

After dissolution of the marriage the only issues that remain for resolution are custody and maintenance of the children including payment of their school fees, division of the matrimonial property, damages and costs of the petition.

2.3 Effects of divorce

Psychological problems. According to Robert E. Emerge, marriage, Divorce and children's adjustment. Sage publications 1998, Children from divorced homes have more psychological problems than children who lost a parent to death

According to Velez Cohen "suicidal" Behavior & ideation in a community sample of children, *Journal of the American Academy of Child and Adolescent Psychiatry* 1988, People who come from broken families are almost twice as likely to attempt suicide than those who do not come from broken homes.

According to Judith Wallerstein, Julia Lewis, & Sandra Blakeslee, *Adult Children of Divorce: The Unexpected Legacy of Divorce: A 25-yr Landmark Study* (N.Y. Hyperion 2k).

According to Dawson, Deborah. "Family structures & children's health and wellbeing." "Children whose parents have divorced are most likely to experience injury, asthma, headache & speech impediments than children whose parents have remained married.

Parents who are Divorced Vs. Parents who are Together. People who have been raised by both parents, rather than those who have been raised by a single parent, or have seen either parent with changing partners, are less likely to go in for a divorce. Those who have seen their parents getting divorced, are more accepting of the idea of divorce, and are more likely to get one. The children of divorced parents are 4 times more likely to go in for a divorce than those children whose parents are together. (U.S. Census Bureau, 2009)

Refund of bride price. Batema, the magistrate, said some men want a refund of their bride price in court when divorce proceedings begin, often forcing him into arguments with those who "seek to trivialize the role of women" in marriage.

"That's why in my career I have never refused to grant a divorce where one partner wants it," he said. "Marriage is supposed to be voluntary. We shouldn't wait to try cases of murder; we should grant a divorce when we have the chance."

Women lawyers have taken notice of such thinking among magistrates, and these days they openly encourage women in unhappy unions to get legal help. The Uganda Association of Women Lawyers, or FIDA, organizes legal aid clinics for women in distress across the country.

"I think the reason why divorce is going up is because the women are breaking out of that cycle, the image that a good woman is a submissive woman," FIDA's Peace Amito said. "In the past very few women were getting educated, very few were experiencing life outside of their villages. Now most of them who come here say, 'I am fed up.' They are coming to realize that divorce is an option."

Matrimonial property. In cases of divorce, matrimonial properties also raise issues and are affected

In *Julius Rwabinumi Vs Hope Bahimbisomwe*¹⁰ The respondent subsequently petitioned for divorce on 14th February 2005 under Divorce Cause No. 4 of 2005, on grounds of the appellant's adultery and cruelty, which had led to her marriage to irretrievably break down. She prayed for judgment against the appellant for the following orders:

Divorce order, Maintenance order for the child, A share of the property to which she contributed, A return of all gifts and presents given during the giveaway ceremony, Cost of the petition, and Any other remedy as court may think fit.

The appellant also cross petitioned for divorce on grounds of the respondent's adultery, witchcraft and irretrievable break down of marriage.

The Petition was heard by Kasule J., who entered a Decree Nisi dissolving the respondent's marriage to the appellant and dismissed the cross-petition on 18th June 2007. He also made orders for the sharing of the parties' property.

¹⁰ Civil Appeal No. 10 of 2009

Dissatisfied with the judgment of the High Court, the appellant lodged Civil Appeal No. 30 of 2007 in the Court of Appeal, which dismissed his appeal, with costs to the respondent.

Being dissatisfied with the Court of Appeal's decision, the appellant filed this second appeal on the following grounds of appeal:

"The learned Justices of the Court of Appeal erred both in law and fact when they held that all property solely acquired by the Appellant became jointly owned property upon his marriage to the respondent and should be shared equally."

The learned Justices of the Court of Appeal erred in law in their interpretation of Article 31 of the 1995 Constitution of Uganda by applying it to equality in the distribution of property independently owned by the appellant."

The appellant prayed that his appeal be allowed and that the judgment and orders of the Court of Appeal be set aside. He also prayed that the costs of this appeal and in the two courts below be provided for.

Ground 1 of appeal was framed as follows:

"The learned Justices of the Court of Appeal erred both in law and fact when they held that all property solely acquired by the Appellant became jointly owned property upon his marriage to the respondent and should be shared equally."

Counsel for the appellant submitted that the appellant appeal was challenging the way the learned Justices of Appeal handled ground 4 of the appellant's appeal in the Court of Appeal, which was framed as follows:

"The learned trial Judge erred in law and fact when he ordered that the parties share the various properties when the respondent never proved any contribution towards acquisition of the same."

In a surprising turn of events, counsel for the appellant lauded the trial Judge, against whose judgment he had lodged an appeal before the Court of Appeal. He submitted that the learned trial Judge properly followed the law on ownership of property of married spouses and gave due consideration to the governing legal principles when he held that the parties' matrimonial home, which was built before the parties got married, belonged to the appellant, with the respondent only being entitled to the cost of the improvements she made on the house.

Counsel for the appellant however took issue with the trial Judge's orders regarding the distribution of the Kasangati land. Counsel for the appellant faulted the learned Justices of Appeal when they confirmed the trial Judge's holding that the parties should share it equally. He argued that the respondent's own evidence was that she had only contributed a total of Shillings. 7,500,000/= towards the total purchase price of Shillings. 20,000,000/=. On this basis, he argued that the Court of Appeal failed to properly evaluate this evidence and to find, according to the respective parties' contribution ratio, that the respondent's share of the Kasangati land was only one third and not one half, as the trial Judge had found.

In conclusion, counsel for the appellant submitted that the Court of Appeal failed to re-evaluate not only the appellant's evidence but also his submissions. He prayed to the Court to allow the appeal, and to reverse the orders relating to the sharing of the Kasangati land, as well as the Court of Appeal's wrong holding on the law on the distribution of property upon marriage and upon divorce.

Counsel for the respondent, on the other hand, supported the judgment of the Court of Appeal. She submitted that the learned Justices of Appeal properly addressed

themselves to the law and facts of the case and reached the right decision by ordering that marital property should be shared equally at the time of dissolution of marriage.

In response to counsel for the appellant's submissions, counsel for the respondent submitted that nowhere did the learned Justices of Appeal hold that all properties solely acquired by the appellant became joint property upon his marriage to the respondent. She contended that the learned Justices decision had actually excluded the properties the appellant acquired before his marriage to the respondent.

Counsel for the respondent also contended that the decision of the learned Justices of Appeal on the distribution of property was based on, among others, the principle of proprietary estoppel and the community property system, which are both applicable in Uganda as a common law jurisdiction.

She relied on, among others, the English case of ***Bernard vs. Joseph [1982] 1 Ch. 391***, which dealt with ownership of a house which was bought in joint names, where the couple pooled their joint income towards the initial deposit and later took out a mortgage in their joint names. She also contended that the principle of a constructive or a resulting trust which was enunciated by Lord Denning in the case of ***Cook v. Head, [1972] 1 W.L.R. 518***, was also applicable to the present case.

Counsel for the respondent urged the court to disallow ground 1 of appeal because counsel for the appellant had failed to show how the learned Justices of Appeal erred in law and in fact by holding as they did that marital property has to be shared equally between the parties at the dissolution of the marriage. She further prayed that since the appellant was only challenging the Court of Appeal's decision on ground 4 of appeal in CACA No. 30 of 2007, and not any other decision made by the Court on the other grounds, this Court should be pleased to uphold the judgment of the Court of Appeal in respect of grounds 1, 2, 3, 5 and 6 which the appellant did not challenge. She also prayed to the court to dismiss the appellant's appeal with costs in this court and the two courts below.

Under this ground, counsel for the appellant made two contentions about the holding of the Court of Appeal for which he sought this court to find that learned Justices of Appeal erred in fact and in law.

The first contention is that the learned Justices of Appeal held that *"all property solely acquired by the Appellant became jointly owned property upon his marriage to the respondent."* The second contention by counsel for the appellant was that the learned Justices of Appeal held that all property solely acquired by the Appellant prior to his marriage should be shared equally with the respondent upon the parties' divorce. Counsel for the appellant, however, failed to point out the "solely acquired property of the appellant" which the learned Justices of Appeal ordered to be shared equally between the parties

Contrary to counsel for the appellant's contentions, the holding of the Court of Appeal with regard to the appellant's and respondent's property, can be clearly found on page 18 of the lead judgment of Twinomujuni, J.A., when he was disposing of ground 4 of appeal. It reads as follows:

"In the instant appeal, the learned trial judge tried as much as he could to share what he found as matrimonial property between the appellant and the respondent. However, he did not follow the formula proposed above. He took into account to what extent the spouses had contributed to the acquisition of each property in question. He was obviously following the common law and both British and local authorities which have followed. Most of those decisions were made before the promulgation of Uganda 1995 Constitution. Nevertheless, I do not think that we should disturb his findings and division of the property, especially when the respondent did not cross-appeal against it. I would uphold the decision of the trial judge on this issue."

The decision of the trial Judge which was upheld by the Court of Appeal on the sharing of the property of the parties provided as follows:

The matrimonial properties are divided between the petitioner and the respondent as follows:

Land at Kasangati: Out of Kyadondo Block 104: 2 acres:

Court orders the same to be shared equally between the two. If for some reason, physical sharing is not possible, then whoever retains the physical land, or is responsible for its disposal, one way or the other, shall pay half of its value as determined by Government valuer, to the other. In case of valuation, both parties have to meet in equal shares the expenses of the Government valuer.

J.H. Party Services business:

Petitioner is to pay Shs. 3,000,000/= to the respondent as his equal share in the enterprise, whereupon the business shall solely belong to the Petitioner.

Motor-vehicle Minibus (PSV) Registration Number UAE 527 K:

The Respondent is to retain the same, but pay Shs. 3,500,000/= to the petitioner being half of its current value.

The matrimonial home at Kisaasi, Kampala:

The respondent is to retain this home but he is to pay shs. 3,782,000/= being the petitioner's contribution to improvement of the same.

Plots of land with house at Mparo, Kabale:

Respondent is held to be sole owner of same with petitioner having no interest therein.

Motor vehicle Pajero Registration Number UAE 887 Z:

Respondent is held responsible for the whereabouts of the same. The vehicle is part of the matrimonial property jointly owned by both in equal shares. Court assesses its value now at Shs.15,000,000/= and order the respondent to pay Shs.7,500,000/= to petitioner being her entitlement in the vehicle.

Motor-vehicle Toyota Corona Registration Number UAE 944 R:

Court holds the same to be solely owned by respondent.

Gifts given at introduction ceremony:

It is ordered that, as much as it is practically possible, the articles be divided equally between petitioner and respondent.

Any payment ordered to be made by any party shall carry interest at the court rate as from 30.07.04, the date of breakdown of marriage, or in case of a payment accruing in the future, as from the date when that payment becomes due, till payment in full."

The cross-petition stands dismissed."

With all due respect to counsel for the appellant, and in light of the holding of the Court of Appeal, I find that the appellant's contentions are not valid. I agree with counsel for the respondent that no where did the learned Justices of Appeal hold that all properties solely acquired by the appellant prior to his marriage become joint property upon his marriage to the respondent.

A case in point was the appellant's house at Kisaasi. Although the trial Judge and the learned Justices of Appeal found this house to have been the home where the parties had lived during their short lived marriage, they nevertheless allowed the appellant to

retain the house as his separate property because he had acquired the house prior to the marriage. In this case, the appellant was only ordered to refund to the respondent her direct monetary contribution of Shs. 3,782,000/= only, which she made towards the improvement of the house.

Another such property that both the trial Judge and the Court of Appeal allowed the appellant to keep as the sole owner was the land and house at Mparo, Kabale. The court held that the respondent had no proprietary interest in this land, which the appellant testified to have bought before his marriage to the respondent. The court reached this holding and overlooked the claims of the respondent that she had contributed money for the roofing and the purchase of the doors of the house.

The court also held that Motor Vehicle No. UAE 944 R, which the respondent testified not having made any contribution, solely belonged to the appellant.

I therefore find that the learned Justices of Appeal actually excluded the properties the appellant had acquired before his marriage to the respondent, when they upheld the division of property ordered by the trial Judge. This finding stands, despite the pronouncements on what constitutes joint property of spouses married under the ***Marriage Act, Cap. 251 Laws of Uganda (2000 Edition)*** that the learned Justices of Appeal made and which I will discuss later in this judgment.

On the other hand, the properties the court ordered the appellant to share with the respondent included (a) Land at Kasangati; (b) the Minibus (PSV) Reg. No. UAE 527 K, which the appellant was ordered to keep after paying the respondent one half of its current value (3,500,000/=); (c) the Party Services business where the appellant was to receive Shs.3,000,000/= from the respondent, who would then remain the sole owner; and (d) Motor Vehicle No. UAE 887 Z where the appellant was to pay Shs. 7,500,000/= to the respondent as her half share.

In three of these cases, [i.e. (a), (b) and (d),] the respondent testified that she made a cash contribution towards the properties' purchase, while in the case of (c), there was also evidence from both parties that they jointly owned the business and that they had both made cash contributions towards that business. All these properties were acquired during the subsistence of the parties' short lived marriage.

The appellant did not testify that the properties the court ordered to be shared with the respondent were acquired before his marriage to the respondent. In those instances where the appellant testified that he had acquired the property solely, the respondent also gave evidence to the effect that she had made a contribution. The trial Judge, who had the opportunity to listen to the evidence and to observe the demeanor of both parties, chose to believe the respondent's side of the story.

In the case of the Kasangati land, for example, the appellant admitted that he received Shs. 1,000,000/= from the respondent as a contribution towards the purchase price. He, however, sought to minimize the respondent's cash contribution by calling it a loan advanced by the respondent to him. It is worth noting that by the time the petition was heard in the High Court, which was over one year later, the appellant had not paid back 'the loan' he admitted receiving from the respondent. It is therefore not surprising that the learned trial Judge and the Court of Appeal believed the respondent's evidence and not that given by the appellant on this issue.

I will now turn to consider the argument made by counsel for the appellant to the effect that the Court of Appeal should not have upheld the trial Judge's order that the parties share the Kasangati property equally. Counsel argued that the courts should have followed the respective contributions of the parties, which would have resulted into a 30% share of the property for the respondent wife and a 70% share for the appellant.

The issue of how a court should determine a contributing spouse's share in joint property has come up in several cases before the High Court and the Court of Appeal. In *Kagga v. Kagga*¹¹, , Mwangusya, J. observed as follows:

"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 as 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 proceeded to order for the registration of 50% interest 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 husband who was "the financial muscle behind all the wealth."

Also, in Sempiga v Sempiga Musajjawaza, High Court Divorce Cause No. 007 of 2005 (Unreported), court awarded the wife, among others, a 50% share in a Farm measuring 154 acres. These decisions were clearly consistent with English cases such as *Chapman v. Chapman, [1969] All E.R. 476*, where the wife was held to have acquired an equal share in the property although she had not made an equal cash contribution to the acquisition of the property in question. The court found and held that the husband and wife had put all their financial resources into the pool to purchase their house without reserving any special interests.

In *Muthembwa v Muthembwa*¹², , the Court of Appeal of Kenya also rejected a similar argument by the appellant husband contesting an order awarding the wife a

¹¹ High Court Divorce Cause No. 11 of 2005

50% share in all the matrimonial home and other properties and businesses. The court held that the issue of whether the wife had made a contribution to the acquisition of the suit properties was a question of fact. The court further held that where since it was impracticable to take accounts for purposes of determining the respective contributions of the parties to the management of a home, there arose a rebuttable presumption of an equal contribution.

It is also worth noting that the contributing spouse's share is not restricted to a maximum of 50% share either in the matrimonial home or in other jointly held property. In some other cases, the court awarded a higher percentage share either in the matrimonial home or in some other properties. For example, in ***Mayambala v Mayambala, High Court Divorce Cause No. 3 of 1998***, the wife's interest in the matrimonial home was established at a 70% share.

Similarly, in ***Kagga, (supra)***, the court awarded the wife several other houses and properties, in addition to the 50% share she received in the parties' matrimonial home.

The other pertinent question that arises is what amounts to contribution to earn a spouse a share in the property. In ***Kagga, (supra)***, the court pointed out that the contribution may be direct and monetary or indirect and non-monetary.

In ***Muwanga v. Kintu, High Court Divorce Appeal No. 135 of 1997***, (Unreported), Bbosa, J., adopted a wider view of non-monetary indirect contributions by following the approach of the Court of Appeal of Kenya in ***Kivuitu v. Kivuitu, [1990 – 19994] E.A. 270***. In that case, Omolo, AJA., found that the wife indirectly contributed towards payments for household expenses, preparation of food, 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

¹² [2002] 1 EA 186

the family income and assets which entitled her to an equal share in the couples' joint property.

I entirely agree with the position taken by the lower courts in the above cases and in the *Kivuitu* case. These cases recognize not only a spouse's direct or indirect monetary contribution but also a spouse's non-monetary contributions, which enables the other spouse to either acquire or develop the property in question.

Turning to the present appeal, I find that there is no merit in the appellant's contention challenging the half share given to the wife in the Kasangati land. I also find that the learned Justices of Appeal did not err in fact when they upheld the orders of the trial Judge regarding the property the appellant had acquired before he married the respondent. Similarly, the learned Justices of Appeal did not err when they upheld the trial Judge's orders made in respect of the property that were to be shared between the appellant and the respondent, based on their respective contributions.

Ground 2 of appeal was framed as follows:

"The learned Justices of the Court of Appeal erred in law in their interpretation of Article 31 of the 1995 Constitution of Uganda by applying it to equality in the distribution of property independently owned by the appellant."

In arguing this ground of appeal, counsel for the appellant contended that the learned Justices of the Court of Appeal erred in law when they held that Article 31 of the 1995 Constitution of Uganda required that the appellant's property, which he had acquired prior to his marriage, be shared equally with the respondent.

Counsel for the appellant argued that in the absence of legislation to the contrary, property acquired prior to the marriage by either spouse, or property inherited during the marriage or property individually owned by either spouse where the other spouse has not made any direct or indirect contribution, remains individual property. He

submitted that courts have no jurisdiction to pass the proprietary interests of one spouse to the other.

Counsel for the appellant contended that the learned Justices of Appeal erred in law when they attempted to fill the legislative gap existing in the law regarding distribution of property upon divorce in Uganda, by interpreting Article 31(1) of the Constitution of Uganda, 1995 beyond its broad objective. He contended that Article 31(1) merely states the constitutional principle of non-discrimination on the basis of sex and that it is neither a legislative nor a property distribution provision that passes proprietary interests from one spouse to another. He further contended that the learned Justices also erred by literally interpreting the marriage vows exchanged during the celebration of a Christian marriage.

Counsel for the respondent, on the other hand, submitted that the learned Justices of Appeal properly applied Article 31 of the Constitution of Uganda, 1995, (as amended). She further submitted that their Lordship's findings on the division of property at the dissolution of the marriage were consistent with Article 31 of the Constitution of Uganda, 1995.

She also argued that the learned Justices of Appeal were right to apply Article 31 of the Constitution of Uganda, 1995, (as amended), which domesticated Uganda's international obligations to ensure equality of spouses at the dissolution of marriage. These international obligations, counsel argued, are espoused in Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Article 23(4) of the International Covenant on Civil and Political Rights; and the International Declaration of Human Rights. She contended that if this Court were to set aside the findings of the Court of Appeal on the distribution of the parties' property, it would amount to discrimination against women, which is prohibited by the 1995 Constitution of Uganda.

Under ground 1 of appeal, I considered in detail how the learned Justices of Appeal dealt with the question of the sharing of the parties' separate property, as well as their joint property, whether acquired prior to or during the marriage. My earlier consideration of ground 1 of appeal disposed of the main contentions in this ground as well, in as far as it concerned the Court of Appeal's adjudication regarding the distribution of property individually owned by the appellant. My holding is that the learned Justices of Appeal upheld the orders of the trial judge which clearly distinguished between individually owned property of the appellant where the respondent had no claim for contribution, from those that the Court found to either be joint property or those where the respondent had made a contribution for which she was either to be refunded or to be paid a share as was determined by the court. I therefore find no merit in the appellant's claims contesting the court's holding on the sharing of property individually owned by each party.

I will now consider the submissions made by counsel for the appellant contending that the learned Justices of Appeal erred in law when they held that in Uganda all property individually held prior to a marriage automatically becomes joint property upon marriage and that it should be divided equally between the parties on divorce.

Counsel for the appellant contended that the learned Justices of Appeal made the following three holdings on law governing the ownership of property of persons married under the Marriage Act and the distribution of such property upon divorce.

First, he submitted that the learned Justices of Appeal held that all property that spouses own individually prior to their marriage becomes joint property upon marriage by virtue of the marriage vows they exchanged during the marriage ceremony.

Secondly, counsel argued that the learned Justices of Appeal held that all property that the spouses individually acquire during marriage also becomes joint property of both spouses irrespective of whether both spouses made a contribution to its acquisition

either in monetary terms or not and that this is by virtue of Article 31(1) of the Uganda Constitution, 1995.

Thirdly, counsel submitted that the learned Justices of Appeal also held that since property owned prior to marriage by either spouse becomes joint property on marriage and that also other property acquired during marriage by either spouse becomes joint property, then it follows that upon divorce, all such property should simply be divided equally between the husband and wife.

Counsel for the appellant faulted the Court of Appeal in their holding on what constitutes matrimonial property in Uganda, which he submitted, was a total departure from the common law position and prior Ugandan decisions on the matter.

Relying on the English cases of *Petitt v Petitt (1969) 2 All ER 394*; *Chapman v Chapman (1969) 3 All ER 476*; *Gissing v Gissing (1970) 2 All ER 780*; *Falconer vs. Falconer (1970) 3 All ER 448* and the Ugandan case of *John Muwanga vs. MylliousKintu, High Court Divorce Appeal No. 135 of 1997*, counsel for the appellant contended that the above authorities made a clear distinction between what constitutes matrimonial property and what does not. He submitted that matrimonial property is that property that a married couple chooses to call home and such other property that a married couple or either of them contributes to, directly or indirectly and may be registered in their joint names. He contended that even where such property is registered in the names of either the husband or the wife, such property will be held to be matrimonial property on the basis of a resultant trust.

Counsel for the respondent, on the other hand, did not find any problems with the holding on the law as stated by the learned Justices of Appeal. Relying on the English case of *Bernard v Joseph, [1982] 1Ch. 391*, counsel submitted that some of the authorities relied on by counsel for the appellant, such as *Petitt (supra)* and *Gissing (supra)* were no longer good law on the distribution of marital property in Uganda. I

did not find the **Bernard** case relevant to this appeal, as it concerned an unmarried couple who had cohabited together and bought a house in their joint names.

The submissions of counsel for the appellant arise from the following articulation of the law by Twinomujuni, J.A., which I have deemed necessary to quote at length.

""The parties to this appeal were married in the Christian tradition... All those who choose to be married in Church must make vows at the precise moment when they become husband and wife. These vows are to the effect that they undertake to live together as husband and wife, in shared companionship in riches or poverty.

These vows are usually made in the presence of hundreds and sometimes thousands of their parents, relatives and friends. My understanding of the vows is that at the time the bridegroom and the bride become husband and wife, all the property they own become joint property. All the property they acquire during the subsistence of their marriage is theirs to share equally in unity and love. At the time of the vows, it is never envisaged that the spouses would have to split. In fact they are told in Church

'That which God has put together let no one divide'

Unfortunately, however, marriage breakdown are so common these days and cannot be ignored. Divorce proceedings normally follow. The issue as to what should happen to their joint property arises for determination as in this case.

In my humble judgment, I do not see why the issue of contribution to the property should arise at all. The property is theirs – Period."

The statements of Twinomujuni, J.A., though *obiter dicta*, warrant consideration in order to clarify on the law governing the property owned by married persons acquired

either before and/or during the subsistence of a marriage. These statements on the effect of marriage vows and the marriage ceremony on a spouse's individual property rights and the legal conclusions he drew there from have no legal basis and cannot therefore be left to stand.

In arriving at his decision on what constitutes matrimonial property and the formula to be applied in dividing it at the time of the dissolution of the parties' marriage, Justice Twinomujuni, J.A., was guided in his analysis by the fact that the parties' marriage had been contracted in Church under Christian tradition. In my view, it was not only legally wrong but also very dangerous for the court to hold that proprietary rights can pass from one party to a marriage to another, based purely on religious marriage vows taken in accordance with one's religious beliefs or denomination, in the absence of specific legislation providing that such parties' property rights shall be determined according to their religious beliefs and practices.

Another important point to note is that the respondent, who was the petitioner in the High Court, never based her claims to a share of the property registered in the appellant's names on the marital vows they had exchanged at the time of contracting their marriage. As the record of appeal clearly shows, the respondent's claims for a share in the property were purely based on her direct cash contributions and not on the mere fact that she had been married to the appellant and that the appellant had exchanged marriage vows with her, giving her "all his property". Since the issue of whether marital vows can give rise to property rights *per se* was never canvassed by either party at the trial stage or even before the Court of Appeal, I find, with due respect, that it was not necessary for the learned Justices of Appeal to make any pronouncements on it. In this respect, I entirely agree with the observations made by Justice Kavuma, J.A., at page 10 of his partial dissenting judgment, when he rightly noted as follows:

"Neither we or the court below had the benefit of being addressed by counsel for the parties on the church vows the appellant and the respondent made.

Given the possible differences in the conduct of marriage ceremonies even among sects professing Christians, I would hesitate to take judicial notice of the vows made by the parties as their marriage and the legal effect of such vows on the treatment of marital property at marriage or during marriage or at the dissolution of marriage in Uganda. "

Secondly, it should also be noted that although the appellant and the respondent contracted their marriage at Mbuya Catholic Church, under the religious rites of the Catholic Church, this marriage was celebrated in accordance with the provisions of the Marriage Act of Uganda. This Act not only governs marriages celebrated in places of worship but also authorises recognized Church Ministers to perform weddings in any licensed place of worship. The learned Justices of Appeal declared that the legal position they articulated concerning the legal effect of vows taken during marriages celebrated in places of worship on property individually held prior to or during marriage *"is confined to the marriages under the Marriage Act, Cap. 251, Laws of Uganda."* In so doing, the learned Justices of Appeal failed to take into account the fact that the Marriage Act not only governs marriages contracted in places of worship, but also provides for non-religious marriages, commonly referred to as "civil marriages." Section 26 of the said Act provides for vows for civil marriages, which are silent on individual property the parties to the marriage may own at the time of the marriage or during the marriage. This too was an error of law on the part of the learned Justices of Appeal.

I will now turn to consider the legal arguments made by both counsel on the import of Article 31(1) of the Constitution of Uganda (1995) on property rights of married persons and the sharing of property on divorce.

Prior to its amendment, Article 31(1) of the Constitution of Uganda (1995) [now Article 31 (1)(b)] provided as follows:

"Men and women of the age of eighteen 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."

Commenting on this article in relation to property rights of married persons, Twinomujuni, J.A. observed as follows:

"In 1995, for the first time in our history, the Constitution of Uganda clearly put into reality the equality in marriage principle contained in Genesis Chapter 2 verse 24 (supra) and what those who choose to contract marriages under the Marriage Act undertake to practice. My conclusion is that matrimonial property is joint property between husband and wife and should be shared equally on divorce, irrespective of who paid for what and how much was paid. Very often, the woman will find a husband who is already wealthy and has a lot of property. If that property belongs to the man at the point of exchanging the vows in Church, that property becomes joint property. These days it is normal for a woman to come into marriage with wealth such as houses, land, cows and other properties from her own sweat, her parents, relatives and friends. If at the time of the Church vows, they are solely owned by the woman, they become joint matrimonial property. From then onwards, the fact that they are registered in the names of the wife or husband is not relevant. It belongs to both. Therefore on separation, they should be equally divided and shared to the extent possible and practicable."

I must hasten to add that this categorical statement is confined to the marriages under the Marriage Act, Cap. 251, Laws of Uganda. This does not mean that the constitutional requirement of equality in marriage does not apply to other types of recognized marriages in Uganda. The principle applies to all marriages in Uganda. However, the application may vary depending on the nature of the marriage contract the spouses agreed to contract. I would also add that like in all other contracts, parties to a marriage have a right to

exclude any property from those to be deemed as matrimonial property. This can be made expressly or by implication before marriage or at the time of acquisition of the property by any spouse. Otherwise the joint trust principle will be deemed to apply to all property belonging to the parties to the marriage at the time of the marriage and during its subsistence."

The statements and reasoning of the learned Justice of Appeal are, are with due respect, legally problematic, for several reasons. First, it is important to note that Uganda is a secular state, which is not governed by Canon law, but by the Constitution, statutory law, case law as developed from common law and doctrines of equity; principles of justice, equity and good conscience. Customary law is also applicable in some areas of personal law, provided it meets the Constitutional standard set out in Article 32(2) of the Constitution of Uganda, 1995. Given the secular nature of this country, it was again not proper, for the learned Justices of Appeal, to base their judicial decision on religious marital vows. For as Justice Kavuma, J.A., rightly observed in his partial dissenting judgment:

"Considering that Uganda is a secular state where there is no officially recognised state religion, See article 7 of the Constitution, it is, in my view, only appropriate that questions of marital property rights in marriages under the laws of the land, including the marriage in issue in this appeal solemnized in a Catholic church, are handled solely under the law applicable in that behalf, without resorting to invoking the holy scriptures. I find that Article 31(1) of the Constitution is explicit and clear as the Constitutional source of equality of rights of the parties in any legal marriage in this country. The article, in my view and indeed the entire law of the land, does not require any reinforcement from invoking divine authority."

It is also clear from the quotation drawn from the Judgment of Twinomujuni, J.A., that the learned Justice of Appeal mixed up the constitutional requirement of equality in the treatment of men and women "during marriage and at its dissolution" with what he

perceived to be equality of sexes prescribed by the Bible. The learned Justice of Appeal not only wrongly articulated the law as to what constitutes matrimonial property, but also how and when individually held property of person acquired before or during marriage becomes matrimonial property. I therefore agree with counsel for the appellant when he took serious issue with the pronouncements made by the learned Justices of Appeal that legal title to an equal share of any property previously held individually passes to the other spouse, first by virtue of the marriage vows exchanged during the marriage ceremony; and secondly by virtue of Article 31(1)(b) of the Constitution of Uganda (1995) which entitles men and women to equal rights "at marriage, during marriage, and at its dissolution".

In my view, Article 31(1)(b) of the Constitution of Uganda (1995) restates the constitutional prohibition of non-discrimination on the basis of sex which is enshrined in Articles 21 and 33 of the Constitution of Uganda (1995), in as far as it relates to marriage. The article prohibits the discrimination in treatment which the Constitutional Court struck down in the ***Uganda Association of Women Lawyers and The Attorney General, Constitutional Petition No. 2 of 2003***, when it declared as unconstitutional several provisions in the Divorce Act relating to grounds of divorce, damages, etc. that treated men and women differently. So, while I agree that Article 31(1) (b) of the Uganda Constitution (1995) guarantees equality in treatment of either the wife or the 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. It was therefore erroneous for the Court of Appeal to hold that all individually held property of persons who contract religious marriages under the Marriage Act becomes matrimonial property upon marriage and joint property of the couple and that it should be shared equally on divorce by virtue of their marriage vows and Article 31(1) of the Constitution of Uganda (1995). The Court's holding was irrespective of whether the claimant proves that he or she contributed to the acquisition of the said property either through direct monetary or non-monetary contribution towards payment of the purchase price or mortgage

installments or its development; or indirectly through payment of other household bills and other family requirements including child care and maintenance and growing food for feeding the family.

In my view, the Constitution of Uganda (1995), while recognizing the right to equality of men and women in marriage and at its dissolution, also reserved the constitutional right of individuals, be they married or not, to own property either individually or in association with others under Article 26(1) of the Constitution of Uganda (1995). This means that, even in the context of marriage, the right to own property individually is preserved by our Constitution as is the right of an individual to own property in association with others, who may include a spouse, children, siblings or even business partners. If indeed the framers of our Constitution had wanted to take away the right of married persons to own separate property in their individual names, they would have explicitly stated so.

In conclusion of Ground 2 of appeal, I find that there is merit in the arguments raised by learned counsel for the appellant on errors of law. I find that the learned Justices of Appeal erred in law when they declared that Article 31(1) of the Constitution of Uganda (1995) requires that divorcing spouses married under the Marriage Act should get equal shares in individually held separate property irrespective of whether the party had proven that they made a direct or indirect contribution to the property in question.

I further find that the learned majority Justices of Appeal also erred in law when they declared that all property owned by a party to a marriage contracted under the Marriage Act becomes joint property on marriage and that it should be shared equally on divorce.

In holding as I have done above, I am aware that any married person, in pursuance to the marriage vows he or she has made in church or in any other marriage ceremony, is at liberty to execute a legal instrument and to transfer into joint or sole ownership land and/or property he or she held prior to the marriage in favour of his or her spouse,

either at the time of contracting the marriage or anytime after the marriage has been celebrated. Similarly, a spouse can also transfer into joint or sole ownership property he or she individually acquired during marriage. In such a case, the spouse, in whose favour the transfer of land has been made, would clearly be entitled to register the land in his or her names or in the couple's joint names as the transfer instrument may state. If this is not done as is the case in most cases, then the courts will continue in divorce cases where ownership or sharing of property is at issue, to determine each case based on the Constitution of Uganda; the applicable marriage and divorce law in force at the time, in order to make the determination whether the property in question is marital property or individual property acquired prior to or during the marriage and to determine whether such property should be divided either in equal shares or otherwise, as the facts of the each case would dictate.

In *Muwanga v. Kintu*¹³, (Unreported), Bbosa J., rightly pointed out the challenges that courts will continue to face in determining what constitutes matrimonial property in Uganda, when she observed as follows:

"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 the parties chose to call home and which they jointly contribute to."

I would also uphold all the other orders made by the trial Judge which were upheld by the Court of Appeal and against which the appellant never lodged an appeal to this court.

¹³ High Court Divorce Appeal No. 135 of 1997,

I would however partially allow this appeal on the appellant's claims that the learned Justices of Appeal erred in law, in those particular aspects that I have pointed out in this judgment when they made pronouncements on marital property and the distribution of property acquired before and during the marriage, which were neither founded in law nor on the pleadings of the parties.

Given the important points of law in our family law involved in this appeal which were raised by the appellant, I would order that the appellant pay only half of the costs in this Court and in the two courts below to the respondent.

Before I take leave of this appeal, I would strongly urge Parliament to enact a law that clearly defines what constitutes marital/matrimonial property as opposed to individually held property of married persons and that spells out the principles that courts should follow in adjudicating disputes involving division of property upon the dissolution of marriage. Such law should of course be based on the principle of equal treatment of the husband and wife, as is prescribed by our Constitution.

CHAPTER THREE

LEGAL FRAME WORK

3.0 Introduction

This chapter explains the provisions of the law on divorce how they have been implemented and their effects in controlling divorce.

3.1 Historical context

Different marriages in Uganda have been governed by different pieces of legislation.

For example, church or civil marriages are governed by the Marriage Act (1904), Muslim marriages are governed by the Marriage and Divorce of Mohammedans Act (1906), which, like the Marriage Act, , Hindu marriages by the Hindu Marriage and Divorce Act (1961), and customary marriages by the Customary Marriage (Registration) Act (1973).

As the name suggests, the Customary Marriage (Registration) Act regulates the registration of customary marriages in Uganda. This article highlights some of the provisions of the Customary Marriage (Registration) Act that need urgent amendment to bring them in line with the Constitution and Uganda's international human rights obligations.

The article also discusses the jurisprudence emanating from Ugandan courts dealing with proving the existence of an unregistered customary marriage and the issue of distribution of property at the dissolution of a customary marriage. The article is divided into five parts. Part one is the introduction, part two highlights the provisions of the Customary Marriage (Registration) Act the need to be amended, part three discusses the jurisprudence emanating from Ugandan courts on proving customary

In 1995 Uganda enacted a new constitution. During the making of the Constitution, many delegates argued, amongst other things, that marriage, inheritance (succession), and divorce laws were discriminatory against women.

When the Constitution was enacted it provided for, amongst other things, the right to equality between men and women and also between people of different races and religions. By invoking different constitutional provisions, the Constitutional Court has found some provisions of the laws on succession, and divorce to be unconstitutional. In 1994, before the Constitution was enacted, Uganda Law Reform Commission launched the Domestic Relations Project aimed at amending marriage laws. In its report the Uganda Law Reform Commission advanced reasons why there was a need to amend the marriage laws.

3.2 Current Position of the law on divorce

Different marriages in Uganda are governed by different pieces of legislation.

The 1995 Uganda constitution

Article 2(1) of the 1995 Uganda constitution provides for the supremacy of the constitution and prohibits any laws or customs that are inconsistent with any of the provisions of the constitution.

Articles 2(2) of the constitution reads:

“If any other law or any custom is inconsistent with any of the provisions of this constitution, the Constitution shall prevail and that other law or custom shall, to the extent of the inconsistency, be void.

Article 21(1)(2) and (3) of the Constitution provides for equality equal protection of every human being before the law and that no person shall be discriminated against on the ground of that person’s sex-tribe creed, social or political standing or his or her physical disability.

Article 33(1) of the Constitution reads:

“Women shall be accorded full and equal dignity of the person with men”

Article 33(6) provides:

“Laws cultures, customs or traditions which are against the dignity, welfare, or interest of women or which undermine their status are prohibited by this Constitution.

Article 34(4) reads:

“Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

Article 273(2) reads:

“For the purpose of this Article, the expression “existing law” means the written and unwritten law of Uganda or any part of it as existed immediately before the coming in force of this constitution, including any Act of Parliament or Statute or Statutory Instrument enacted or made before that date which is to come into force on or after that date.

Under section 4(2) of the customary marriages registration Act provides that customary marriages marriage may be polygamous.

under section 16 of the Judicature Statute, the Judicature Statute confers upon the High Court jurisdiction which it exercises in conformity with the Constitution, written law, equity, common law, customs,

The Divorce Act CAP 249

Under section 3 ;

Where all parties to a proceeding under this Act are Africans or where a petition for damages only is lodged in accordance with section 21, jurisdiction may be exercised by a court over which presides a magistrate grade I or a chief magistrate.

In all other cases jurisdiction shall be exercised by the High Court only.

Such jurisdiction shall, subject to this Act, be exercised in accordance with the law applied in matrimonial proceedings in the High

Under section 4;

A husband may apply by petition to the court for the dissolution of his marriage on the ground that since the solemnisation of the marriage his wife has been guilty of adultery.

A wife may apply by petition to the court for the dissolution of her marriage on the ground that since the solemnisation of the marriage—

her husband has changed his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; or

has been guilty of— (i) incestuous adultery; (ii) bigamy with adultery; (iii) marriage with another woman with adultery; (iv) rape, sodomy or bestiality; (v) adultery coupled with cruelty; or (vi) adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Under section 5;

Where the husband is the petitioner, he shall make the alleged adulterer a correspondent to the petition unless he is excused by the court from doing so on one of the following grounds—

that the respondent is leading the life of a prostitute, and that he knows of no person with whom the adultery has been committed, that he does not know the name of the alleged adulterer although he has made due efforts to discover it, or that the alleged adulterer is dead.

The petition is brought under section 5 (2) which lays down the circumstances under which, the petitioner, in case of a wife, may petition for the dissolution of marriage, under the law (Divorce set) as it appears under the passing of the 1995 Constitution, this petition would have been incompetent for disclosing no grounds for dissolution of

marriage. In other words it would be a plaint/petition that discloses no cause of action against the respondent.

Under section 7;

The petition shall be dismissed if the court is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed, or finds that during the marriage the petitioner has been accessory to or conniving at the going through of the form of marriage or the adultery or has condoned it, or finds that the petition is presented or prosecuted in collusion with either the respondent or correspondent.

Under section 8;

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, the court shall pronounce a decree nisi for the dissolution of the marriage.

Notwithstanding subsection (1), the court shall not be bound to pronounce the decree if it finds that the petitioner has during the marriage been guilty of adultery, or been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty to the respondent, or of having deserted or willfully separated himself or herself from the respondent before the adultery complained of, and without reasonable excuse, or of such willful neglect of or misconduct towards the respondent as has condoned the adultery.

Under section 9;

Adultery shall not be deemed to have been condoned unless conjugal cohabitation has been continued or subsequently resumed.

Under section 10;

If the respondent opposes the relief sought on the ground, where the petitioner is the husband, of his adultery, cruelty, or desertion without reasonable excuse, or, where the petitioner is the wife, on the ground of her adultery, the court may give the respondent, on his or her application, the same relief to which he or she would have been entitled if a petition had been presented seeking that relief, and the respondent may give evidence of or

relating to the adultery, cruelty or desertion.

Under section 11;

A husband or a wife may present a petition to the court praying that his or her marriage may be declared null and void.

Under section 12;

The following are the grounds on which a decree of nullity of marriage may be made; that the respondent was permanently impotent at the time of the marriage, that the parties are within the prohibited degrees of consanguinity, whether natural or legal, or affinity, that either party was a lunatic or idiot at the time of the marriage, that the former husband or wife of either party was living at the time of the marriage, and the marriage with the previous husband or wife was then in force, that the consent of either party to the marriage was obtained by force or fraud, in any case in which the marriage might be annulled on this ground by the law of England.

If the court finds that the petitioner's case has been proved, it shall pronounce a decree nisi declaring the marriage to be null and void.

Under section 13;

Where a marriage is annulled on the ground that a former husband or wife was living, and it is found that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or where a marriage

is annulled on the ground of insanity, children begotten before the decree nisi is made shall be specified in the decree, and shall be entitled to succeed in the same manner as legitimate children to the estate of the parent who at the time of the marriage was competent to contract.

Under section 15;

Where judicial separation has been decreed under this Act, the wife shall, from the date of the decree, and while the separation continues, be considered as unmarried with respect to property of every description which she may acquire or which may come to or devolve upon her, and that property may be disposed of by her in all respects as if she were an unmarried woman, and on her decease, if she dies intestate, shall go as it would have gone if her husband had then been dead; but if she again cohabits with her husband, all property to which she may be entitled when that cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband while separate.

Under section 17;

A husband or wife upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may at any time thereafter present a petition praying for the reversal of the decree on the ground that it was obtained in his or her absence, and that where desertion was the ground of the decree there was reasonable excuse for the desertion alleged.

The court may, on being satisfied of the truth of the allegations of the petition, reverse the decree accordingly.

Under section 18;

Any wife, in whose property the husband has acquired an interest by virtue of the marriage, may, if deserted by him, apply by petition to the court for an order to protect

any property which she may have obtained or may obtain after the desertion, against him and his creditors and any person claiming under him.

The court may, if satisfied that the desertion was without reasonable excuse, and that the wife is maintaining herself, make that order.

The order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance on the order, be conclusive as to that time.

While the order is in force, the wife shall be, and be deemed to have been from the date of the desertion, in the like position in all respects with regard to the property and contracts, and suing and being sued, as she would be if she had obtained a decree of judicial separation under this Act.

The husband, or any other creditor or person claiming under him, may apply to the court for the discharge or variation of the order, and the court may, if the desertion has ceased, or if for any other cause it thinks fit so to do, discharge or vary the order accordingly.

If the husband or any creditor or person claiming under him, seizes or continues to hold any property of the wife after notice of any such order, the wife may by action recover the property, and also a sum equal to double its value.

Under section 21;

A husband may, by petition, claim damages from any person on the ground of his having committed adultery with the wife of the petitioner.

Such claim may be made either in a petition for dissolution of marriage or for judicial separation, or by petition for that purpose only.

The court shall ascertain the amount of damages and may direct that the damages be levied under warrant on the movable or immovable property of the person ordered to pay and may direct in what manner the damages, when recovered, shall be paid or applied, and may direct that the whole or any part of the damages shall be settled for

the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife.

Where the officer having execution of a warrant for the recovery of damages ordered under subsection (3) reports that no property or insufficient property exists upon which the damages may be levied, the court may by warrant commit the person ordered to pay to imprisonment for a period not exceeding six months.

Every person so committed to prison shall be released from prison before the expiration of his sentence on the amount of the damages being paid to the officer in charge of the prison; or by order of the court if the court is satisfied that the damages have otherwise been fully paid.

Under section 22;

A correspondent may be ordered to pay the whole or any part of the costs of the proceedings if adultery with the wife of the petitioner has been established against him; except that he shall not be ordered to pay the costs of the petitioner

if at the time of the adultery he had no reason to believe the respondent to be a married woman, or if the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute.

Under section 23 of the Divorce Act, the petitioner would not be entitled to costs even if she proved the adultery of the respondent. This law is obviously discriminatory and inconsistent with the constitution.

The case of **Mrs. Ruharavs Christopher Ruhara,** is remotely relevant to the present case both in that the petitioner and the respondent are equally guilty of adultery. This case is one where there is no winner and no loser. No party should be allowed to benefit from his or her wrongs. The court, would therefore, exercise its discretion to refuse costs to both of them as none of them has come to court with clean hands.

Under section 24;

On a decree absolute declaring a marriage to be dissolved, or on a decree of judicial separation obtained by a wife, the court may order the husband to secure to the wife such sum of money as, having regard to her fortune, if any, to the ability of the husband, and the conduct of the parties, it thinks reasonable.

The court may direct the alimony to be paid either in a lump sum or in yearly, monthly or weekly payments for any period not exceeding the life of the wife, and for that purpose may cause a proper instrument to be executed by all necessary parties.

The court may direct the alimony to be paid either to the wife herself or to a trustee to be approved on her behalf by the court, and may impose such terms and restrictions, and may direct the execution of such trust deeds as it may think fit, and may from time to time appoint a new trustee.

Under section 39;

When the time limit for appealing against a decree of dissolution or nullity of marriage has expired, and no appeal has been presented, or when in the result of any such appeal, any marriage shall be declared to be dissolved or annulled, but not sooner, the parties to the marriage may marry again as if the prior marriage had been dissolved by death.

Under section 40;

No clergyman in Holy Orders of the Church of Uganda shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing, or refusing to solemnize, such marriage.

The Marriage and Divorce of Mohammedans Act. CAP 252

Under section 2

All marriages between persons professing the Mohammedan religion, and all divorces from such marriages celebrated or given according to the rites and observances of the Mohammedan religion customary and usual among the tribe or sect in which the marriage or divorce takes place, shall be valid and registered as provided in this Act.

Under section 5

Application for registration shall be made within one month from the date of the marriage or divorce, before a registrar in the manner and by the persons following; in the case of a marriage, by the husband, or in the event of his death before the expiration of one month from the date of the marriage, by the widow; but if either party whose duty it is to apply is a minor, the application shall be made by his or her lawful guardian, and if the widow be a purdah-nisheen the application shall be made by her personally or on her behalf by her duly authorised vakil;

in the case of a divorce; other than of the kind known as Khula, by the man who effected the divorce; and (ii) of the kind known as Khula, by the parties to the divorce jointly, but if the woman is a purdah-nisheen the application may be made on her behalf by her duly authorised vakil.

Nothing in this section shall prevent a woman or, if she is a purdah-nisheen, her authorised vakil, or her guardian applying for the registration of marriage or divorce if the man fails to apply, or a minor from so applying if his or her guardian fails to apply.

Under section 17;

Any person, who being required by this Act to apply for registration of a marriage or divorce, fails to make that application commits an offence and is liable on conviction to imprisonment for a period not exceeding one month and to a fine not exceeding two hundred shillings.

The Marriage Of Africans Act CAP 253

Under section 7;

For the purpose of the registration of marriages under this Act, the Minister in charge of each place of public worship licensed under section 5 of the Marriage Act shall, in the absence of any special appointment by the Minister, be a registrar and shall be deemed to be a registrar of marriages within the meaning of the Marriage Act, except that it shall not be necessary for the minister to transmit to the Registrar General a certified copy of the entries made by him or her in the Marriage Register Book more than once in three months.

In *Negulu milly Eva Vs Dr. Serugga solomon civil appeal no. 103 of 2013*

This Appeal arises out of a Ruling of the Magistrate Grade I at Njeru Court delivered on 7/7/2011, in which he struck out the petition of the Appellant on grounds that it could not stand since the supposed customary marriage between the Petitioner and the Respondent was not registered under Section 6 of the Customary Marriages (Registration) Act Cap. 248 Laws of Uganda.

The Hindu Marriage And Divorce Act CAP 250

Under section 6;

A marriage solemnised after the commencement of this Act shall be void if the former husband or wife of either party was living at the time of the marriage and the marriage

with that former husband or wife was then in force, and section 153 of the Penal Code Act shall apply in that case.

A marriage, whether solemnised before or after the commencement of this Act, shall not be capable of being dissolved during the joint lives of the parties otherwise than in accordance with this Act.

Under section 8;

Subject to this section, the Divorce Act shall apply to marriages and to matrimonial causes relating to marriages.

In addition to the grounds for divorce mentioned in the Divorce Act, a petition for divorce may be presented—

by either party to a marriage on the ground that—

the respondent has ceased to be a Hindu by reason of conversion to another religion; or (ii) the respondent has renounced the world by entering a religious order and has remained in that order apart from the world for at least three years immediately preceding the presentation of the petition; and by the wife, in the case of a marriage solemnised before the commencement of this Act, on the ground that her husband at the time of the marriage was already married; or married again before the commencement of this Act, the other wife being in either case alive at the date of presentation of the petition.

A decree of nullity of marriage shall not be granted on the ground that the parties are within the prohibited degrees of consanguinity if the party permits a marriage between them;

in the case of a marriage solemnised before the commencement of this Act, shall not be granted on the grounds that the former husband or wife of either party was living at

the time of the marriage and the marriage with the previous husband or wife was then in force; and

may be granted on the ground that the consent of a guardian in marriage was necessary under this Act and was obtained by force or fraud.

In this section, references to the Divorce Act include a reference to any Act replacing that Act.

The Marriage and Divorce Bill 2009

The Marriage and Divorce Bill has a long and tortured history. A version of the bill was presented to Parliament in the 1970s, designed in part to improve women's rights in marriage and also to consolidate the multiple acts regulating customary marriage, Hindu marriage, civil marriage, Christian marriage, and Islamic marriage. This bill failed to pass. A 2003 Domestic Relations Bill sought to achieve the same goals, but faced enormous resistance from Muslim groups opposed to the provisions banning polygamy. After being rejected by Parliament in 2006, the bill was split into a Muslim Personal Bill, which covers Muslim marriages, and the Marriage and Divorce Bill, currently being debated.

Among the controversial provisions in the current bill are those that pertain to brideprice, a customary practice requiring payment of consideration by a groom to his wife's family. For years women's groups have contested the customary practice requiring payment of brideprice to legitimize a marriage, yet its supporters consider it to be an important cultural element of marriage. The Constitutional Court recently refused to ban the practice, a decision that is currently being appealed to the Supreme Court. The current Marriage and Divorce Bill states that brideprice cannot be treated as a prerequisite for marriage, and makes criminal the act of demanding repayment of brideprice.

Although many argue that this payment is merely symbolic, in conversations with me, Ugandan women have complained that it permits men to consider their wives their property and grant them few rights. In connection with women's ability to own or inherit property, I have often heard the phrase, "property cannot own property."

The demand for repayment of brideprice can also keep women in abusive or unhappy marriages. If a woman seeks a divorce, her husband or his family often demands a return of brideprice. Unfortunately, that brideprice has not been paid to the woman herself, but her family, and it is not often available to be returned.

The bill, if enacted, would improve women's rights dramatically. In addition to the brideprice provisions, the bill prohibits "widow inheritance" (the practice of marrying off a widow to her deceased husband's relative), grants certain rights to cohabiting couples, and equalizes the previously discriminatory divorce provisions. On the other hand, an unfortunate effect of the bill is that it codifies the prohibition on same-sex marriages. In addition, some feel that it does not adequately address the harms of polygamy.

Amendments

In 1995 Uganda enacted a new constitution. During the making of the Constitution, many delegates argued, amongst other things, that marriage, inheritance (succession), and divorce laws were discriminatory against women. When the Constitution was enacted it provided for, amongst other things, the right to equality between men and women and also between people of different races and religions.

By invoking different constitutional provisions, the Constitutional Court has found some provisions of the laws on succession, and divorce to be unconstitutional.

In 1994, before the Constitution was enacted, Uganda Law Reform Commission launched the Domestic Relations Project aimed at amending marriage laws.

In its report the Uganda Law Reform Commission advanced reasons why there was a need to amend the marriage laws. It wrote:

The existing laws enacted between 1906 and 1916: these laws enacted during the era discriminate on the basis of religion and race. Non-African Christians may only contract a marriage under the Marriage Act, an African Christian couple may only contract a monogamous marriage under the Marriage of Africans Act and Muslims, even if they so wish, may not contract a civil marriage under the Marriage Act.

The Uganda Law Reform Commission added that:

The various laws on marriage; do not recognise or provide for marriage of any other person who are Africans but are not Christians and who do not wish to marry under customary law. For example, the Sikhs, Jews and Bahai may only marry under the Marriage Act but cannot contract a valid marriage celebrated according to the rites of their religions because the law does not make any provision for such ceremonies.

It is evident from the above that the reasons why these laws are being amended is to bring them in conformity with the Constitution especially on the issue of equality and freedom from discrimination.

3.3 The effects of the law

In the law of divorce, there are orders that court may make on granting a decree of divorce.

Decree nisi. This is provided for under **section 37¹⁴**. It is made after court has established to its satisfaction that the grounds alleged in the divorce petition exist. This is an interim order and it lasts for six months when a decree absolute may be granted. A gap between a decree nisi and a decree absolute is a cooling off or waiting period which is intended to allow a party to reconsider his or her position. It is where

¹⁴ 11 of the divorce Act

fresh evidence may be adduced to bar the granting of a decree absolute on the grounds of collusion or any reason of material fact not having been brought before court.

Under **Section .37(2),(3)** if no evidence is adduced, then the decree will be made absolute. However, **section 37(5)** provides that the petitioner must move court within a reasonable time that the decree nisi be made absolute. Failure to do so may result into court dismissing the petition.

Damages. Under **section 21 subsection 1** of the divorce Act, the husband may by petition claim damage from any person on the ground of it having committed adultery with the wife of the petitioner .this action may be brought in separate action in a petition for dissolution of marriage or for judicial separation as was asserted in **Uganda Association of women lawyers &OR's V Attorney General.**

Costs :Under **section 22** of the divorce Act court may make an order of the costs against the co-respondent may be ordered to pay the whole or any part of the costs of his proceedings if adultery with the petitioners wife has been established against him .However ,he may not be ordered to pay costs in the following circumstances:-

If at the time of the adultery, the respondent was living apart from the husband and leading the life of a prostitute.

Alimony pendent life-Maintenance pending the disposal of the suit.

This is provided for under **section 23¹⁵** and refers to a sum of money that court may order the husband to pay his wife for her maintenance pending the final disposal of the suit. However, the sum should not exceed a 5th of the husbands net income in the last 3 years. This order continues in force till the decree is made absolute.

Permanent alimony .This is provided for in **section 24** of the Act the order is made when the decree is made absolute or when the marriage is dissolved .It's also made

¹⁵12 of the divorce Act

during judicial separation .Court will grant money in regard to the following circumstances:-

The wife's status or economic standing, The husbands ability to pay, Conduct of the parties.

This alimony can be in one lump sum or may be paid in installments as court may deem fit e.g. Monthly, weekly or yearly.

It should however be noted that the order for alimony may be discharged or altered. **section 25** provides that where an order has been made for the payment of the alimony and the husband from any cause subsequently becomes unable to make to make the payment,the court may discharge or modify or suspend the order in whole or in part and may again revive order in whole or in part.

Section 26 provides for the property of the wife to be settled for the benefit of the husband or the children of the marriage or of both,if the wife is guilty of adultery when a decree of dissolution of marriage or judicial separation is pronounced.

Custody and maintenance of children.

Under **section 29**, court maymake an order for custody, maintenance and education of minor children during proceedings for dissolution or after the decree absolute has been pronounced.

3.4 Analysis of some court cases of divorce

The following case *of Annetee Nakalema Kironde Vs Apollo Kaddu Mukasa Kironde And Moses Zizinga* and other cases explains the legal effects of divorce.

Judgment.This judgment arises out of Divorce Petition No. 6/2001 in which the petitioner, Annetee Nakalema Kironde seeks the dissolution of her marriage with Apollo Kaddu Mukasa Kironde. The grounds in support of her petition are contained in paragraphs 6 to 8 of her petition dated 6t June 2001.

The respondent filed his reply to the petition and cross petition; both dated 19Th July, 2001. The petitioner filed a reply to the petition and cross-petition on the 30/7/2001. The co-respondent, also filed his reply to the cross-petition on the 8th of August, 2001

The summary of the facts in support of the petition and cross-petition are that the petitioner and the respondent married at Namirembe Cathedral on 1/10/1983 and a Marriage Certificate Annexure "A" was issued to them. The petitioner and the respondent cohabited at different places in Kampala between 1983 and 1991. During their stay together as husband and wife, three children, namely - Gulemye Apollo Kironde (19 years), Senteza Kaddu Mukasa Kironde (17 years) and Mpagi Kalibala Kironde (13 years) were produced by the couple.

It was the contention and grounds of the petitioner that the respondent, since the solemnisation of the marriage committed adultery with MsAyeta, MsNambasa Florence and FatumaNanfuka in addition to committing acts of cruelty against the petitioner and their issues. The petitioner also alleged that the respondent deserted her in 1999.

In reply the respondent accused the petitioner of committing adultery and producing a child who is not the respondent's. He admitted associating with the women mentioned by the petitioner but denies committing adultery with any of them.

The respondent Moses Zizinga was joined as a co-respondent in the cross-petition and he denied ever committing adultery with the petitioner.

The petitioner denied, in reply to the cross-petition ever committing adultery with any man, being cruel to the respondent and or deserting him. She added Safina Namigadde, Grace Majoro, Sarah Matovu, Cissy Nanfuka and Norah Lule as other and additional women with whom the petitioner committed adultery. Both the petitioner and the respondent prayed for the dissolution of their marriage on the ground of adultery committed by the respondent, then the petitioner, respectively. At the hearing of the petition, Paul Kiapi appeared for the petitioner, Nasser Lumweno for the respondent and Mathias Sekatawa for the corespondent respectively.

During the Scheduling Conference, both counsel agreed on the following facts:

The petitioner has committed acts of adultery with the co-respondent, and a child known as Joe Sebugwawo had been born out of those acts of adultery.

The respondent had committed acts of adultery with Ayeta Wangusa and Florence Nambasa.

That the property comprised in LRV 2382 Folio 21 Plot 82, Old Kira Road, Naguru is the joint property of the Petitioner and the respondent and that any dispute touching on that property will be resolved in another forum.

The children of their marriage remain in the custody of the petitioner but that the respondent should be given access to those children while they are in the custody of the mother at Naguru or at school.

That the children of their marriage shall be at liberty to stay at the home of either the petitioner or the respondent.

That the petitioner shall bear % of the Children's maintenance, while the respondent shall bear 1/3 of the same, subject to the respondent having the financial means to meet his share of bringing up the children.

The petitioner shall take full responsibility of the Children where the respondent fails to meet his financial obligation toward the children.

This petition is brought under **section 5 (2)** of the Divorce Act which lays down the circumstances under which, the

petitioner, in case of a wife, may petition for the dissolution of marriage, under the law (Divorce set) as it appears under the passing of the 1995 Constitution, this petition would have been incompetent for disclosing no grounds for dissolution of marriage. In other words it would be a plaint/petition that discloses no cause of action against the respondent.

But counsel for the petitioner has cited to me provisions of the 1995 Uganda Constitution which seek to place all human being as equals before the law. **Article 31(1)** of the Constitution provides: "Men and women of the age of eighteen years and above, have the right to marry and to found a family and are entitled to equal rights in Marriage, during marriage and its dissolution.

Article 33(1) of the Constitution reads: "Women shall be accorded full and equal dignity of the person with men"

Article 34(4)¹⁶ reads: "Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

Article 33(6) provides: "Laws cultures, customs or traditions which are against the dignity, welfare, or interest of women or which undermine their status are prohibited by this Constitution.

The summary of all the above provisions of the Constitution is contained in **Article 273(1) and (2)** of the Constitution, where it is provided in **273(1)**" "Subject to the provisions of this Article, the operation of existing laws after the coming in force of this Constitution shall not be affected by the coming in force of this Constitution, but the existing law shall be construed with such modifications adoptions, qualifications and exceptions as may be necessary to bring it into conformity with this constitution.

And **Article 273(2)** reads: "*For the purpose of this Article, the expression "existing law" means the written and unwritten law of Uganda or any part of it as existed immediately before the coming in force of this constitution, including any Act of Parliament or Statute or Statutory Instrument enacted or made before that date which is to come into force on or after that date.*

Article 2(1) of the Constitution provides: "*This constitution is the Supreme Law of Uganda and shall have the binding force on all authorities and persons throughout Uganda*".

¹⁶ 13 Of the 1995 Uganda constitution

Articles 2(2) of the constitution reads: "If any other law or any custom is inconsistent with any of the provisions of this constitution, the Constitution shall prevail and that other law or custom shall, to the extent of the inconsistency, be void.

Article 21(1)(2) and (3) of the Constitution provides for equality equal protection of every human being before the law and that no person shall be discriminated against on the ground of that person's sex-tribe creed, social or political standing or his or her physical disability.

Lastly - **the Judicature Statute** confers upon the High Court jurisdiction which it exercises in conformity with the Constitution, written law, equity, common law, and customs under **section 16**.¹⁷

The effect of all these constitutional provisions is show that **sections 5 and 6** of the Divorce Act are inconsistent with the Constitution in that they create different sets of rights, opportunities and treatment for men and women to the same institution of marriage.

If **sections 5 and 6** of the Divorce Act are to be given effect, their aspects which infringe the above quoted provisions of the Constitution cannot be enforced or relied upon as good law.

The principle of equal rights and opportunities before the law, therefore, requires that the wife may sue for divorce of her marriage on the ground of adultery alone, in the same way as the husband is entitled to do under that section as per **section 5** of the Divorce Act.

In the result, therefore, I hold that the petitioner's petitioner as well as respondent cross-petition are both competent and validly before the court.

Both the petitioner and the respondent have relied on each other's adultery in their prayers for the dissolution of their marriage. Both have admitted the fact of adultery.

¹⁷ 15 of the Judicature Statute

Adultery can be proved by a party adducing evidence to prove the same or by the adulterer admitting the fact of adultery or by circumstantial evidence. It must be remembered that whoever desires court to give judgment as to his/her legal right or liability must produce evidence to prove the existence of the facts he asserts exist.

Adultery, on the part of both the petitioner and the respondent has been admitted and hence proved by their express pleadings in the petition and cross-petition, Under Order **11 rule 1 15 Civil Procedure Rules** of the any party to a suit may give notice by his pleadings or otherwise in writing that he admits the truth of the whole or any part of the case of any other party. A fact, once admitted, need not be proved and the plaintiff is entitled to judgment on the defendant's admission of his claim.

In Pan African Insurance Co. versus Uganda Airlines,¹⁶

Once the admission is made, the party making the same will not normally be allowed to resign from a pleaded admission unless made under a genuine mistake of fact.

In Bater vs. Bater (1951) Probate

Notwithstanding the admissions of adultery by both the petitioner and respondent, I find that neither of them has connived with the other to bring the present proceedings, neither of them has condoned the other partner's adultery and neither the petitioner nor the respondent have colluded with the other to institute these divorce proceedings.

Therefore this court do hereby pronounce a decree nisi for the dissolution of the petitioner's and respondent's marriage respectively.

After the decree nisi has been pronounced the court has to consider who of the parties to the marriage shall have the custody of the children. Section 30 of the Divorce Act provides that the court makes such order as to the custody, maintenance and education of the child or children as it deems fit. The guiding principle that the court must address is the welfare of that child or those children. What the welfare principal means is contained in sections 4 - 6 and the First schedule¹⁸.

The parties to this petition have agreed that the Children of their marriage shall remain in the custody of the petitioner who shall provide two thirds of their material and educational needs.

Where circumstances permit, the father respondent shall assist in the education and maintenance of the children to the extent of one third (1/3) of their material and educational requirements.

Notwithstanding the order that the custody of the Children be vested in the petitioner the petitioner and respondent have mutually agreed:

That the respondent shall have access to their children at the Petitioner's home at Naguru at reasonable times of day and at the schools where they are schooling, and,

That such visits to their children should not be a source for the breach of peace; and

The children may stay at the home of the petitioner or respondent when and how they wish provided that such visits to their father (respondent) shall not be a source of tension between the petitioner and the respondent.

Section 23 of the Divorce Act provides for the co-respondent to pay costs to petitioner (in case the petitioner is the husband) where adultery with the wife of the petitioner is proved.

This section raises the same issues of being in conflict with the Constitution. It seeks to punish the adulterous wife while the adulterous husband goes scot free as far as costs with the co-adulterer are concerned. In fact, the co-adulterer does not have to be joined in the petition for dissolution of marriage where the petitioner is the wife. This provision of the Act is manifestly discriminatory in nature and particularly against women. It is therefore void to the extent of its being discriminatory and in conflict with the Constitution.

I will therefore apply the general laws that apply to costs under section 27 of the Civil Procedure Act. Under **section 27** the successful party is entitled to costs unless the court, in its discretion and for shown reasons decides otherwise.

The court can lower, in its discretion, deny the successful party costs if it deems fit having regard to the circumstances of the case. Such circumstances may include:

The mutual consent of the parties to waive the costs, The incapacity of the unsuccessful party to pay the costs, The mitigating factors available to the losing party, The aggravating circumstances contributory to the winning party - e.g. misconduct or neglect of the winning party.

Under **section 23** of the Divorce Act, the petitioner would not be entitled to costs even if she proved the adultery of the respondent. This law is obviously discriminatory and inconsistent with the constitution.

I would also refuse to grant costs to either the petitioner or respondent on the basis of the reasoning and principles adopted by the Supreme Court in the case of **Prince J. D.**

C. MpugaRukidi vs. Prince Solomon Iguru& others

Supreme Court Civil Appeal No. 18194 where Justice Oder held: The case of Mrs. **Ruharava Christopher Ruhara**¹⁸, is remotely relevant to the present case both in that the petitioner and the respondent are equally guilty of adultery. This case is one where there is no winner and no loser. No party should be allowed to benefit from his or her wrongs. The court, would therefore, exercise its discretion to refuse costs to both of them as none of them has come to court with clean hands.

"It is, I think, in the interest of peace and harmony within the family and community of Bunyoro-Kitara Kingdom as a whole, that the rift or feud caused by the case, should be healed, if possible, as speedily as can happen. One side has won. The other has lost. In such circumstances it would assist the process of reconciliation within the family and

¹⁸(1997) HCB 86

the community concerned as a whole to bring to an end the possibility of one side trying to extract its "pound of flesh" from the other".

And Judge Tsekoko, made his concluding remarks on the same subject of costs - in the same case by stating:

"In fairness this harmony can be fostered by ordering each party to bear his own costs". I think it is a proper case where neither the petitioner nor the respondents should be penalized in costs, for he reasons that:

All the parties to the petition are guilty of adultery.

The parties have agreed to settle the case expeditiously thereby saving court and themselves protracted proceedings that would involve loss of money and time.

The petitioner and the respondent have agreed to maintain a harmonious relationship for the good and welfare of their children.

The petitioner and the respondent have accepted to have their children as a linking or joining bridge between them,

For the reasons shown above, I shall not grant any costs to any party to this petition. This includes the co-respondent. In the result, each party shall bear his or her own costs.

For the same reasons as I have given with regard to my refusal to award costs to any party, I shall not give any damages to any party. Besides the damages claimed have not been proved.

Finally, the following orders are made:

A decree Nisi is hereby pronounced dissolving the marriage between the petitioner and the respondent.

The custody of the children of he said marriage is granted to the petitioner, their mother.

The respondent shall have access to their children, at reasonable hours and times whether they (children) are at the petitioner's home or at school.

Each party to the petition shall bear his or her own costs.

3.5 Challenges facing implementation of these laws

Cultural factors. People in Uganda are still attached to the ancient cultures. Many culture encourage polygamy and also don't see adultery as a big issue.

Lack of sensitization. Mostly intending marriage partners and the community are not sensitized enough about the evil in divorce and the laws of divorce.

"Sometimes people take the family for granted. You have your siblings, your parents, and everything. But the moment they are no more, you see things falling apart. Some people commit suicide because of failing relationships and lacking a sense of belonging," Langa says. He further explains that a family shapes how we relate in future, ranging from our spouses, to our colleagues at work or friends at school.

"You cannot give the world what you did not receive. The cradle of civilization, morality, ethics and behaviors all come from the family. A family is a building block of society," Langa says, stressing that family breakdowns are, therefore, an enormous threat to future generations.

CHAPTER FOUR

PROBLEMS INHERENT IN THE LAW OF DIVORCE

4.0 Introduction

This study was carried out to achieve the following objectives that is; to find out the causes/grounds of divorce, the effects of divorce the legal framework regulating divorce and the solutions to the problem of divorce.

This chapter covers analysis of data interpretation findings and presentation. it analyses the extent to which divorce among families is a great tragedy.

4.1 The age

Age as a Factor.

During the research I found out that couples of younger age have higher chances of their families ending up in divorce.

Couples between the age bracket of 20-24 are seen to go in for the maximum number of divorces, with 36.6% of women wanting to end their marriage, and 38.8% of men wanting to end theirs. The second age bracket which is seen to have a high number of divorces are couples under the age of 20 years. 27.6% of women in this age bracket want to end their marriages while 11.7% of men want to end theirs. 21

Percentage of 1st, 2nd, and 3rd Marriages Ending in Divorce It has been studied that 41%-50% of first marriages end in divorce, while 60-67% of second marriages and 73%-74% of third marriages end in divorce. It has also been found that couples with no children are slightly more likely to go in for a divorce than those who have children. (U.S. Census Bureau, 2009)

4.2 Evidential requirement

Motives for Defending a Divorce. Why would a spouse choose to defend against a divorce, knowing that, at least as far as other spouse is concerned, the marriage is over? It's a personal decision, and only the defending spouse knows the true reason. But, sometimes it's pure ego - the spouse doesn't want to lose. Sometimes, a spouse simply doesn't want the marriage end, and raising a defense can stop the divorce, giving the spouse time to "make things right again."

More likely than not, however, a spouse may want to avoid being blamed for the failure of the marriage. That's because, in many instances, the spouse who is not at fault usually gets more when it comes to the property division or alimony or spousal support, for example¹⁹.

Downside of Defending.

In my findings, even when a defense is available, it may not be a good idea to raise it. In the first place, fault-based divorces usually are much more expensive than no-fault divorces, and raising a defense usually makes the divorce even more expensive and more time consuming. Without witnesses or other concrete proof, the divorce may turn into a "he said - she said" battle.

Also, the odds are, you won't "stop" the divorce. The courts are not in the business of forcing people to stay married when it's obvious that one or both spouses don't want to be married anymore.

Know & Weigh Your Options

These and other defenses may or may not be available in your state, and even if a defense is available, there may be limits on when it may be used. For instance, in some states, connivance can be used only when adultery is the grounds for divorce.

¹⁹(U.S. Census Bureau, 2009)

4.3 Social factors

"The woman might have been counseled, but with empowerment, she reaches a point and decides she cannot die in a marriage in the name of being a good wife. So do we ensure the men are brought up to become good husbands? Men need to learn that marriage is about equals."

"That's why in my career I have never refused to grant a divorce where one partner wants it," he said. "Marriage is supposed to be voluntary. We shouldn't wait to try cases of murder; we should grant a divorce when we have the chance."

Women lawyers have taken notice of such thinking among magistrates, and these days they openly encourage women in unhappy unions to get legal help. The Uganda Association of Women Lawyers, or FIDA, organizes legal aid clinics for women in distress across the country.

"I think the reason why divorce is going up is because the women are breaking out of that cycle, the image that a good woman is a submissive woman," FIDA's Peace Amito said. "In the past very few women were getting educated, very few were experiencing life outside of their villages. Now most of them who come here say, 'I am fed up.' They are coming to realize that divorce is an option."

4.4. Economic factors

Refund of bride price. Batema, the magistrate, said some men want a refund of their bride price in court when divorce proceedings begin, often forcing him into arguments with those who "seek to trivialize the role of women" in marriage.

In relation to the **Marriage and Divorce Bill of 2009**, among the controversial provisions in the current bill are those that pertain to bride price, a customary practice requiring payment of consideration by a groom to his wife's family. For years women's groups have contested the customary practice requiring payment of bride price to legitimize a marriage, yet its supporters consider it to be an important cultural element of marriage. The Constitutional Court recently refused to ban the practice, a decision

that is currently being appealed to the Supreme Court. The current Marriage and Divorce Bill states that bride price cannot be treated as a pre-requisite for marriage, and makes criminal the act of demanding repayment of bride price.

According to my research, although many **argue** that this payment is merely symbolic, in conversations with me, Ugandan women have complained that it permits men to consider their wives their property and grant them few rights. In connection with women's ability to own or inherit property, I have often heard the phrase, "property cannot own property."

One respondent said; ***demand for repayment of brideprice can also keep women in abusive or unhappy marriages. If a woman seeks a divorce, her husband or his family often demands a return of brideprice. Unfortunately, that brideprice has not been paid to the woman herself, but her family, and it is not often available to be returned.***

The bill, if enacted, would improve women's rights dramatically. In addition to the bride price provisions, the bill prohibits "widow inheritance" (the practice of marrying off a widow to her deceased husband's relative), grants certain rights to cohabiting couples, and equalizes the previously discriminatory divorce provisions.

4.5 The divorced couple and the family

According to my research it was found that Children from divorced homes have more psychological problems than children who lost a parent to death

According to Velez Cohen "suicidal" Behavior & ideation in a community sample of children, *Journal of the American Academy of Child and Adolescent Psychiatry* 1988, People who come from broken families are almost twice as likely to attempt suicide than those who do not come from broken homes

According to Judith Wallerstein, Julia Lewis, & Sandra Blakeslee, Adult children of divorce tend to have lower paying jobs & less college than their parent unstable father –

children relationships ,a history of vulnerability to drugs & Alcohol in adolescent fears about commitment & divorce ,and negative memories of the legal system that forced custody & visitation The unexpected legacy of divorce: A 25-yr land mark study N.Y Hyperion 2k).

According to Dawson, Deborah."Family structures & children's health and wellbeing. "Children whose parents have divorced are most likely to experience injury, asthma, headache & speech implements than children whose parents have remained married.

Parents who are Divorced Vs. Parents who are Together. People who have been raised by both parents, rather than those who have been raised by a single parent, or have seen either parent with changing partners, are less likely to go in for a divorce.

Cultural factors.

I found that People in Uganda are still attached to the ancient cultures. Many culture encourage polygamy and also don't see adultery as a big issue yet according to my research adultery is one of the major causes of divorce.

Lack of sensitization.

It was also found that most intending marriage partners and the community are not sensitized enough about the evil in divorce and the laws of divorce.

Sometimes people take the family for granted. You have your siblings, your parents, and everything, but the moment they are no more, you see things falling apart. Some people commit suicide because of failing relationships and lacking a sense of belonging. A family shapes how we relate in future, ranging from our spouses, to our colleagues at work or friends at school.

You cannot give the world what you did not receive. The cradle of civilization, morality, ethics and behaviors all come from the family. A family is a building block of society, family breakdowns are, therefore, an enormous threat to future generations

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

As reflected from the above discussion and presentation of the findings, to divorce is to terminate a legally existing marriage.

Though the law has in its provisions and implementation, divorce has still persisted among the families of Uganda.

5.2 Recommendations

In order to combat the evil of divorce, I hereby proposed as follows;

Establish other corrective and preventive measures to reduce the occurrence of the vie, I recommend faithfulness among couples as a solution to this problem, Peer education, religious leaders, cultural leaders among others should rise up and restore a culture where fornication and adultery is a serious taboo.

Counseling. Sources in the judiciary attribute the 2012 decline in divorce rates to the Children and Family Courts handled by grade one magistrates. These professionals partly helped in counseling and sensitizing spouses to resolve conflicts. This move was introduced in 2011. However, with new reports showing the rise in HIV infection rates, a lot of Ugandans are now scared of taking any chances, a source disclosed. Once the case has been concluded, the court offers counseling for the divorcing couples. Court seeks to cool tempers down and offer the way forward in terms of custody, and access to the child. And it has worked, according to Mutonyi. "Before I move out, I need to be free. If one of you takes custody of the children, what about issues of welfare and access to the children by the other spouse who moves on?"

Rev. Peter Matovu, the director of Munnange Counselling Centre at Nkumba University calls for the need to provide counseling and guidance sessions to both boys and girls from a much younger age, so that they grow up knowing how to respect relationships.

Alternative Divorce Solutions (ADS). People sometimes should opt for litigation teams to resolve their family matters than calling for divorce in court.

Giz S, San Diego, CA also says; I don't know if I would have made it through my divorce without Lani and the team at Alternative Divorce Solutions. I was so stressed out before I went to ADS. Once I got there Lani sat with me and my husband and explained the whole mediation process. After I left I knew exactly what to expect and ADS lived up to my expectations. My paperwork was perfect and done so quickly. I was amazed at the service I received. I would highly recommend to anyone going through a divorce!

Need for amendments

Before I embark on a discussion of the provisions of the Customary Marriage (Registration) Act, it is critical to highlight some of the relevant provisions of this Act. The Act establishes marriage districts for the purpose of the registration of customary marriages (section 2), the appointment of the registrar of customary marriages (section 3), the celebration of customary marriages (section 4), the process that has to be followed and the requirements that have to be fulfilled for a customary marriage to be registered (section 6), the issue of customary marriage certificates and the registration of customary marriages out of time (sections 5, 6 and 10), void customary marriages and the relationship between customary marriages and monogamous or Muslim marriages (sections 11, 12 and 13) and failure to register a customary marriage (section 20).

Arranged marriages by the Unification Church. As published in the US Newspaper "usa today " by Brent Jones, Unificationists believe that marriages arranged through the church and blessed by Moon are "sinless" and foster the kingdom of God on earth, one happy family at a time.

Arranged marriages or lessons imparted by them could also help lower the American divorce rate, according to research recently highlighted by the Unification Church.

With about 12,000 members in the United States, the days when Moon filled American stadiums for "mass weddings" are long gone. But more than 70% of Moon-matched couples are still together, U.S. church officials estimate.

Church studies suggest that many Unificationists do practice what Moon preaches. A 1998 study found that 83% of the 2,075 couples matched by Moon in 1982 for the Madison Square Garden ceremony remained together, according to the Rev. Phillip Schanker, director of the church's Blessed Family Ministry. Schanker estimates that 70% are still married today.

According to the unification teachings divorce is a serious taboo and is never attempted by the members. Unification marriages are for eternity, not even death can terminate the marriage.

The core of the unification teachings is absolute sexual purity and marriage for eternity. A unification member married or not married cannot get involved in any illicit sexual relationship.

BIBLIOGRAPHY

Unification thought.

Case law books and reports

News papers

U.S. Census Bureau, 2009

Family Law Journals

National family statistics

Statutory Laws of Uganda

APPENDICES

APPENDIX 1

Dear Sir/Madam,

I am KarumunaTumwine a student of Kampala International University pursuing a bachelor's degree in Law.

I am doing a research paper which is a requirement for the award of the stated degree program. The study is about Divorce and the Law in Uganda.

The data acquired below will be treated with a lot of confidentiality so I kindly request you to render your assistance by answering these questions. Am looking forward to your positive response.

THANK YOU

Dear respondent;

. You have been chosen to participate in this study

.This study is purely academic

.The information you will give is confidential

.You are requested to tell the truth

.Respond by ticking in the box provided and filling the blank spaces given.

SECTION A (Background information)

1. Age

2. Gender a. Male b. Female

3. Marital status a). MarriedB). Divorced C).Widow/widower

4. level of Education a). Ordinary level. b)Degree and above

C) Advanced level d) others specify.....

5. Main occupation.....

SECTION B (LEGAL FRAMEWORK)

1. What do you understand by divorce?

.....
.....

2. Effects of divorce

.....
.....

3. List any legal framework you know in controlling divorce

.....
.....

4. How often do you receive divorce cases?

.....
.....

5. How do you get to know about divorce cases?

.....
.....

6. What is the action normally taken after report?

.....
.....

7. How do you handle divorce cases?

.....
.....

Is the number of divorce cases increasing? YES NO

8. How many divorce cases have you recorded in the last five years?

.....
.....

Do the victims of divorce get redress?

.....
.....

9. What legal challenges do you face in handling or controlling divorce?

.....
.....

10. What gaps do you think are there in the existing law in controlling divorce?

.....
.....

SECTION C (Social Economic and Cultural factors)

1. Who are the common victims of divorce?

.....
.....

2. What is the most common age of couples that are divorced?

.....
.....

3. In your own view, what are the causes of divorce?

.....
.....

4. Why do you think divorce has persisted?

.....
.....

5. Do you think the social cultural norms have facilitated divorce? YES NO

6. What do you think are the effects of divorce?

.....
.....

7. What services do your organization offer to divorce victims?

.....
.....

8. For what period do you offer these services to the divorce victims?

.....
.....

9. Do you have any community programs concerning divorce? YES NO

10. What is the community attitude towards the divorce programs?

.....
.....

11. What social, cultural and economic challenges do you face as you provide services to the divorced and the community at large?

.....
.....

SECTION D (Strategies/Recommendations)

1. What do you think should be done to improve on the laws on divorce?

.....
.....

2. What role should the following agents play in controlling divorce?

Judiciary.....
.....

Legislature
.....
.....

Police

.....
.....

Parents

.....
.....

Non-Governmental Organizations

.....
.....

Community

.....
.....

3. How do you think the divorced should be helped to overcome emotional
psychological trauma and stigma?

.....
.....

Thank you