

OBJECTION

MY LORD

LEGAL PRACTICE DEMYSTIFIED



**FIRST
EDITION**

ISAAC CHRISTOPHER LUBOGO

OBJECTION MY LORD

“Legal Practice Demystified”



FAMILY LAW & PRACTICE

OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED

© 2022 ISAAC CHRISTOPHER LUBOGO

FIRST EDITION

The right of **Isaac Christopher Lubogo** to be identified as the author of this book has been asserted by him in accordance with the Copy right and Neighboring Rights Act, 2006

All rights reserved. No part of this publication may be reproduced or transmitted in whole or in part in any form or by any means,

electronic or mechanical, including photocopy, recording or any information storage and retrieval system, without permission in writing from the author. First Edition 2022

First Edition 2022

ISBN: 97899704457776

First published in Uganda by:

Jescho Publishing House

A member of Jescho Group Ltd

Maria's Galleria, Level 3 Room 17,

Luwum Street,

Kampala (U), East Africa.

Tel: +256 393 256 545, +256 782 395 293

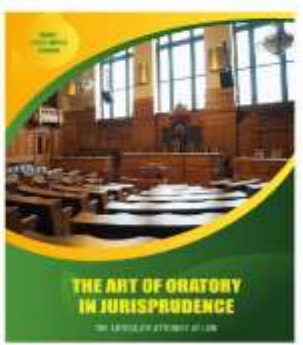
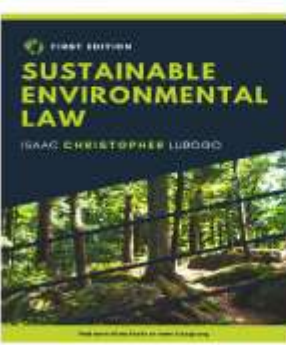
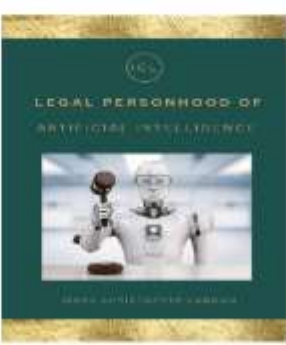
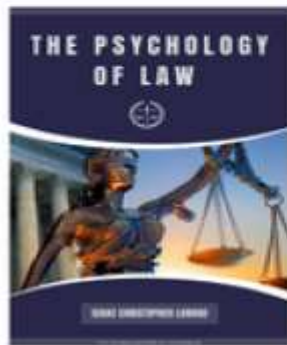
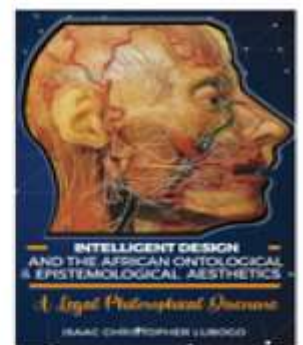
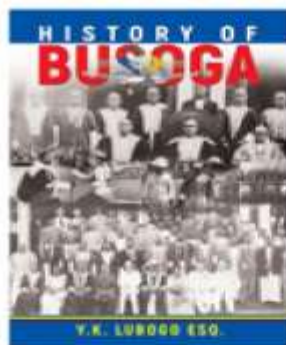
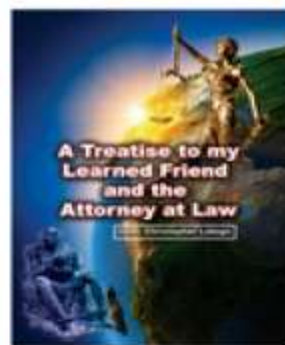
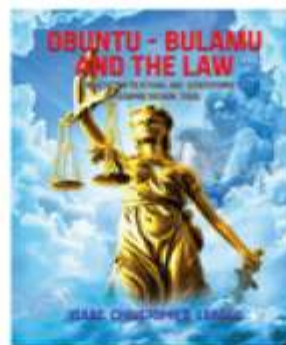
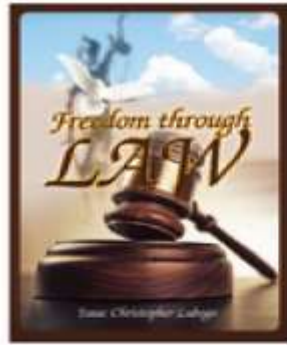
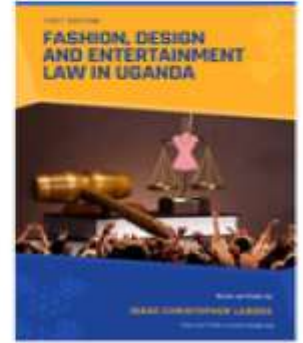
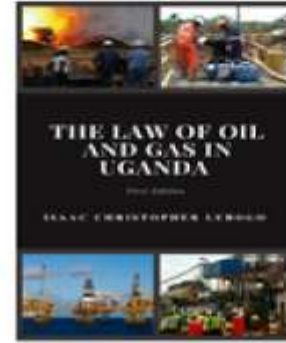
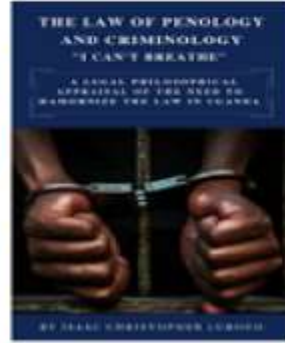
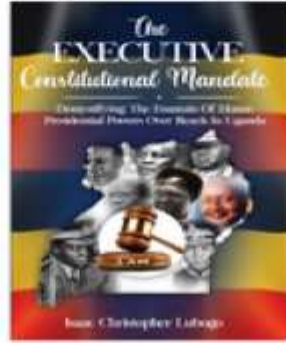
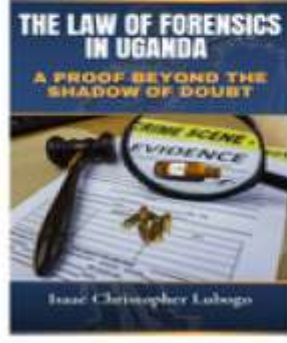
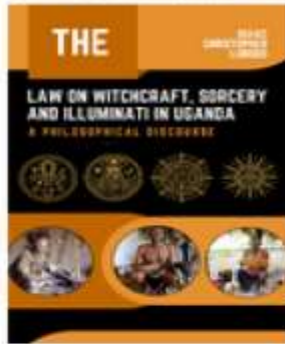
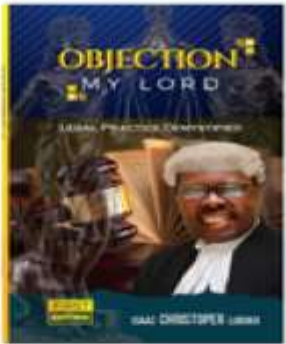
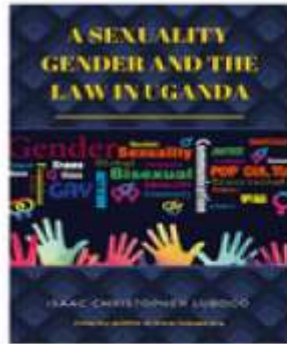
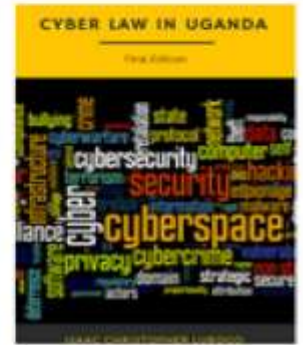
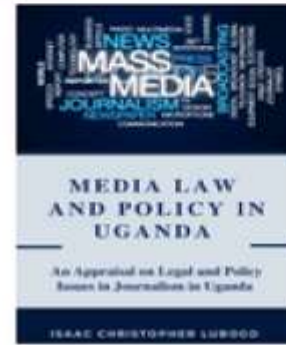
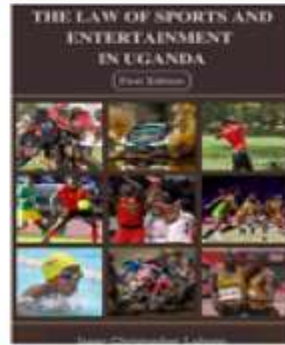
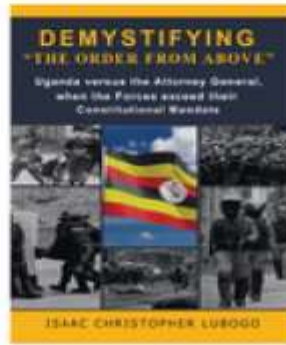
+256 702 055 211, +256 752 055 211

E-mail: jeschogroupltd@gmail.com

Website: www.jeschogroupltd.co.ug

View this author's profile at (<https://www.lubogo.org>)

ISAAC CHRISTOPHER LUBOGO'S WORKS



Find all my works, bio and books at www.lubogo.org

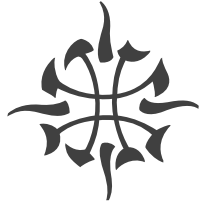
ISAAC CHRISTOPHER LUBOGO

DEDICATION



*To the Lord Who Breathes Life and Spirit on Me ... Be My Guide Oh Lord of
The Entire Universe.*

OBJECTION MY LORD



*Obey God's law first before considering
the laws of man.*



ISAAC CHRISTOPHER LUBOGO

ACKNOWLEDGEMENT



Great thanks to Doya, whose materials have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript. Blessings upon you.

Contents

DEDICATION	IV
ACKNOWLEDGEMENT.....	VI
DOMESTIC RELATIONS.....	1
TYPES OF MARRIAGES IN UGANDA	2
FORMAL AND ESSENTIAL REQUIREMENTS OF MARRIAGES IN UGANDA	2
CIVIL MARRIAGES	5
CHURCH MARRIAGE	7
VOID AND VOIDABLE MARRIAGES.....	8
MAINTENANCE	13
ISLAMIC MARRIAGES	16
HINDU MARRIAGES.....	18
IMPORTANCE OF DOMICILE IN A MARRIAGE	20
DIVORCE.....	21
DIVORCE UNDER THE VARIOUS MARRIAGES	21
DIVORCE IN ISLAM.....	30
PETITION FOR DIVORCE.....	36
SUMMARY OF EVIDENCE	39
SUMMONS TO ANSWER PETITION.....	41
PETITION.....	43
VERIFICATION	44
SUMMARY OF EVIDENCE	46
REPLY TO PETITION.....	48
VERIFICATION	49
SUMMARY OF EVIDENCE	50

ISAAC CHRISTOPHER LUBOGO

CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE.....	52
PETITION FOR RESTITUTION OF CONJUGAL RIGHTS AND PROVISION OF MAINTENANCE.....	53
SEPARATION AGREEMENT.....	55
PETITION FOR SEPARATION.....	59
DIVORCE UNDER MOHAMMEDAN MARRIAGES.....	61
SUMMONS TO ANSWER PETITION.....	66
PETITION FOR NULLITY OF MARRIAGE.....	67
VERIFICATION.....	68
SUMMARY OF EVIDENCE.....	69
REPLY TO PETITION.....	71
VERIFICATION.....	71
SUMMARY OF EVIDENCE.....	73
CASES.....	75
SEPARATION OF SPOUSES.....	79
SEPARATION BY AGREEMENT.....	79
COMMON LAW AND DOCTRINES OF EQUITY.....	79
CLAUSES IN A SEPARATION AGREEMENT.....	80
DESCRIPTION OF THE PARTIES.....	80
DRAFTING OF SEPARATION AGREEMENTS.....	80
SEPARATION AGREEMENT.....	82
JUDICIAL SEPARATION.....	84
MATRIMONIAL OFFENCES.....	84
PROCEDURE FOR PETITIONING FOR A JUDICIAL SEPARATION.....	86
SUMMONS TO ANSWER PETITION.....	88
PETITION.....	89
VERIFICATION.....	92
SUMMARY OF EVIDENCE.....	93
REPLY TO PETITION.....	95

OBJECTION MY LORD

VERIFICATION	96
SUMMARY OF EVIDENCE	97
CHILDREN MATTERS	99
RIGHTS OF CHILDREN.....	99
WELFARE PRINCIPLE	100
APPLICATION OF THE PRINCIPLE WHERE THERE ARE TWO CHILDREN.	101
PARENTAGE.....	101
PROOF OF PARENTAGE.....	102
AN APPLICATION FOR A DECLARATION OF PARENTAGE.....	103
APPEALS	105
COMPLAINT ON OATH.....	106
SUMMONS IN CHAMBERS.....	107
CUSTODY	108
APPLICATION FOR CUSTODY	108
APPLICATION FOR A CUSTODY ORDER.....	110
AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR A CUSTODY ORDER.....	111
SUMMONS.....	113
SUMMONS IN CHAMBERS.....	113
MAINTENANCE.....	115
APPLICATION FOR A MAINTENANCE ORDER.....	115
COMPLAINT ON OATH.....	118
INTERIM ORDERS AND ORDERS THAT CAN BE ISSUED FOR CARE, PROTECTION AND WELFARE OF THE CHILD.....	120
GROUND FOR MAKING A SUPERVISION OR CARE ORDER.....	121
ADOPTION OF CHILDREN	122
LAW APPLICABLE TO ADOPTION.....	122
INTERCOUNTRY ADOPTION.....	127
CONSEQUENCES OF ADOPTION	129

ISAAC CHRISTOPHER LUBOGO

PETITION 131

RESPONDENTS’ SUMMARY OF EVIDENCE. 136

PETITION FOR ADOPTION OF A CHILD. 139

PETITION FOR ADOPTION OF A CHILD 142

ADOPTION ORDER. 145

GUARDIANSHIP 147

DUTIES OF GUARDIAN. 147

TYPES OF GUARDIANSHIP..... 147

HOW TO APPLY FOR LEGAL GUARDIANSHIP..... 148

NOTICE OF MOTION 151

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION: 154

PETITION FOR GUARDIANSHIP. 157

SUMMARY OF EVIDENCE:..... 160

GUARDIANSHIP ORDER EXTRACTED. 163

ORDER. 163

GUARDIANSHIP ORDER EXTRACTED WHERE THE GUARDIAN SEEKS TO TRANSFER
PROPERTY REGISTERED IN MINOR’S NAMES. 164

ORDER 164

MATTERS TO CONSIDER BEFORE GRANTING CUSTODY OF CHILDREN GENERALLY
..... 166

MAINTENANCE OF CHILDREN 167

PROVING PATERNITY & DECLARATION OF PARENTAGE..... 168

THE PROCEDURE FOR DECLARATION OF PARENTAGE IS AS FOLLOWS:..... 170

THE FORUM:..... 170

THE DOCUMENT(S) 170

FORM 2: FOR DECLARATION OF PARENTAGE..... 171

COMPLAINT ON OATH 171

SUCCESSION 173

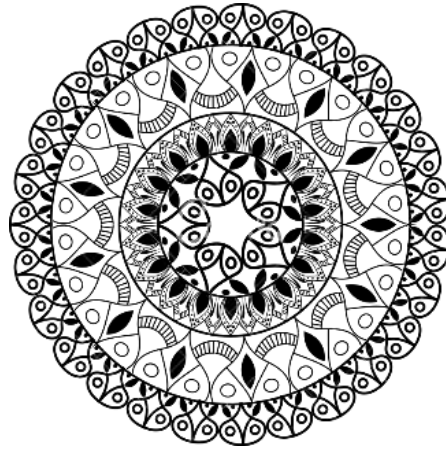
OBJECTION MY LORD

TESTATE SUCCESSION	173
TESTATE SUCCESSION	175
CAPACITY TO MAKE A WILL.....	175
REVOCAION OF WILLS	178
INTESTATE SUCCESSION	180
THE PROCEDURE FOR APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION	181
PETITION FOR PROBATE	183
VERIFICATION	185
LETTERS OF ADMINISTRATION	186
RE: APPLICATION FOR A CERTIFICATE OF NO OBJECTION TO THE ESTATE OF THE LATE ABBAGA MABUGA	186
PETITION FOR LETTERS OF ADMINISTRATION.....	188
VERIFICATION	189
NOTICE	191
DECLARATION	193
COPY OF WILL.....	195
FORM OF CAVEAT.....	199
NOTICE TO BE PUBLISHED.....	199
PLAINT	200
SAFE CUSTODY OF WILLS.....	202
GRANT OF PROBATE	202
WHERE WILL IS NOT IN ENGLISH.....	202
VERIFICATION OF THE PETITION.....	203
VERIFICATION OF PETITION BY ONE WITNESS TO THE WILL.....	203
PROCEDURE FOR OBTAINING PROBATE.....	203
REVOCAION OF LETTERS OF ADMINISTRATION/PROBATE.....	204
EXERCISE OF POWER BY JOINT ADMINISTRATORS/EXECUTORS.....	206

ISAAC CHRISTOPHER LUBOGO

LODGMET AND REMOVAL OF CAVEATS.....207
RESEALING OF PROBATE OR LETTERS OF ADMINISTRATION 208
ADMINISTRATION OF ESTATES OF MISSING PERSONS AND PERSONS OF UNSOUND
MIND 209
PERSONS OF UNSOUND MIND OR MENTAL ILLNESS..... 211
INTERIM REMEDY 214
LONG TERM REMEDY 216
WHAT IS THE PROCEDURE, FORUM AND DOCUMENTS NECESSARY? 218
NOTICE OF MOTION 220
AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION 223
PETITION FOR DIVORCE..... 227
SUMMARY OF EVIDENCE..... 230
SUMMONS TO FILE AN ANSWER TO THE PETITION..... 232
CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE. 233
PETITION FOR RESTITUTION OF CONJUGAL RIGHTS AND PROVISION OF
MAINTENANCE..... 235
SEPARATION AGREEMENT. 237
PETITION FOR SEPARATION. 241
ADOPTION ORDER 243
PETITION FOR NULLITY 253
VERIFICATION 254
SUMMARY OF EVIDENCE..... 255
SUMMONS TO ANSWER PETITION 257
SUMMONS TO FILE A RESPONSE..... 261
PETITION FOR MAITENENCE ORDER AND RESTITUTION OF CONJUGAL RIGHTS... 262
SUMMARY OF EVEIDENCE 264
MAINTENANCE SUMMONS 266
CAVEAT FORBIDDING MARRIAGE..... 270
STATUTORY DECLARATION 272

OBJECTION MY LORD



DOMESTIC RELATIONS

- A) The Laws Governing Domestic Relations in Uganda includes the following:
1. The Constitution of the Republic of Uganda 1995
 2. The Judicature Act cap 13
 3. The Civil Procedure Act Cap 71
 4. The Civil Procedure Rules SI 71-1
 5. The Advocates (Remuneration and Taxation of Costs) Regulations SI 267-4
 6. The Magistrates Courts Act Cap 16
 7. The Marriage Act Cap 251
 8. The Marriage (District Registrars) Order SI 251-1
 9. The Divorce Act Cap 249
 10. The Divorce Act Rules SI 249-1
 11. The Customary Marriages Registration Act Cap 248
 12. The Customary Marriages (Registration) (Prescription of Forms and Fees) Regulations SI 248-1
 13. The Marriage & Divorce of Mohammedans Act 252
 14. The Marriage & Divorce of Mohammedans (Appointment of Registrars) Order SI 252-1
 15. The Marriage & Divorce of Mohammedans (Fees) Order SI 252-2
 16. The Marriage & Divorce of Mohammedans (Jurisdiction in Matrimonial Causes) Instrument SI 252-3
 17. The Marriage of Africans Act Cap 253
 18. The Hindus Marriage and Divorce of Act Cap 250
 19. The Hindus Marriage and Divorce (Marriage and Registration) Rules SI 250- 1
 20. The Children Act Cap 59
 21. The Children (Adoption of children) Rules SI 59-1

22. The Children (Family and Children's Court) Rules SI 59-2
23. The Succession Act Cap 162
24. The Administration of Estates (Small Estates) (Special Provisions) Act Cap 156
25. The Administration of Estates (Persons of unsound mind) (Procedure) Rules SI 155-1
26. The Administration of Estates (Small Estates) (Special Provisions) Rules SI 156-1
27. The Administrator General's Act Cap 157
28. The Administrator General's (Fees) Rules SI 157-1
29. The Evidence Act Cap 6

TYPES OF MARRIAGES IN UGANDA

There are four types of marriages recognized by the law in Uganda and these include the following:

- **Customary Marriages** recognized majorly by The Customary Marriages Registration Act¹.
- **Civil Marriages** recognized majorly by The Marriage Act ²and the Divorce Act³.
- **Church marriages** recognized majorly by The Marriage Act Cap and the Divorce Act.
- **Hindu Marriages** recognized majorly by The Hindu Marriage and Divorce Act⁴.
- **Mohammedan Marriages** recognized majorly by The Marriage and Divorce of Mohammedans Act⁵ and Sharia Law.

FORMAL AND ESSENTIAL REQUIREMENTS OF MARRIAGES IN UGANDA

A) CUSTOMARY MARRIAGES

The law applicable to customary marriages includes the following;

1. The Constitution of the Republic of Uganda 1995
2. The Judicature Act cap 13
3. The Customary Marriages Registration Act Cap 248

¹ Cap 248

² Cap 251

³ Cap 249

⁴ Cap 250

⁵ Cap 252

OBJECTION MY LORD

4. The Customary Marriages (Registration) (Prescription of Forms and Fees) Regulations SI 248-1
5. Case law and customary law

A customary marriage is defined in section 1(b) of the Customary Marriages Registration Act as a marriage celebrated in accordance with the rites of an African community and one of the parties to which is a member of that community. This principle is fortified by the case of **Uganda Vs Kato and Others [1976] HCB 204** where court held that the test of determining what type of marriage is, is whether the union is treated as a marriage by the laws or customs of the nation, race or sect to which the parties belong. Court went on further to state that; where the parties are from different tribes, the customs of the woman would be to be followed in case of a customary marriage.

It must be noted however that the customs should not be contrary to the principles of natural justice and morality. This is the spirit of the law evident in section 14 of the Judicature Act Cap 13 which enjoins courts of judicature to apply customary law *ipso facto* in adjudication of matters before it provided the customs are not repugnant to natural justice and morality. Article 33(6) of the Constitution prohibits laws, cultures customs or traditions that are against the welfare or interest of women or that undermine their rights. This is fortified by the East African case of **Kimani vs Gikanga [1965] EA 735** where court was of the view that repugnant customs should not be upheld in society.

Under S.4 (2), customary marriage maybe polygamous.

A customary marriage is a celebrated according to the rites and customs of an African community to which one of the parties is a member of that community or any marriage celebrated under part 3 of the customary marriage (registrations act, cap 248. S.1 (b) of the customary marriage (registrations) act (CMRA).

What customs are to govern customary marriage?

In the case **NASSANGA V NANYONGA (1977) HCB 352**, the parties were both Banyakole who had moved to Buganda and changed their names. The court held that

1. Parties are free to choose the law to govern their relationship but this choice is made at the time the relationship is entered into and not after a dispute has arisen. The choice of law is a matter for the court to decide.
2. Where the parties belong to the same tribe the proper law is the law of the tribe to which they belong in matters of moveable property and interpersonal issues. In a case of immovable property, the law of the tribe where the property is situated applies. As the instant case related to marriage and dowry, the proper law was the law of the tribe to which the parties belong.

3. Where the parties belong to different tribes, the most equitable rule for the choice of law is to discover the law which both parties had in mind as governing their relationship at the time of the transaction in issue.
 - In this case ankole customary law applied and not Buganda customary law since even the alleged dowry paid was paid in cows, an item which is not listed among the list of the items of dowry paid by Buganda.

In **KINTU V KINTU, DIVORCE APPEAL NO.135 OF 1997**, the court held that where the parties are from different tribes, the customs of the girl determine whether there was a marriage.

In **UGANDA V P. KATO ANDORS (19760 HCB 24**, Court held that in order to establish the existence of a customary marriage its sufficient to prove that according to the customs and laws of a given-tribe, a marriage exists.

- The marriage should have been conducted according to the customs of that tribe and satisfied the requirements of that custom .in **UGANDA V JOHN EDOKU (1975) HCB 359**, the court held that if bride price is required it must be paid in full.

ESSENTIAL REQUIREMENTS

Rights of an African community. First and foremost, the Marriage should be conducted according to rights of an African community as enunciated in the case of **Uganda Vs Kato and Others [1976] HCB 204** where court held that the test of determining what type of marriage is, whether the union is treated as a marriage by the laws or customs of the nation, race or sect to which the parties belong.

Full bride price. Secondly, where bride price has to be paid, it must be paid in full. This payment is made by the husband to be or the groom to the family of the girl he intends to marry. This principle is fortified by the case of **Uganda Vs Eduku [1975] HCB 359**. where court held that since bride price had not been paid in full, there was no subsisting marriage between the complainant and the adulterous woman for they were not considered as husband and wife. This was the same principle in **Aiya Vs Aiya D.C. 8 of 1973**. The girl's family may request for no dowry at all and the marriage will be valid. Therefore , dowry becomes relevant only when requested for and if not requested for, this does not mean that the marriage is void.

Age. Thirdly, the age of marriage for the wife is considered to be at 16 years and for the husband is taken to be at 18 years. This is the spirit of the law in section 11 (a) and (b) of the Customary Marriages Registration Act.

In light of the above there is need to strike a balance between the constitutional sanction and the sanction under the Act. The constitution of the Republic of Uganda 1995 is the supreme law of the land and shall have binding force on all persons. To this end therefore, it is legally correct for one to rely on Article 31 which talks of the majority age as 18 and thus marrying off a girl of 18 years under customary law. The fallacy however is, persons have been so litigious on this matter.

OBJECTION MY LORD

Prohibited degrees. Fourthly, there should not be any prohibited degrees of kinship under section 11(d) of the Customary Marriages Registration Act. The prohibited degrees of kinship are provided for in the second schedule to the Customary Marriages Registration Act.

Parental consent. Fifthly, Consent of the parents is a must and it must be got. This is premised on the African tradition that girls cannot do anything without the parent's approval.

Section 11 (e) of the Customary Marriages Registration Act provides another condition to the effect that there should be no valid and subsisting monogamous marriage between the parties to this marriage and another person.

Potentially polygamous. Must be noted that customary marriages are potentially polygamous. This is provided for in section 4 of the Customary Marriages Registration Act.

Registration of customary marriages is provided for under section 5 of the Customary Marriages Registration Act. it does not however mean that failure to register the marriage renders it void. This is fortified by **Nassanga Vs Nanyonga [1977] HCB 314** where court held that failure of the parties to register the marriage does not invalidate the marriage.

Under section 6 of the Customary Marriages Registration Act, the marriage may be registered not later than six months after the date of completion of the ceremony; with at least two witnesses to attend to the office of the Registrar with details to register the marriage.

CAVEATS TO CELEBRATION OF A CUSTOMARY MARRIAGE.

Under S.27, of CMRA, any person whose consent of a marriage is required or who may know of any just cause why the customary marriage should not take place, may enter a caveat against the issue of the registrar's certificate by writing at any time before issuance of the certificate the word "**forbidden**" opposite to the entry of the notice in the customary marriage notice book, add his/her names and the grounds to wit

Consent.

Under S.32, where the parties are below 21 years, they must have the consent of the father or of his dead or of unsound mind, then the mother.

CIVIL MARRIAGES

The basic issues for discussion here include the following

1. Whether the parties have capacity to contract a marriage?
2. If so, what formalities should be followed to effect the marriage?
3. What is the forum and documents?

Discussion

Section 1(f) of the Marriage Act defines a civil marriage in to mean a marriage between one man and one woman; subsistence of which; neither of them is at liberty to contract any form of marriage.

This is fortified by **Hyde vs Hyde (1863) LR P & D 130** which was noted with approval in **Alai vs Uganda (1967) EA 416** as the voluntary union of one man and one woman to the exclusion of all others. The case of **Ayoub vs Ayoub [1967] EA 416** provides that marriages under the Marriage Act is potentially monogamous. In ascertaining the validity of the marriage one ought to ensure that all the requisite steps provided for in the law have been followed.

Case law has however enunciated a principle in **Wightman Wightman (1963) R & N 275** where court held that evidence of a marriage ceremony followed by cohabitation lays a presumption of a valid civil marriage. In **Hill vs Hill (1959) 1 All ER 281**, court held that such a presumption can be rebutted unless evidence to the contrary is adduced beyond reasonable doubt there was no valid marriage. These are provided for in Sec. 6 of Marriage Act Cap 251. The parties to an intended marriage should place a notice with Registrar;

Notice entered in marriage register book, the notice lapses after three months and then parties marry after that **Sec 9** of Marriage Act Cap 251. If there is no objection at end of 21 days; before expiration of 3 months the parties are issued with certificate permitting them to marry, as provided for under section 10 of the Marriage Act.

It must be noted that this Certificate is issued upon application supported by affidavit, where the deponent is supposed to aver that:-

1. One of the parties resident in district where the marriage is going to be celebrated of celebration of marriage
2. Parties are above 21 years of age.
3. No impediments of kindred or affinity to the intended marriage
4. None of the party to the intended marriage is married by customary law to any person other than that person with whom such marriage is proposed.

OBJECTION MY LORD

CAPACITY TO CONTRACT A CIVIL MARRIAGE

To be able to contract into a valid marriage the following attributes should be present, as enunciated in section 10 of the Marriage Act; thus

Each of the parties must be **above 21 years** and if the parties are below this age, consent of the parties ought to be got. This should be read in line with Article 31 of the Constitution 1995, which lays down the majority age to be 18 years.

One should be of sound mind. This is premised on the principle of contract law which is to the effect that in any contract there ought to be consensus ad idem.

The intended marriage should be between a Male and Female; this is evident in the common law principle enunciated in **Hyde vs Hyde (1863) LR P & D 130** where court defined marriage as the voluntary union of one man and one woman to the exclusion of all others.

None of the party to the intended marriage is should be married by customary law to any person other than that person with whom such marriage is proposed. This is fortified in section 49 of the Marriage Act.

Parties to the intended marriage should not be within the prohibited degrees of consanguinity or kindred. These degrees are referred to in the second schedule to the Customary Marriages Registration Act.

CHURCH MARRIAGE

The law applicable to civil marriages applies to church marriages; save that church marriages do not have an option for divorce. There are however, a few other rules which one ought to deal with.

Section 20 (1) of the Marriage Act provides that for a church marriage to be valid, it must be celebrated in licensed place of worship, presided over by recognized Minister; according to rights/usages of marriages observed in that church.

Section 21 of the Marriage Act provides that in case of any impediment; the Minister should not celebrate the marriage, until he has been granted a registrar's Certificate or a Minister's licence.

It must be noted further that according to section 20 (2) of the Marriage Act, the marriage must be celebrated between the hours 8.00 am – 6.00 pm.

Section 22 provides further that the marriage has to be celebrated in a building duly licensed by Minister, or such place as Minister's license may direct.

VOID AND VOIDABLE MARRIAGES.

VOID.

A void marriage is void ab initio. A decree of nullity can be sought by any person with a legitimate interest and can be pronounced at any time, even after the parties have died.

IN DE RENEVILLE V DE RENEVILLE (1948) 1 ALL ER 56, the court defined a void marriage as one that will be regarded by every court in any case in which the existence of marriage is in issue as never having taken place and can be treated so by both parties to it without the necessity of any decree annulling it.

IN RE ROBERTS (1978) 3 ALL ER 225, the court held that if a marriage is declared void it is declared void on social and public policy grounds unlike in voidable marriages where the persons concerned with the grounds which make the marriage voidable are only the parties to the marriage and no one else.

S.34 lays down the instances when a marriage shall be void and these include:

- 1) S.34 (1) if it's within the prohibited degrees of kindred or affinity or if either of the parties has contracted customary marriage with any other person other than the person with whom the marriage is now had.
- 2) S.34(2) where parties knowingly and willfully acquiesce in its celebration:
 - a. In an unlicensed place without minister's license
 - b. Under false name or names
 - c. Without the registrar's certificate of notice or ministers license duly issued.
 - d. Conducted by an unlicensed person.

VOIDABLE MARRIAGES.

IN DE RENEVILLE, a voidable marriage was defined as a marriage that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction.

IN RE ROBERTS, the court held that where a marriage is voidable, the matter is left entirely in the hands of the parties and the parties may not wish to take advantage of their undoubted right to have the marriage declared void.

OBJECTION MY LORD

GROUNDS FOR VOIDABLE MARRIAGES.

1. Non-consummation.

S.12 (a) of the D.A allows an innocent party to petition for nullity on ground of permanent impotence.

IN DE RENEVILLE, the court held that non-consummation of a marriage rendered a marriage voidable whether it was based on incapacity to consummate or owing to willful refusal.

In D VA (1845) 163 ER 1039, the court held that consummation of the marriage requires ordinary and complete” rather than “partial and imperfect” sexual intercourse, including erection and penetration but not necessarily leading to orgasm.

In SINGH V SINGH (1971)2 ALL ER828, the court held that where there is willful refusal, the refusal must be settled and definite and arrived at “without just excuse”, the husband is expected to use appropriate facts, persuasion and encouragement if his wife is shy, and her resistance to insensitive demand will not necessarily be regarded as willful refusal.

In HORTON V HORTON (1947) 2 ALL ER 871, lord jowilt, stated that “willful refusal” means a settled and definite decision arrived at without just excuse, considering the whole history of the marriage.

2. Failure to consent

In RE ROBERT, the court held that absence of any consent renders a marriage voidable and not void. Consent to a marriage maybe voidable and not void. Consent to a marriage maybe varied by either insanity, duress or mistake as to the identity of the other or the nature of the ceremony.

a) Insanity.

In DURHAM V DURHAM (1885) 10 PD 80, the petitioner sought a decree of nullity and claimed his wife had not had the mental capacity needed for marriage. The court held that the contract of marriage is a very simple and which does not require a high degree of intelligence to comprehend. But a person who understands the language of the ceremony may still be affected by delusions or other insanity so as to have no real appreciation of its significance. Court found that the respondent had had sufficient capacity at the time of the marriage, though her condition had deteriorated later.

b) Duress.

In SINGH V SINGH (1971)2 ALL ER 828, for duress to suffice, it must be shown, it must be shown that the petitioners will was overborne or that her consent was obtained through force or fear. There must be a threat to the petitioner’s life, limb or liberty.

In BUCKLAND V BUCKLAND (1967)2 ALL ER 300, petitioner while working in Malta, developed a 15-year-old girl. He was arrested and charged with corrupting a minor. He affirmed his innocence, but his solicitor and his employer both advised him that he was unlikely to be believed and his only hope of escaping a substantial

prison sentence was to marry the girl. He went on to contract the marriage. On return to England, he sought to have the marriage annulled. The court annulling the marriage held that he had only consented because of his reasonable fear of imprisonment and that was not true consent.

c) Mistake

A mistake as to the identity of the other party is generally sufficient to make a marriage voidable, but a mistake as to his attributes or as to the effect of marriage is not.

In the case of **C V C (1942) NZLR 356**, the petitioner met a man, respondent who claimed to be Michael Miller, a well-known boxer. She married him after a short courtship and subsequently found he was not Miller at all and sought an annulment. The petition was dismissed. The court held that the petitioner was mistaken as to the respondent's attributes rather than his identity. She intended to marry the man, respondent, standing beside her and was mistaken only as to his name and profession.

In **RE C AND D (1979) 35 FLR 340**, the respondent was born a hermaphrodite. Underwent surgery as a young adult to remove the external signs of femininity. Married the petitioner and the marriage was never annulled. Wife (petitioner) filed for a declaration of nullity. Granting a declaration of nullity, the judge said W had intended to marry a male and was therefore mistaken as to the identity of her partner and that would be sufficient grounds.

APPROBATION OF VOIDABLE MARRIAGES.

This occurs in situations where one of the parties is fully aware of facts making the marriage voidable and conducts himself although the marriage is valid, he/she may be estopped from revoking the marriage and will be deemed to have waived his or her rights.

The defect will be cured once the innocent party approves the marriage.

In **W and W (1952) 1 ALL ER**, the parties were married in 1941 but attempts by the husband to consummate the marriage were unsuccessful. In 1945, on the suggestion of the husband, the parties adopted a child and later in 1946, the husband left the wife and sought to annul the marriage for non-consummation. The court held that the husband had so approved the marriage by his initiation of the adoption proceedings.

In **HARTHAN V HARTHAN (1948) 2 ALL ER**, the husband sought a declaration of nullity on a claim of his own impotence and claimed that in their 20 years marriages he had been unable to engage in any sexual intercourse and court declined to grant him the decree.

OBJECTION MY LORD

LEGAL EFFECTS OF MARRIAGE.

1. Married status.

Once married under the MA, you're incapable of contracting another marriage during the subsistence of that marriage. **In HYDE V HYDE**, marriage is monogamous and during its subsistence one cannot purport to enter another relationship.

2. Legal fiction of one person.

At common law, when married, the personalities of husband and wife were fused into one hence there could be no civil action between the spouses for they were one and similarly spouses could not be jointly charged.

However, Art 31 of the constitution provides for equality in marriage between husband and wife thus the wife cannot lose her personality to the husband. Further in **MIDLAND BANK TRUST CO.LTD V GREEN**, lord denning held that now days both in law and in fact, husband and wife are two persons not one. The severance being complete in all aspects except in so far as its stated by law or a judicial decision.

3. Right of the wife to use the husband's name.

A marriage gives the wife the right to use the husbands name if she so wishes but this is not obligatory. **IN FONDAL V GOLDSMITH**, court held that while marriage confers a right to the wife to use her husband's name, she cannot be forced to do so but if she desires, she can use it without swearing a deed pool.

- Even after termination of the marriage, a wife may keep her husband's name and the husband has no right to restrain her from using it except if she is using it for a fraudulent purpose.

COWLEY V COWLEY (1900) P 305, upon dissolution of a marriage wife kept using the former husband's name. He applied for an injunction restricting her from using the name. Court held that a man has no such property in his name as to title him to prevent a woman not his wife claiming to be such unless she does so maliciously.

4. Presumption of legitimacy of children.

Any child born during the subsistence of a marriage shall be presumed to have been fathered by the husband however this presumption can be rebutted if one shows overwhelming evidence to the contrary in:

- a. Where husband was temporarily or permanently impotent at the time of conception.
- b. Absence of the husband for a reasonably long time. In **PRESTON JONES V PRESTON JONES (1956)1 ALL ER 124**, the husband had not been around for over 360 days after a particular coitus, court held that the child was not his legitimate child.

In Uganda there is no distinction between “legitimate” and illegitimate” children, they are all considered children. **KAJUBI V KABALI (1944) 11 EACA 34.**

5. Right to consortium or conjugal rights.

In LYNCH V KNIGHT, consortium was defined as living together as husband and wife with all the incidents that flow from that relationship. The right to consortium is the right to the company, society and affection of a spouse in any matrimonial relationship.

In PLACE V SCARLE (1932)2 ALL ER 497, court held that both husband and wife have a right to consortium and a right to each other and each of them has a right against any person who abuses that right without noble cause.

Where one of the parties withdraws conjugal rights from the other unreasonably, the innocent party may petition court under S.20 of D.A for restitution of conjugal rights.

Where the order is for restitution is granted and the other party against whom its issued does not comply, their property may be attached or be condemned to civil prison per O.22 R19 of the civil procedure rules.

The non-compliance with the order as held in the case of **RV JACKSON (1891) 1 Q.B 671**, is a ground for separation or divorce because extra judicial means cannot be used to enforce the order.

Forcing the non-conforming spouse into coitus amounts to marital rape. **In R V R (Rape marital exemption) (1991)4 ALL ER 481**, the defendant went to her parents’ house and forcefully had sex with her. His conviction for rape was upheld by the HOLs who stated that the status women and particularly married women has changed beyond all recognition and in modern times any reasonable person must regard the common law position as to general consent to sex upon marriage as quite unacceptable. The supposed marital exception in rape forms no part of the law of England today.

In UGANDA V YIGA HAMID, HCT CRMINAL SESSION CASE 0055 OF 2002, Justice Kibuuka Musoke convicted the accused of rape finding no evidence that the couple had been married or that the woman had consented to sexual intercourse. The court further held that even if the couple had been married, women were constitutionally entitled to equal rights in marriage and the right to human dignity thus, the women would not have been obligated to submit to sexual intercourse against her will.

6. The right to maintenance.

Under common law, the husband has a duty to maintain his wife. The right to maintenance is often tied to the continued enjoyment of conjugal rights.

The right includes the right to a house and to be provided with recesses of like.

In the case of **KINTU V KINTU, DIVORCE APP. NO135 OF 97**, court held that the wife has a right to occupy the matrimonial home and be provided with necessaries of life and where this isn’t done, the wife can

OBJECTION MY LORD

exercise what under common law is called the **DESCETRED WIFES EQUITY**, which means that the wife may insist on remaining in the matrimonial house if she is deserted by the husband.

MAINTENANCE

How a wife can enforce maintenance

- a) Enforcing her right of agency of necessity

Arises in situation where the husband fails to provide for his wife necessities. The wife is allowed to pledge or take goods on credit for a trader and trader will be able to sue the husband for the credit for the wife is treated as an agent for the husband.

Biberfeld V Berens, in considering whether a wife, who has been compelled by her husband's conduct to leave him, is her husband's agent of necessity, regard must be had to her means. In the present case, the wife had assets which she could have been reasonably expected to use to pay for necessities and accordingly, she was not her husband's agent of necessity.

- b) Through a bilateral maintenance agreement.

Spouses living in separation may include a clause in their separation agreement of maintenance and this agreement must be enforceable.

In WILLIAMS V WILLIAMS, a wife left her husband and the husband promised to make her weekly payment for her maintenance. He failed in this and the wife claimed arrears. The husband claimed that she had deserted and she could maintain herself. Lord denning held that a promise to perform an existing duty is sufficient consideration to support a promise, so long as there is nothing in transaction which is contrary to the public interest.

- c) Maintenance order from court.

There is no provision in Uganda creating a right of a wife to seek a maintenance order where the marriage is still on going. Therefore, the petition is brought under the following provisions. Article 139 of the constitution, S.14 of the judicature act, S.98 of the CPA, S.10 of the MCA (if in magistrate courts). These provisions grant the courts with the jurisdiction to hear family matters and in doing so may apply doctrines of common law and equity in ensuring there is maintenance between the husband and the wife.

Rebuttal of common law presumption that a husband is liable to maintain his wife.

In **STRINGER V STRINGER (1952) 1 ALL ER 373**, the husband and wife separated by mutual consent in November 1946 and from that date the husband had not paid the wife any maintenance nor had she demanded any maintenance until 17th July 1951, when she issued a summons for willful neglect to maintain. Court held that proof of consensual separation of spouses without any agreement by the parties regarding the maintenance of the wife is sufficient to rebut the common law presumption that a husband is liable to maintain his wife.

7. The right to matrimonial confidence

This bars spouses from disclosing matters which come to their knowledge as a result of a marriage relationship. The parties to a marriage have an obligation of confidentiality towards one another and either can be restrained by injunction from revealing to 3rd party anything learned from the other in the course of their married life.

In **ARGYLL V ARGYLL (1965)1 ALL ER 611**, the duties of Argyll divorced the wife on grounds of the wife's adultery. The wife did not contest the divorce on the understanding that nothing more would be said about the adultery. The duke subsequently sold stories to newspaper giving intimate details of that and other aspects of the wife's private life. The wife sought an injunction prohibiting the publication. The court granting the injunction held that, not only was the disclosure contrary to the undertakings that had been given earlier, but it was a breach of the confidence presumed to exist between husband and wife.

8. Matrimonial property (Article 26 and 31 of constitution)

Justice Bbosa in **KINTU V KINTU** and cited with approval in **HOPE BALIMBISOMWE V JULIUS RWABIBINURI**. Matrimonial property was defined as property to which each spouse should be entitled to and this is property which the parties chose to call home and which they jointly contributed to.

There is no statutory law in Uganda governing matrimonial property and therefore most of the reference is made to case law.

CONTRIBUTIONS BY SPOUSES.

RWABINUMI V BAHIMBISOMWE, the Supreme Court held that a spouse's contribution to acquisition of property maybe direct or indirect monetary contribution and non-monetary contributions which enables the other spouse to either acquire or develop the property.

In **KIVUITU V KIVUITU C/A 26/85**, it was held that a wife does contribute to the family in a thousand other ways including child bearing, looking after the family. It can't therefore be said that only monetary contributions should be taken into account.

Court further noted that the wife indirectly contributes to towards payments for household expenses, preparation of food, purchase of children's clothing, organizing children for school and generally enhance the welfare of the

OBJECTION MY LORD

family and this amounts to a substantial indirect contribution to the family income and assets which entitle her to equal share in the couples' joint property.

In RWABINUMI V BAHIMBISOMWE, the Supreme Court further held that property acquired prior to the marriage by either spouse, property inherited during marriage or property individually owned by either spouse where the other spouse has made no direct or indirect contribution remains individually owned property. Therefore, property held prior to marriage and property individually acquired during marriage does not become joint property.

Where a spouse makes a direct/indirect contribution owned by another before the marriage, the spouse is entitled to share in the property to the extent of their contribution as was in **MAYAMBALA V MAYAMBALA DIVORCE CAUSE NO.3 OF 1998**

BANK ACCOUNTS.

Wives and husbands may have their separate accounts. It's also possible that they may have joint accounts or a joint pool from which they deposit or withdraw money though not necessarily in equal proportions. As a result, they acquire a joint interest their in.

In JONES V MAYNARD (1951)1 ALL ER 802, where the husband authorized his wife to draw on his account which was after used as a joint account. Into the account dividends from both the husband and the wife's investment were deposited thereon. The two had not agreed on what their rights are in this joint venture but they regarded the account as their joint property.

The court held that the wife's action for an equal share in the balances on the account and the investments carried out using monies drawn from the account would succeed.

On the evidence the intention of the parties was to constitute a pool of their resources in the form of a joint account, it was not consistent with that intention to divide the monies in the account and the investments made with monies withdrawn therefore by reference to the amounts respectively contributed to the account by each of them and therefore the husband must be regarded as trustee for the wife of one half of the investment and of the balance of the account.

SAVINGS FROM HOUSEHOLD EXPENSES.

IN BLACKWELL V BLACKWELL (1943) 2 ALL ER 579, on separation, the wife was found to have 103 pounds as savings in a cooperatives society and it was established that these savings were balances off the weekly housekeeping allowance made to the wife by the husband while the parties were still being together. It was contended that this sum was her own property. Court held that it was clear that the source of the money was the

husband's weekly allowance and in the absence of sufficient evidence to the contrary the money was still the husband's property.

However, lord denning dissented in the case of **HODDINOT V HODDINOT (1949) 2 K.B 406**, where he stated that the position adopted by his colleagues as was in **BLACKWELL V BLACKWELL** might well work an injustice for it took no account of the fact that any savings from the house keeping money were as much due to the wife's skill and economy as a house wife as to her husband's earning capacity.

In light of Article 26, art. 31 of the constitution and decisions such as **KIVUIT V KIVUIT AND JULIUS V HOPE**, the balance from housekeeping allowance must be shared equally.

WEDDING GIFTS.

Whether or not a gift belongs to one spouse alone or both of them is a question of the donor's intention. It is generally presumed that wedding presents in absence of any evidence to the contrary from the friends of either spouse (3rd party) belongs to that spouse alone.

In **SAMSON V SAMSON (1960) 1 ALL ER 653**, it was stated that there is no principle of law that wedding presents are joint wedding presents to both spouses. If there is evidence of intention on the part of the donor, that may determine whether the gift belongs to one spouse or both, but if there is no such evidence, the inference may be drawn that gifts from relatives and friends of a spouse were gifts to that spouse property which was given to one spouse may also become the property of both by subsequent conduct.

IN HOPE BAHIMBISOMWE V JULIUS RWABIBINUMI, DIVORCE CAUSE NO 4/2004, the court ordered the couple to share the marriage gifts equally given how they had subsequently conducted themselves in regard to the gifts.

Where a donor gifts for a joint use or ownership of the spouse, the gifts will be treated as jointly owned by the spouses.

In **KELNER V KELNER (1939) 3 ALL ER 957**, where a 100-pound deposited by the wife's father at the time of the marriage in a joint bank account in both spouses' names, was ordered to be divided equally between them. Court also noted that the spouse's subsequent conduct may turn a gift to one of them into joint property.

ISLAMIC MARRIAGES

The law applicable to this type of marriage includes the following:

1. The Marriage & Divorce of Mohammedans Act 252
2. The Marriage & Divorce of Mohammedans (Appointment of Registrars) Order SI 252-1

OBJECTION MY LORD

3. The Marriage & Divorce of Mohammedans (Fees) Order SI 252-2
4. The Marriage & Divorce of Mohammedans (Jurisdiction in Matrimonial Causes) Instrument SI 252-3
5. Sharia law

The issues for resolution usually include the following:

1. Whether the parties have capacity to contract a marriage?
2. If so, what formalities should be followed to effect the marriage?
3. What is the forum and documents?

Discussion

These are governed by Marriage and Divorce of Mohammedans Act Cap 252 provides in section 2 that 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 and customary, usual among the sect or tribe and registered as provided in the Act. shall be valid and registered as provided for under this act.

CAPACITY/ PREREQUISITES TO CONTRACT A MUSLIM MARRIAGE

These are spelt out in sharia law. The **Quran** provides in **Chap 4 vs 6** that the parties intending to contract must have attained the age of puberty. Secondly, the bride ought to give her consent. Consent of the wali is also a prerequisite. This is fortified by **Husin vs Saayah and Another (1980) 7JH 183**, where court held that without the consent of the wali, the marriage is a nullity.

The marriage has to be witnessed by at least two males or one male and one female. This is provided for in **Quran Chap 2vs 282**

There has to be payment of Mahr (Dowry). This is obligatory and it is taken as the consideration in a contract for marriage. This is fortified by the **Quran 4:4** where the husband is enjoined to give the wife by the marriage as free gifts. Parties should not be within prohibited degrees. This is provided for in the **Quran 4:23**, and these include the mother, father, daughters, son, mothers' son's, sister, father's sister etc.

CELEBRATION OF THE MARRIAGE

Celebration of the Marriage is not spelt out in the Act. Therefore, the Sharia practice prevails.

It must be noted that the marriage can be celebrated anywhere. This is usually at bride's home or mosque. There is no requirement for the Registrar of Marriages to be present. The marriage has to be witnessed by at least two males or one male and one female. This is provided for in **Quran Chap 2 vs 282**

REGISTRATION OF THE MARRIAGE.

The Marriage and Divorce of Mohammedans Act provides in section 3 and 4 for appointment of a Registrar. Section 5 requires that the registration should be done within a month from date of marriage. Application shall be by the husband before his death, if he dies before one-month elapses, then the widow can apply.

It must be noted that where parties are minors, application can be made by the Guardian.

Before Registration, Registrar must be satisfied that:-

- 1) *Marriage took place*
- 2) *Parties before him are the ones who actually entered the Marriage*
- 3) *The Guardian before him is the rightful person*

Effect of Non-Registration is that it doesn't render a valid marriage invalid.

HINDU MARRIAGES

The law applicable includes the following:

The Constitution 1995

The Judicature Act Cap 13

The Hindus Marriage and Divorce of Act Cap 250

The Hindus Marriage and Divorce (Marriage and Registration) Rules SI 250- 1

The Divorce Act Cap 249

Case law.

OBJECTION MY LORD

The issues for resolution usually include the following:

1. Whether the parties have capacity to contract a marriage?
2. If so, what formalities should be followed to effect the marriage?
3. What is the forum and documents?

Sec 1(c) defines this type of marriage as Marriage between Hindus etc.

The Preliminaries are laid out in section 2 of The Hindus Marriage and Divorce of Act Cap 250; and they include the following;

- 1) Neither Party should have a spouse living at the time of the marriage.
- 2) Parties are of sound mind
- 3) Groom attained is 18 years
- 4) Bride attained 16 years; if not; consent of guardian should be given.
- 5) Parties are not within prohibited degrees if consanguinity; or kindred. The prohibited degrees are provided in section 2(2) of the Act.

It must be noted that the persons capable of being guardians in section 3 of the Act, include the father, mother etc. and the guardian must have attained the age of 21 years. The chief magistrate is enjoined to appoint a guardian upon application of any interested party.

CELEBRATION OF THE MARRIAGE

This is provided for in Section 4 of the Act. The Marriage is solemnized in accordance with the customary rights and ceremonies of either party thereto. If the rites include taking the seven steps according to the **Saptapadi**; the marriage is completed on taking the seven steps.

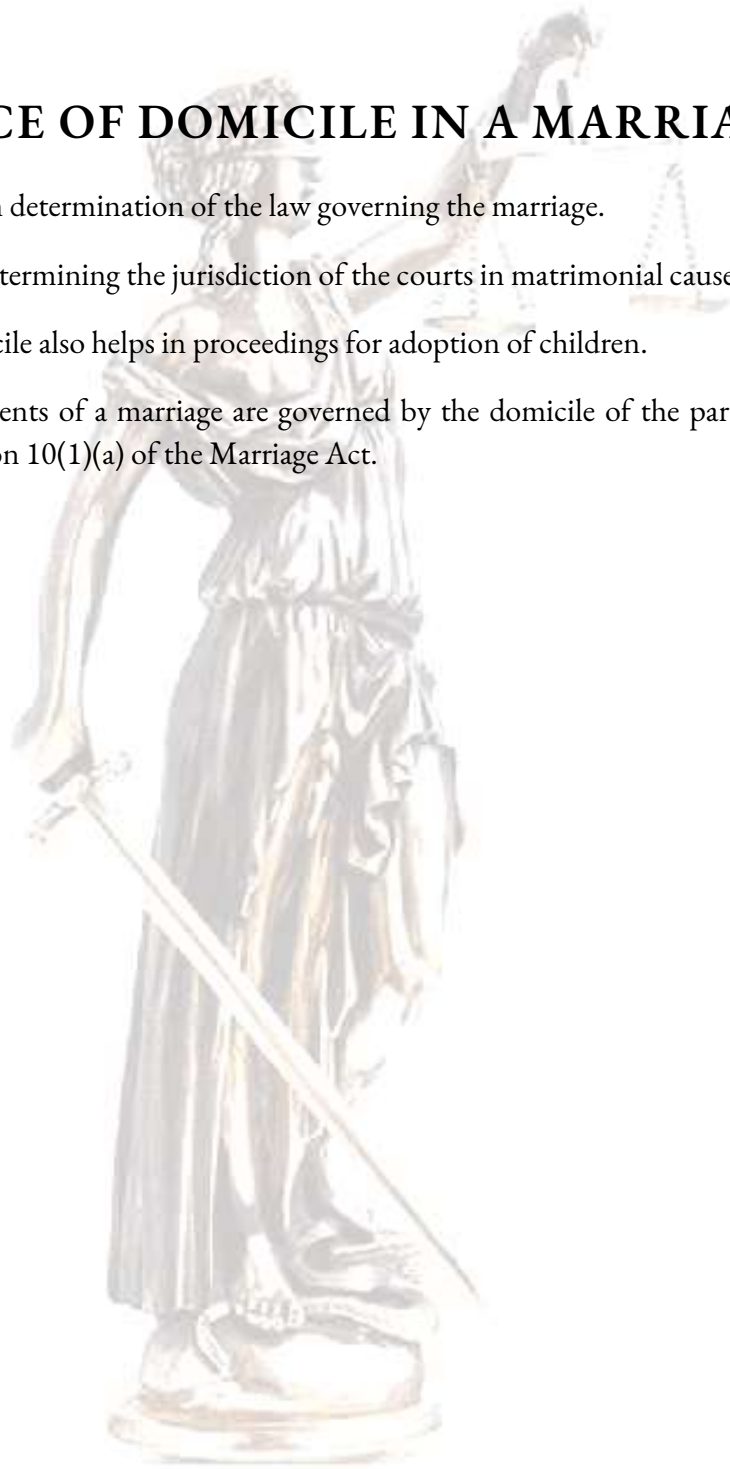
If the marriage is solemnized in the form of A and Koraj; the marriage becomes complete as soon as the fourth step is completed.

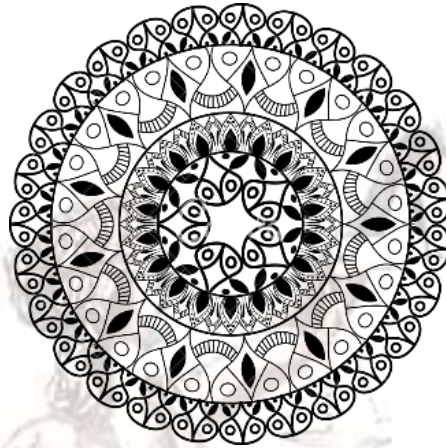
Section 6 of the Act provides that a marriage solemnized after the commencement of the Act shall be void if the former husband or wife of either party was living at the time of the marriage and the marriage with that former husband or wife was then in force and section 153 of the Penal Code shall apply.

Section 8 of the act provides that the Divorce Act shall apply to marriages solemnized under the Hindu Marriage and Divorce Act.

IMPORTANCE OF DOMICILE IN A MARRIAGE

- Domicile helps in determination of the law governing the marriage.
- It also helps in determining the jurisdiction of the courts in matrimonial causes.
- The law of domicile also helps in proceedings for adoption of children.
- Formal requirements of a marriage are governed by the domicile of the party to the marriage. This is fortified by section 10(1)(a) of the Marriage Act.





DIVORCE

An action for divorce is founded on a breach of an obligation arising out of a valid marriage contract. Where the marriage is void, divorce is not applicable.

In civil, church or Hindu marriages, the law applicable is the divorce act cap 249

For Islamic marriages, the marriage and divorce of the Mohammedans act applies.

For customary marriage, the various customs under which the marriage was contracted apply to the divorce in so far as they conform to the constitution. **KINTU V KINTU**. Following the decision **in MIFUMI**, where the refund of bride price was declared unconstitutional it's not.

Article 31(1) of the constitution is applicable to all the divorce in all the various marriage.

DIVORCE UNDER THE VARIOUS MARRIAGES

CUSTOMARY MARRIAGES

Depends on the communities and not the Divorce Act as enunciated in **Kintu Vs Kintu DA 135**.

The grounds for divorce include witchcraft, laziness, barrenness, incompatibility, impotence and adultery.

CIVIL MARRIAGES

TERMINATION OF MARRIAGES

A valid marriage may be terminated either by the death of the parties or by dissolution or divorce pronounced by a court *of* competent jurisdiction.

Divorce is defined as the termination of a valid and subsisting marriage by a court of competent jurisdiction. It must be noted that for court to pass a decree of divorce, the Petitioner should have been domiciled in Uganda at the time the petition is presented.

Before consideration of Divorce, it is incumbent to have the checklist below for resolution:

1. Whether there is a valid and subsisting marriage between the parties?
2. If so, whether the facts disclose any matrimonial offences?
3. If so, whether X can petition court for divorce?
4. What is the forum, procedure and documents?

GROUND FOR DIVORCE UNDER THE DIVORCE ACT.

The divorce act under S.4 provides for the grounds for divorce. These include: adultery, desertion. In the case of **UGANDA WOMENS LAWYERS ASSOCIATION V ATTORNEY GENERAL, CONSTITUTIONAL PETITION NO.2 OF 2003**, court held that any of the grounds stipulated in S.4 was sufficient to entitle the petitioner to a divorce.

In the case of **KAZIBWE V KAZIBWE, D.C NO.3 OF 2003**, court held that the position of law is that both adultery and cruelty are distinctive grounds each on its own rights upon which a decree for dissolution of marriage may be issued. The petitioner (wife) could therefore obtain a decree for divorce after proving to the satisfaction of the court either the ground of adultery or cruelty or both. **IN REBECCA NAGIDDE V CHARLES STEVEN MWASA, CACA NO.160 OF 2006, the C.A** set aside the decree nisi granted by the H.C on grounds that no matrimonial offence had been proved. The court reasoned that before the court grants a decree nisi, it must be satisfied that the petitioner has proved at least one matrimonial offence.

1. Adultery.

OBJECTION MY LORD

In the case of **HABYARIMANA V HABYARIMANA (1980) HCB 139**, adultery was defined as consensual sexual intercourse during the subsistence of the marriage between one spouse and a person of the opposite sex not being the other spouse.

Burden of proof and standard of proof

In **MARY RUHARA V CHRISTPOHER RUHARA (1977) HCB 86**, court held that the basic rule as established by case law is that in cases of adultery the burden of proof lies on the petitioner and its heavier burden than that lies on a party to an ordinary civil action though it is not high as in criminal case.

Elements of adultery.

1. That the person was married
2. They had sex with another person not being their spouse. The sexual intercourse must be complete for those to be adultery. **IN DENNIS V DENNIS (1955)2 ALL ER 51**, the court held that there is no distinction to be drawn between the word's sexual intercourse in the definition of adultery and carnal knowledge in criminal law. It must be shown that there was penetration of female organ by the male organ however slight.

EVIDENCE IN ADULTERY CASES.

It is not necessary to prove a direct fact of adultery. Adultery can be proved by circumstantial evidence as long as that evidence is cogent to the extent that it raises no other inference other than the fact that the respondent committed.

PRESTON JONES V PRESTON JONES (1951)1 ALL ER 124, where the respondent had given birth to a child 360 days after the last time, she had had sexual intercourse with her husband the petitioner who for all those days had been away.

In FRANK NIGEL OTHEMBI V ADONG GRACE CHODA DC NO.2 OF 1998, the petitioner found love letters in the respondent's bag.

CONDONATION OF ADULTERY.

Under S.9 of the divorce act, adultery is deemed to have been condoned where the offended party resumes conjugal cohabitation or was continued after discovery of the adultery.

In **Y.MUGONYA V TROPHY NAKABI MUGONYA (1975) HCB 297**, it was stated that proof of condonation requires evidence of forgiveness and reinstatement of the relationship although further commission of matrimonial offences receives the condoned offence.

2. Cruelty

Under S.4 (2) of the D.A, a spouse may petition for divorce on grounds of cruelty. In the case of **HABYARIMANA V HABYARIMANA**, the court stated that no conduct can amount to cruelty in law unless it has the effect of producing actual or apprehended to the petitioners physical or mental health.

KASASA V KASASA (1976) HCB 348, the court held that in order to constitute cruelty, the petitioner must prove that the respondents conduct constitutes danger to their life, limbs or health, bodily or mental or a reasonable apprehension of it.

The conduct of the respondent to constitute legal cruelty must be beyond the reasonable wear and tear of marriage life. In **RUHARA V RUHARA**, it was held that scalding a person with burning oil would be the most cruel and brutal act and a clear injury to life and limb.

In the case of **HABYARIMANA V HABYARIMANA (1980) HCB 139**, the court held that before coming to a conclusion as to whether the respondents conduct amounts to legal cruelty, the court must consider the impact of the personality and conduct of one spouse or mind of the other and all incidents and quarrels between the spouses must be weighed from that point of view and regard must be heard on the circumstance of each case and the mental and physical conditions of the parties ,their characters and social status. It has further been suggested that in deciding whether a particular conduct amounts to cruelty as a matrimonial case, the whole relation, the entire conduct, the personality, the character and the social status of the parties must be taken into account.

The court in **HABYARIMANA**, further noted that the burden of proof lies on the petitioner and the standard of proof is slightly higher than the preponderance of probability required in ordinary civil cases.

In **KIRUNGI DOREEN V MUGABE RONALD, DIVORCE CAUSE NO. 48 OF 2013**, the respondent had abandoned the matrimonial home and moved to live with his mother. Before that he had also stopped sleeping in the matrimonial bed and opted for the couch. The court held that the respondent was guilty for cruelty. It reasoned that looking at the evidence in totality, the entire matrimonial relations between the parties including their conduct amounted to cruelty. This was manifest in his denial of sexual intimacy to the petitioner, physical and verbal abuse and heavy drinking.

3. Desertion. (it's a form of self-help divorce)

(S.4 of the divorce act)

In the case of **PATEL V PATEL (1965) E.A 560**, court held that the constituents of desertion include:

- 1) *That the husband or wife left the matrimonial home for the statutory period two years*

OBJECTION MY LORD

- 2) *Did so without the consent of the other partner*
- 3) *Did so with the intention of permanently ending cohabitation.*

IN ERUME V KYOMUGISHA, DIVORCE CAUSE NO.9 OF 2014, the wife disappeared without trace and the husband was granted a divorce on grounds of desertion.

The black's law dictionary defines desertion as an actual abandonment or breaking off matrimonial cohabitation, by either of the parties, and a renouncing or refusal of duties and obligation of the relation with an intent to abandon or forsake entirely and not to return or resume marital relations.

ELEMENTS

1. Intention to desert.

This is the notice to desert. There is no desertion unless the guilty spouse has the intention of remaining permanently separated from the other.

If a spouse is away for business, is deployed in the army, ill, or in prison, the desertion is voluntary and will not be construed unless the intentions can be expressly proved.

In KAYE V KAYE, THE TIMES 1953, the separation was not voluntary and under computation for all practical purposes, it was never possible for the wife to leave Poland and come to England, nor was the husband ever able to join her there.

Where the deserting spouse is alleged to be insane, it is a question of fact to be determined by the courts whether he or she is capable of forming the necessary animus.

IN PERRY V PERRY (1963) ALL ER 766, the wife left her husband because she suffered from an (unfounded) insane delusion that he was trying to murder her. It was held that her conduct had to be judged as though her belief was true and, in these circumstances, it was clear that there could be no desertion because she believed that she had good cause for leaving her husband.

In KIRUNGI DOREEN V MUBAGE RONALD (SUPRA), court held that he had unreasonably deserted the petitioner by virtual of his having abandoned the matrimonial bed though his refusal to have sexual intercourse with the petitioner.

CONSTRUCTIVE DESERTION.

Where a spouse behaves in such a willful unreasonable and unjustifiable way that the other is driven out of his or her behavior, then there is desertion.

Constructive desertion is therefore above republic conduct which has to be ascertained in light of the presumption that a man intends the natural and probable consequences of his acts per court in **EDWARDS V EDWARDS (1948) P.268 C.A**

In LANG V LANG (1955) A.C 402, Lord Potter held that it is the intention of the deserting party which establishes desertion and that the intention permanently to end a relationship can be readily informed. Where a husbands conduct towards his wife was such that a reasonable man would know, and that the husband must have known, that in all probability it would result in the departure of the wife from the matrimonial home. That in the absence of rebutting evidence, there was sufficient proof of an intention on his part to disrupt the home and the fact that he nevertheless desired or requested her to stay did not rebut the information to be inferred from his acts that he intended to drive her out and he was guilty of constructive desertion.

However, irritating idiosyncrasies” which get on a wife’s nerves are part of the lottery in which every spouse engages on marrying.

In BUCHLER V BUCHLER (1947) P.25 AND 45, Asquth, LJ emphasized that the conduct must be more than the ordinary wear and tear of married life. The court stated constructively, the deserter may be the party who remains behind, if that party has been guilty of conduct which justifies the other party in leaving. Secondly to afford such justification, the conduct of the party staying need not have amounted to a matrimonial offence such as cruelty or adultery. But thirdly, it must exceed in gravity such behavior, vexatious and trying though it may be a every spouse bargain to endure when accepting the other for better or worse. The ordinary wear and tear of conjugal life does not in itself suffice.

DECREE OF DIVORCE AND ITS EFFECTS

The decree is made in two stages; the decree is followed by the decree absolute as provided for under section 37 of the Divorce Act. It must be noted the petitioner may apply for the decree to be made absolute at any time after the expiration of **six weeks** from granting the decree Nisi.

If a petitioner fails to move court within a reasonable time, the decree Nisi be made absolute, the

Court may dismiss the suit. It must be noted that the purpose of the delay is to enable any person show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not having been brought before court. This is fortified by the case of **Neogy v. Neogy 19G7 EA GG4** (see) dictate to students.

OBJECTION MY LORD

The Decree is only pronounced if court is satisfied that the petitioner has proved his/her case and has not been accessory to or has connived with the Respondent in the act complained of.

Secondly, though the petition is brought before the court, court shall not be bound to pronounce the decree if it finds that the petitioner has during the marriage been guilty of adultery or has taken unreasonable delay in presenting the petition.

EFFECT OF PRONUNCIATION OF DECREE

First and foremost, the marriage is dissolved and as a result, either spouse is thereafter free to re-marry. It must be noted that the decree nisi does not have this effect and if either party remarries before it is made absolute. To this end, the subsequent marriage shall be void. This is fortified by section 39 of the Divorce Act.

Secondly, the court may award damages against a co-Respondent for committed adultery with the wife of the petitioner, it must be noted that if the petitioner claims damages for the same, section 21 warrants that court may order male co-respondent to pay the damages granted and failure to pay can lead committal to civil prison.

Thirdly, Court may make orders as to payment of permanent alimony by the husband to the wife that is, the husband is made to secure to the wife such sum of money as awarded by court. Permanent alimony is provided for in section 24 of the Divorce Act. Court may order upon passing of a decree absolute or on a decree of judicial separation obtained by the wife; whereby the husband is ordered 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; as it thinks reasonable.

Alimony may be paid by yearly, month or weekly payment for any period not exceeding the life of the wife as provided for under section 24 of the Divorce Act. Another point worth noting about alimony is that the alimony should not exceed one fifth of the husband's average net income. This principle was enunciated in the case of **Gakwavu v. Gasengayire (1977) HCB 322**.

Fourthly, court may make orders as relates to property under section 26 and 27 of the Divorce Act. This is fortified by the case of **Saidi v. Mwanamkulu (1978) LRT 200**.

Lastly but not least, court may make orders as to the custody, maintenance & education of the minor children of the marriage or for placing them under the protection of court under section 29 of the Divorce Act. This is fortified by the case of **Nyakana v. Nyakana (1979) HCB 26.1** where court held on custody.

JURISDICTION (FORUM)

This is conversed in section 3 of the Divorce Act which states that where all parties are Africans, or where a petition for damages 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.

The High Court has jurisdiction where not all the parties are African. It should be noted however that the High Court has original jurisdiction in all matters, so one can invoke the inherent powers of the High Court to hear the matter.

In HOUGH V HOUGH, DIVORCE CAUSE NO.001/2006, the court held that the court in Uganda will have jurisdiction to hear the matter for as long as the petitioner establishes Uganda as his or her domicile of choice/origin. The court declared the issue of dependence domicile in relation to wives as being unconstitutional.

In order to satisfy the court that the parties have acquired domicile of choice, they must prove that they have abandoned their domicile of origin and they have settled intention to permanently stay in Uganda.

The blacks law dictionary (7th ed p.256), defines domicile as a place at which a person has been physically present and that the person regards as a home, a person's true, fixed, principle and permanent home, to which that person intends to return and remain even though currently residing elsewhere.

IN THORNHILL V THORNHILL (1965) EA 268, character and duration won't be material where there is personal presence.

IN ROBINAH KIYINGI V AGGREY KIYINGI C.A NO 41/2004, court held that the burden of proof is on the person alleging he has acquired a domicile of choice.

The aspect of domicile must be strictly stated in the petition/pleadings. **IN SATIVINDER SINGH V SANDNAR KAWR, H.C DIVIORCE CAUSE NO.2 OF 2002**, judge Kagaba among other things dismissed a petition which was defective for non-disclosure of the domicile of the petitioner. The judge stated that divorce must be ascertained in order to determine whether the court has the jurisdiction to entertain the petition and grant the reliefs prayed for. Mere stating that the parties were Indian origin was not enough disclosure of domicile.

GROUND FOR DIVORCE

Section 4(1) of the Divorce Act provides grounds for divorce for the Husband. Thus, where since solemnization of the said marriage, the wife has been guilty of adultery, the husband can petition court for divorce. This means the husband relies on one ground.

Section 4(2) of the Divorce Act provides grounds for divorce for the Wife. Thus, where since the solemnization of the marriage,

OBJECTION MY LORD

- a) The husband has changed the profession of the religion from Christianity to another religion and gone through another celebration of marriage, under Section 4(2) (a)
- b) Incestuous Adultery, under Section 4(2) (b) (i).
- c) Bigamy and adultery, under Section 4(2) (b) (ii).
- d) Marriage with another man couple with adultery, under Section 4(2) (b) (iii).
- e) Rape, Sodomy and bestiality, under Section 4(2) (b) (iv)
- f) Adultery and cruelty , under Section 4(2) (b) (v)
- g) Adultery and desertion without reasonable excuse for a period of two years or more , under Section 4(2) (b) (vi).

It must be noted further that where the husband is relying is the Petitioner and relying on adultery as a ground, the alleged adulterer has to be joined as co respondent unless he is excused by court. Under paragraphs (a) and (b) of **section 4 of the Divorce** act.

JURISDICTION IN ISLAMIC MARRIAGES.

The marriage and divorce of Mohammedans act, under S.18 provides for jurisdiction under the act, any competent court can grant relief albeit doing so under Mohammedi's law.

Article 129(1) (d) of the constitution provides for Qadhir courts although these have not yet been operationalized by an act of parliament, the court in the case of **SUMAYA NABAWANUKA V MED MAKUMBI (DIVORCE CAUSE NO.39 OF 2011)**, premising its decision on Art.274 of the constitution held that sharia courts operated by the **Uganda Muslim Supreme Counsel were courts of competent jurisdiction** to hear matters in matrimonial proceedings under the marriage and divorce of Mohammedi's act.

Court further held that the high court has jurisdiction to handle Mohammedan divorce and the law applicable must be Mohammedan law and not the law as provided in the D.A

Look at the marriage and divorce of Mohammedan (jurisdiction) regulations (S.1NO 252-3)

JURISDICTION IN CUSTOMARY MARRIAGE.

The customary marriage (registration) act is silent about the applicability of the divorce act. The law recognizes customary marriages and customary divorce however, it merely outlines that the marriage and divorce would be in accordance to one's culture (S.1 (2))

IN KINTU V KINTU, DIVORCE APPEAL NO1997, justice.135 OF Bbosa, held that the formal courts have the jurisdiction to dissolve customary marriages however they must do so applying the customs of the culture under which the marriage was contracted in as far as those custom to the constitution.

PROCEDURE IN DIVORCE PROCEEDINGS UNDER THE DIVORCE ACT.

1. Proceedings for divorce are brought by petition to the court as provided under S.4 of the act. **IN ANNE MUSISI V HERBERT MUSISI AND ANOR (DIVORCE CAUSE NO.14 OF 2007)**, it was held that divorce proceedings are commenced with a petition for dissolution of marriage by divorce, setting out the grounds on which the prayer for orders as to divorce relies.
2. S.30 provides that the proceedings under the D.A are regulated by the civil procedure act.
3. S.31 provides that every petition concisely states the nature the facts on which the claim is based and shall be verified as if it were a plaint and may be referred to as evidence during hearing. (This case it must be commissioned).
4. Court may grant interlocutory applications that may arise during the proceedings for example in **BASHEIJA V BASHEIJA AND ANOTHER, DIVORCE CAUSE NO.12 OF 2005**, where the court granted an interlocutory application to stay proceedings, when the petitioners counsel prayed for the order since the parties were in advanced stages of reconciliation.
5. Proof of service of petition and summons is crucial as is the case in normal civil proceedings.
6. Divorce proceedings may be held in camera. In **KIRUNGI V MUGABE, DIVORCE CAUSE NO.48 OF 2013**, the court granted prayers as to the sitting of court in chambers and noted that matters of divorce warranted meticulous privacy. S.35 of the act also provides for proceedings in camera.

DIVORCE IN ISLAM.

Islam immensely disapproves of divorce and encourages reconciliation of the event of disagreement but allows for divorce when it becomes inevitable. In **AYOOB V AYOOB (1968) EA 72**, court stated that marriage in Islam is not a temporary union and is meant for the entire span of life. Dissolution is however permitted if it fails to serve its objectives and has irretrievably broken down. It is purely contractual and not sacrament as it is in Christianity.

OBJECTION MY LORD

Ground.

The general ground of divorce in the Quran is the hopeless failure of one or both parties to discharge their marital duties and to consent with each other in kindness, peace and compassion.

Forms.

Marriage under Islamic law may be dissolved in four ways:

1. By the husband through talaq (outside court)
2. By mutual agreement of the spouses (khul)
3. By a judicial order of separation in a suit that may be raised by either of spouses. (fask)
4. Lian which is divorce by oath.

TALAQ.

Pre-requisites

- Husband should be sane
- Husband should not be a minor
- Husband should be exercising own discretion

In **AYOOB V AYOOB**, court held that a Mohammedan marriage could be dissolved by talaq

NUMBER OF PRONOUNCEMENTS.

An adult of sound mind, married person has the right to pronounce “divorce” (talaq) to his wife during the marital life three times.

The Quran 2; 229 says, a divorce is permissible twice, after that the parties should either hold together on equitable terms or separate with kindness.

For two times the husband has the right to revoke the pronouncement and can continue usual marital relationship

When he gives the 3rd talaq, then the spouses do not remain married.

WHEN TO GIVE THE TALAQ.

The wife should not be in her menses when the talaq is pronounced. Quran 65:2

EFFECT/RE-MARRYING

If a husband divorces his wife (irrevocably) he cannot after, re marry her until after she has married another husband and divorced her. After that period, the parties may re-unite. Quran 2:230.

PROCEDURE

1. The words used to convey the divorce must expressly convey the intention that the marriage tie is being dissolved.
2. The Talaq must be pronounced when the wife is in state of purity and the husband must abstain from having sexual inter course with his wife after pronouncing talaq for the period of the three months.
3. The divorce may be given orally or in writing but must take place in the presence of two just men to keep testimony. Quran 65:2
- 4.

STATUTORY PROVISIONS.

S.2 of the marriage and divorce of the Mohammedan act requires that the method of divorce to be carried out has to be in conformity with the rites and observances of the Mohammedan.

S.5 (1) (a) of the act provides for the registration of divorce by the husband within one month from the date of divorce.

Cases.

OBJECTION MY LORD

In *the king v. The superintendent registrar of marriages, Hammersmith (ex parte mir-awriwaruda) (1917) kb 634*, one of the issues raised was whether the declaration of divorce (talaq) made by the husband has the effect in England of dissolving a marriage contracted according to marry gain in England. The court held that a marriage solemnized in UK between a Mohamed domiciled in India and a Christian woman in UK cannot be dissolved by the husband handing to the wife a writing of divorcement although that would be an appropriate mode of effecting the dissolution of a Mohamedan marriage according to Mohammedan law.

In RE MOHAMED HUSSIN AND HAZIMAH (1990)7 JH 189, the husband pronounced three talaqs at the same time. The appeal committee held that the three talaq pronounced at the same time effected only a single divorce. The appellants thus could re marry.

FASK.

Fask is a decree by the Khadi (judge) after the careful consideration of an application by the wife. Its basis is in Quran 2:229

GROUND.

1. Defect in one of the spouses: according to Malik School, shafii and hanbali schools, each couple is entitled to get divorce due disease and physical defect e.g., leprosy, madness, leucocythaemia and impotency. According to Shafii School what forms the basis is the infectiousness of the disease that are passed from husband to the wife.
2. Failure to provide maintenance.
3. Cruelty: if the fears that the husband will injure her person to such an extent that she is unable to live with him as husband and wife. Quran 4:128. In the Tanzanian case of **ZAINABU V MOHAMMED (1973) EA 280**, the wife brought the suit for divorce on grounds of inter alia cruelty. Court held that evidence of cruelty would lead to the dissolution of marriage under fask.
4. Desertion by the husband: the reason for giving the right to the wife is to save her from injury and hardship.

KHULA.

It is an irrevocable divorce and is divorce by the woman. **IN SALUM V ASUMIN**, court held that a khula divorce is obtainable at the initiative of the wife and that although consideration for the khula divorce had

not been paid in full, there was a valid divorce and the amount paid should be recovered from the wife or her father. Seaton J in particular said “with regard to divorce (khula) to be clear from the authorities of Mohammedan law” khula divorce is obtainable at the initiation of the wife. It is accomplished at once by means of appropriate words spoken or written by the two parties or their respective agents, the wife offering and the husband accepting compensation out of her property for the release of his marital rights.

In HALIMA ATHUMANI V MAULIDI HAMISI (1991) TLR 179, appellant applied for divorce against her husband on grounds of cruelty on the part of her husband. She alleged that her husband insisted to have sex against the order of nature which she vehemently resisted. The court indicated that under the law, there are two ways in which female spouses may seek dissolution of the marriage. 1st is fask divorce, 2nd a Moslem spouse can proceed to demand Khulu before a sheikh.

- The provisions on registration apply.

LIAN.

If a husband puts forward slanderous accusation against his wife or a wife against her husband, the holy Quran lays down the procedure under 24:6-7 and 24:8-9. If a husband accuses his wife of adultery, he has to bring four witnesses to prove his case. Quran 4:15 but if he fails to do so he has to swear four times by God that he speaks the truth and 5th that the curse of God be on him if he be lying Quran 24:6-7. Against this if the wife also swears four times by God that her husband was telling a lie and fifthly if she invokes the wrath of God on her if her husband was speaking the truth. There is a deadlock then.

In this case, the Khadi holds the marriages dissolved as the couple isn't fit to live any longer as husband and wife.

REMEDIES OF THE PARTIES UPON DIVORCE.

The M&DMs act does not prescribe the remedies available to a party and S.18 specifically excludes the applicability of the divorce act. The section further grants power to any competent court given power to grant relief as provided under Islamic law to the party aggrieved. Thirdly, the H.C may exercise its inherent powers and grant appropriate remedies in accordance with Muslim law.

In RE HAMZA MOHAMED AND NASHAT MOHAMED (Minors) H.C FAMILY MISC APPLIC NO.89 OF 2012. The court considered the relief mentioned under S.18 of M&DMs Act. The application was brought by the wife under S.18. Mukiibi J stated that Section 18 means that any party to an Islamic marriage may come to the court seeking relief by way of divorce and any other consequential orders but the court must apply Islamic law. The High Court upheld the decision of the sharia court (at UMSC0 decision granting divorce to the parties and custody of the children to the wife and other relief.-

OBJECTION MY LORD

- a) Mahr: if not paid should be paid (Quran 4:4)
- b) Maintenance of wife (Quran 65:50)
- c) Maintenance of children ; after divorce, the man is supposed to contain maintaining the children (Quran 2:223)
- d) Right of accommodation entitlement of wife and husband should not chase her away. Quran 65:2



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2019

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

PETITION FOR DIVORCE.

The humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX, KAMPALA and it shows

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality, Wakiso District and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe Municipality, Wakiso district.
3. THAT your humble petitioner professes the Anglican religion.
4. THAT your petitioner was in the month of May 2015, was lawfully married to the respondent in a customary marriage under the Karamojong customs at the home of the parents of the petitioner in Moroto district,
5. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at All saint's church at Nakasero in the district of Kampala, and that
 - a) The marriage was solemnized under the provisions of the Marriage Act cap251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe Municipality and there is one issue of the marriage to wit Lubogo Juniorborn on the 1st September 2016.
6. THAT your petitioner's husband, LUGAMBO HENRY, in or about the months of AUGUST 2017, SEPTEMBER 2017, FEBRUARY 2018, MARCH 2018 AND OCTOBER 2019 at their matrimonial home in Entebbe Municipality, Wakiso district violently assaulted your petitioner by striking her in the

OBJECTION MY LORD

face, abdomen area, back and on the head with his enhanced fists, using a but on some occasions and his shoes at times.

7. THAT your petitioner's husband, LUGAMBO HENRY, in or about the months of AUGUST 2017 TO OCTOBER 2019 at their matrimonial home in Entebbe municipality, Wakiso district insulted your petitioner by blaming her for all his problems, for being Karamojong and calling her good for nothing. This has caused your petitioner mental and emotional anguish.
8. THAT all avenues ,forums and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results.(attached as Annexure 'A' is a copy of the minutes from one of the mediation meetings called by our relatives)
9. THAT due to the continued cruelty of the respondent to the petitioner, the marriage between the two of them has irretrievably broken down.
10. THAT the matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
11. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceeding nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) The marriage of your petitioner with the respondent be dissolved and a decree nisi be granted
- b) That the petitioner may have the custody of the issue of the marriage
- c) That the respondent be ordered to pay alimony of UGX.1,000,000 per month to the petitioner and pay UGX.1,000,000 per month to the petitioner for maintenance of the issue of the marriage.
- d) That the respondent pays the costs of and incidental to the petition
- e) That your petitioner may have such further and other relief as the court may deem fit.

DATED at KAMPALA, this 26th day of October 2019.

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Before me;

COMMISSIONER FOR OATHS

Drawn and filed by;

SUI GENERIS AND CO. ADVOCATES,

P.O BOX 7117, KAMPALA



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2019

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

SUMMARY OF EVIDENCE

The petitioner shall adduce evidence to the effect that the respondent, LUBOGO HENRY, has been cruel to her thereby causing her emotional and psychological torture.

LIST OF DOCUMENTS

The petitioner will adduce the following documents in support of the petition.

1. The marriage certificate
2. Minutes from the previous mediation meetings
3. Any other with the leave of court.

LIST OF WITNESSES.

The petitioner shall testify and call the following witnesses.

1. Akerimo Grace
2. Any other with leave of court

LIST OF AUTHORITIES

1. The divorce Act
2. Any other authority with leave of court.

Dated at Kampala on this 27th day of October 2019.

PETITIONER.

Drawn and filed by

SUI GENERIS AND CO ADVOCATES

P.O BOX 7117, KAMPALA.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
DIVORCE CAUSE NO. 002 OF 2006

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- RESPONDENT

SUMMONS TO ANSWER PETITION

WHEREAS the Petitioner has petitioned this court for a decree for dissolution of marriage;

YOU ARE hereby summoned to file an answer to the Petition in this court within 15 days from the date of service of summon to you.

AND TAKE FURTHER NOTICE that in default of doing so, the petition will be heard and determined in your absence

Dated at Kampala this Day of 2006

.....

REGISTRAR

TO BE SERVED UPON

NYADOI MARY



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
DIVORCE CAUSE NO. 002 OF 2006

OGWANG BOB **PETITIONER**
VERSUS
NYADOI MARY **RESPONDENT**
ODONG SOLOMON **CO- REPENDENT**

PETITION

THE HUMBLE PETITION OF OGWANG BOB SHOWETH;

1. THAT the Petitioner is an adult male Ugandan, for sound mind resident at Kikuba Mutwe, Ggabba, Kampala and your petitioner's address for purposes of this suit is C/O SUI GENERIS and Co. Advocates, P.O.BOX 7117, Kampala.
2. THAT the Respondent is a female adult Ugandan of sound mind and the Petitioner undertakes to effect service of the court process on her.
3. THAT your Petitioner Professes the Christian Religion.
4. THAT your Petitioner and the Respondent are domiciled in Uganda with a matrimonial home at Ggabba.
5. THAT your Petitioner was married to the Respondent vide a church marriage at All saints Cathedral on the 21st day of August 1998; solemnized in accordance with the provision of the marriage Act in force in Uganda; and have two issues to the marriage aged 3 and 5 respectively.

6. THAT in early 2004, the Respondent did commit adultery which the Co Respondent, at Room 12, Hotel Muyenga and around 20:00 hours on the 23rd of January 2004.
7. THAT owing to the adultery of the respondent, there has been an irretrievable breakdown of the said marriage between you petitioner and the said respondent.
8. THAT this petition is not prosecuted in collusion or connivance with the Respondent or with any other person connected in any way with these proceedings nor is your petitioner guilty of condonation.
9. THAT Notice to institute legal action was communicated to the Respondent.
10. THAT this cause of action arose in Kampala within the jurisdiction of this Honorable Court.

WHEREFORE, the Petitioner prays for

- a) A Decree for dissolution of marriage.
- b) An order of Maintenance for the Respondent.
- c) An order fort custody of the issues of the marriage
- d) Other Relief as Court Deems fit

DATED at Kampala the day of 2006

.....

Counsel for Petitioner

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

OBJECTION MY LORD

.....

Before me;

Commissioner for oaths

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA**

DIVORCE CAUSE NO. 002 OF 2006

OGWANG BOBPETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- REPENDENT

SUMMARY OF EVIDENCE

The Petitioner will adduce evidence to show that the Respondent has been guilty of adultery, and that the marriage has irretrievably broken down.

LIST OF WITNESSES

Ogwang Bob

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

Mugonya vs Mugonya (1975) HCB 95

OBJECTION MY LORD

Sheldon vs Sheldon (1962) 2 All ER 257

Common Law and Doctrines of Equity & Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....

Counsel for Petitioner



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
DIVORCE CAUSE NO. 002 OF 2006

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- RESPONDENT

REPLY TO PETITION

THE HUMBLE PETITION OF THE RESPONDENT SHOWETH;

1. THAT the Respondent is a female adult Ugandan of sound mind and the Respondent undertakes to effect service of the court process on her.
2. THAT your Respondent Professes the Christian Religion.
3. THAT your Respondent and the Petitioner are domiciled in Uganda with a matrimonial home at Ggabba.
4. THAT your Respondent was married to the Petitioner v-ide a church marriage at All saints Cathedral on the 21st day of August 1998; solemnized in accordance with the provision of the marriage Act in force in Uganda, and begot two issues of the marriage aged 3 and 5 years respectively.
5. THAT the Respondent has never committed adultery as alleged by the petitioner and as a result there has been no irretrievable breakdown of the said marriage between you Respondent and the said respondent.

OBJECTION MY LORD

6. THAT the said incident on the 23rd day of January 2004 was simply a meeting of a business partner and the Petitioner will be put to strict proof of the allegations.

WHEREFORE, the Respondent prays that the petition be dismissed with costs to the Respondent.

DATED at Kampala the day of 2006

.....
Counsel for Respondent

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....
RESPONDENT

Drawn and filed by:

SUI GENERIS and Co. Advocates
P.O.BOX 7117,
Kampala



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

DIVORCE CAUSE NO. 002 OF 2006

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- REPENDENT

SUMMARY OF EVIDENCE

The Respondent will adduce evidence to show that the Respondent has never committed adultery and as a result the marriage has never irretrievably broken down.

LIST OF WITNESSES

Nyadoi Mary

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

Mugonya vs Mugonya (1975) HCB 95

OBJECTION MY LORD

Sheldon vs Sheldon (1962) 2 All ER 257

Common Law and Doctrines of Equity

Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....

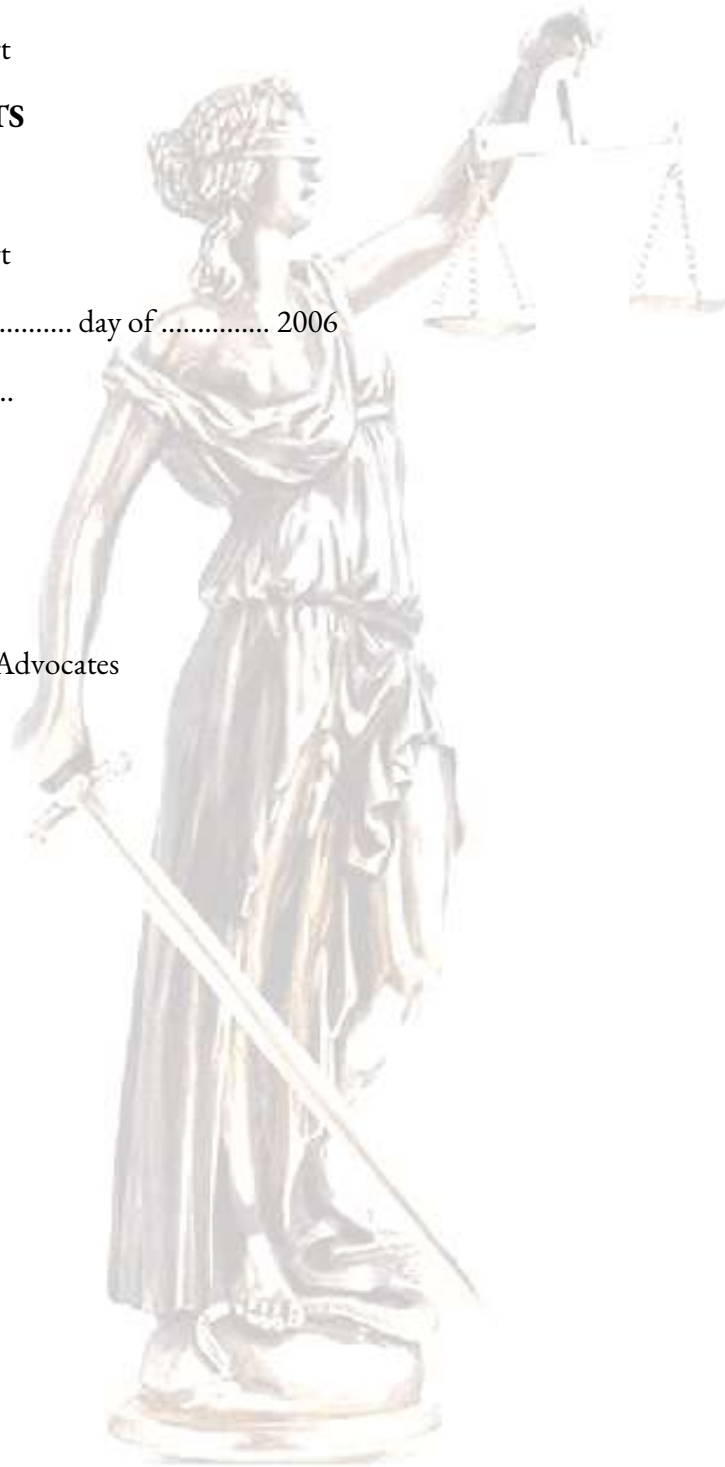
Counsel for Respondent

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala



ISAAC CHRISTOPHER LUBOGO

Caveat (S.13 of MA, S.27 OF CMRA)

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE MARRIAGE ACT

CAP. 251

AND

**IN THE MATTER OF A CAVEAT FORBIDDING THE
SOLEMNISATION OF A MARRIAGE.**

**TO: THE REGISTRAR OF
MARRIAGES AT KAMPALA.**

**CAVEAT FORBIDDING SOLEMNISATION OF A
MARRIAGE.**

TAKE NOTICE that I, LUGAMBO HENRY, being the lawful husband of GRACE AKOROMWIGURU who intends to contract another marriage at Christ the king church, hereby forbid the same for the following reasons.

1. That grace is already married to me having solemnized a marriage on 29th December 2015 at all saint's church Nakasero.

My address for purposes of service under this caveat is SUI GENERIS and co advocates, P.O BOX 7117 KLA.

Dated at Kampala this 25th day of October 2019.

SIGNED by the sand

LUGAMBO HENRY
CAVEATOR.

Before me

COMMISSIONER FOR OATHS.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBEE

AT ENTEBEE.

MATRIMONIAL CAUSE NO. 002 OF 2019.

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGANBO HENRYRESPONDENT

**PETITION FOR RESTITUTION OF CONJUGAL RIGHTS
AND PROVISION OF MAINTENANCE.**

(Under S.20 (1) and (2) of the D.A and O.22 rule 29 of civil procedure rules)

This is the humble petition of **GRACE AKOROMWIGURU** whose address for purposes of this petition shall be **SUI GENERIS AND CO.ADVOCATES, P.O BOX 7117, KAMPALA** and these are as follows:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates under take to effect service on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and is a resident of Entebbe municipality, Wakiso district
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015 ;lawfully married to the respondent at Christ the king church in the district of Kampala and that:
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe municipality and there are two issues of the marriage to wit LUGAMBO JUNIOR AGED 20 YEARS AND AKIROMO JUNIOR AGED 3 YEARS.
5. THAT, the respondent, LUGAMBO HENRY has not from the month of AUGUST 2017, to date not provided maintenance to the petitioner nor to the children.

- 6. THAT the respondent, LUGAMBO HENRY has since the 14th day of AUGUST 2015 refused and still refuses to render her conjugal rights albeit living in the same house and sleeping in the same bed.
- 7. THAT the petitioner has taken all necessary steps to have the respondent, LUGAMBO HENRY restore her conjugal rights but with no success in sight.
- 8. THAT the matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.

Your petitioner therefore humbly prays for a decree that;

- a) The respondent be ordered to provide maintenance for the wife and the children at a rate of UGX. 1,000,000 per month.
- b) The respondent be ordered to render the petitioner her conjugal rights
- c) The respondent pays the costs of and incidental to this petition.

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Drawn and filed by;

SUI GENERIS AND CO. ADVOCATES

P.O BOX 7117, KAMPALA

before me

.....

COMMISSIONER FOR OATHS.

Attach

- 1. Summary of evidence
- 2. Summons to file a reply
- 3. Mediation summary.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE DIVORCE ACT, CAP 249

AND IN THE MATTER OF THE CONTRACTS ACT, 2010

SEPARATION AGREEMENT.

THIS AGREEMENT IS MADE THIS 27th day of October 2019.

BETWEEN

GRACE AKOROMWIGURU aged 24 years whose address for purposes of this agreement shall be SUI GENERIS COMPANY ADVOCATES, PILKINGTON ROAD, KAMPALA. (Hereinafter referred to as the wife)

AND

LUGAMBO HENRY aged 35 years, resident of lubowa, Entebbe, Wakiso district (Hereinafter referred to as the husband)

WHEREAS the husband and wife lawfully contracted a marriage on the 15th day of October 2015 at All saint's cathedral Nakasero in Kampala.

AND WHEREAS they have since lived and cohabited together at their matrimonial home in Entebbe municipality and have two issues from the marriage to wit, Lugambo Junior aged 3 years and Lugambo Grace aged one year (Hereinafter referred to as the children)

AND WHEREAS the relationship between the two has broken down and thus they are desirous of separating and agree to live separately as agreed in this agreement.

THIS AGREEMENT IS THEREFORE WITNESSETH AS FOLLOWS:

1. NON MOLESTATION.

1.1 The parties mutually agree that there shall be no molestation of one by the other during the continuance of this agreement.

1.2 In the event that any of the parties violates the provision of clause 1.1 above, the party in breach shall pay damages of UGX 5,000,000 to the other innocent party.

2. MAINTENANCE OF WIFE AND CHILDREN.

- 2.1 The husband shall provide for the maintenance of children and the wife at a rate UGX.2,000,000 per month
- 2.2 The maintenance in clause 2.1 above shall be paid on every 28th day of the month and shall be deposited on the above account provided by the wife from time to time.
- 2.3 Failure to comply with clause 2.2 above, the sum in clause 2.1 shall attract an interest of 10% for each day after the 28th day to the day when the full sum due that month shall be paid.

3. LIVE A PART.

The parties agree that they shall continue to live separately in consideration for having each other's consortium.

4. DUM CASTA CLAUSE

None of the parties to this agreement shall be at liberty to have sex with another person during the subsistence of this agreement.

5. MATRIMONIAL PROPERTY

- 5.1 each party shall be entitled to take property constituting wearing apparel and personal effects
- 5.2 the wife shall be entitled to retain the matrimonial home during the subsistence of this agreement
- 5.3 all other properties constituting matrimonial property at the time of execution of this agreement shall continue to be held jointly and for the benefit of both parties
- 5.4 the party deriving any income from any of the properties mentioned in clause 5.3 shall have to account to the other party for all revenues earned from the properties and shall relinquish half of the income earned to the other party as their share in the income earned to the other party as their share in the income earned from the property.
- 5.5 All properties acquired by the parties during the subsistence of this agreement shall not be construed as constituting matrimonial property during the subsistence of this agreement or thereafter.

OBJECTION MY LORD

6. DURATION

- 6.1 This agreement shall unless otherwise expressly agreed upon by the parties in writing run for a period of two years from the date of execution.
- 6.2 Notwithstanding clause 6.1, the parties may by mutual consent terminate this agreement at any time during its subsistence.

7. CUSTODY OF THE CHILDREN.

- 7.1 The parties agree that the wife shall have custody of the children while the husband shall have visitation rights at all times
- 7.2 In exercise of his visitation rights in clause 7.1 above, the husband shall ensure that he gives at least a days' notice to the wife and shall ensure the visits are in a reasonable time
- 7.3 For avoidance of doubt, reasonable time shall be construed to be between 9:00am and 7:00pm.

8. AMENDMENT.

No provision in this agreement shall be varied or deemed to be varied except where there is an express agreement to that effect in writing signed by the parties.

9. DISPUTE RESOLUTION.

- 9.1 All disputes arising under this agreement shall be referred to a mediator within 10 working days from the date when the dispute arose.
- 9.2 The mediator referred to in clause 9.1, shall be a mediator appointed by CADER upon application by either party,
- 9.3 The mediation referred to clause 9.1, shall not exceed 30 days from the first day when the mediation is commenced.
- 9.4 Where the parties fail to reach a settlement in respect of the dispute, they shall refer the matter to court of competent jurisdiction for resolution of the dispute.

10. LAW APPLICABLE.

ISAAC CHRISTOPHER LUBOGO

This agreement shall be governed by the laws of the republic of Uganda.

IN WITNESS WHEREOF, the parties have appended their signatures hereto on the date and year first mentioned above.

SIGNED BY:

AKORIMO GRACE
(WIFE)

In the presence of

KIZITO DERRICK
ADVOCATE

Drawn by

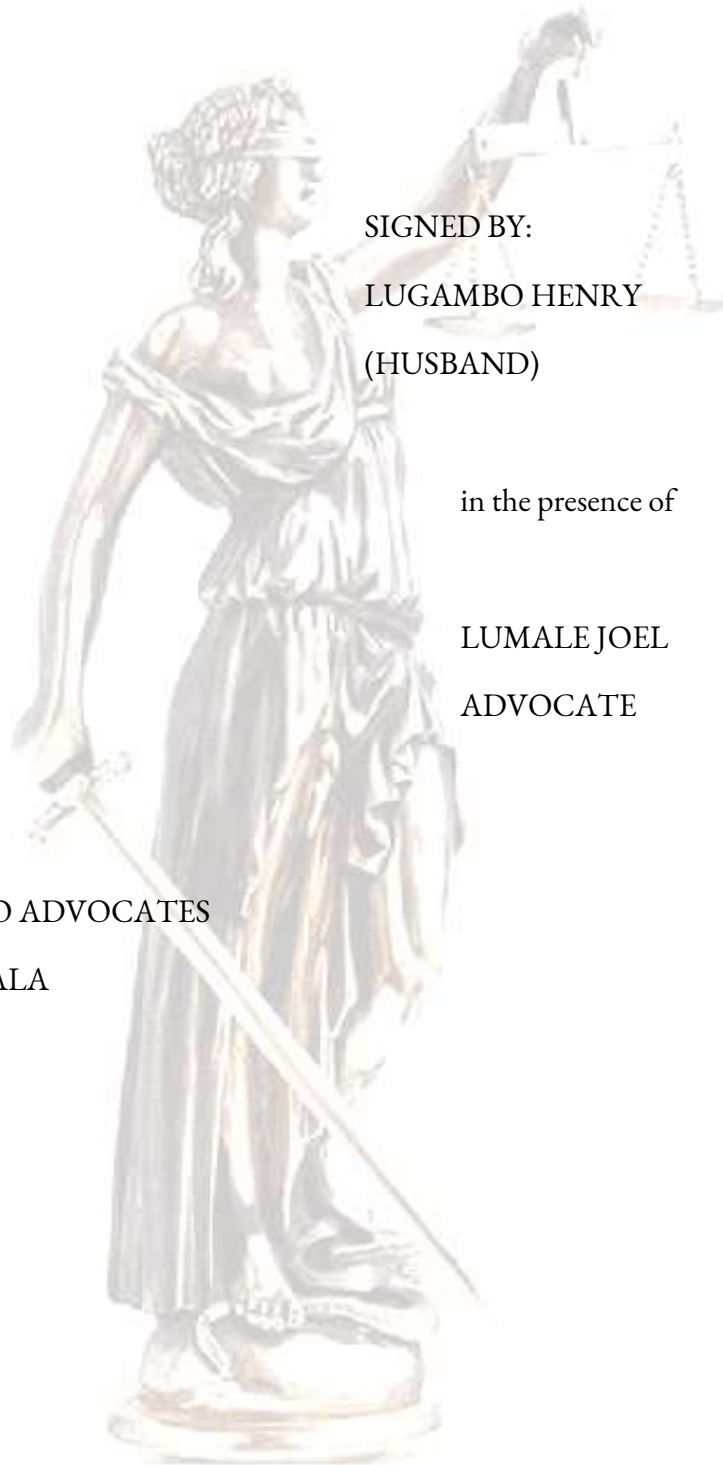
SUI GENERIS AND CO ADVOCATES
P.O BOX 7117, KAMPALA
UGANDA.

SIGNED BY:

LUGAMBO HENRY
(HUSBAND)

in the presence of

LUMALE JOEL
ADVOCATE



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE

MATRIMONIAL CAUSE NO 003 OF 2019

AKIROMO GRACEPETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

PETITION FOR SEPARATION.

(Under section 14 of the divorce act cap 249 and rule 4 of the divorce rules)

This is the humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX 7117, KAMPALA and it showeth:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe municipality, Wakiso district.
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at all saint's cathedral at Nakasero in the district of Kampala and that
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251
 - b) After the marriage, your petitioner hired and cohabited with the respondent, LUGAMBO HENRY at kiwanga village, Entebbe municipality and there is one issue of the marriage to will LUBOGO JUNIOR born on the 1st September 2016.
5. THAT your petitioner's husband, LUGANBO HENRY, in or about the month of AUGUST 2017, SEPTEMBER 2019, at their matrimonial home in Entebbe municipality, Wakiso district, violently assaulted your petitioner by striking her in the face, abdomen areas, back and her head with calendared fits and his belt.
6. THAT all avenues and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results (Attach evidence if any)

ISAAC CHRISTOPHER LUBOGO

7. THAT due to the respondent's cruelty to the petitioner, the marriage between the two has broken down.
8. THAT this matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
9. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceedings nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) Your petitioner be judicially separated from LUGAMBO HENRY, the respondent
- b) The petitioner be granted custody of the issue of the marriage
- c) The respondent be ordered to pay a monthly maintenance for the child at a rate of UGX 1,000,000 per month.
- d) The respondent be ordered to pay alimony to the petitioner at a rate of UGX1,000,000 per month
- e) That the respondent pays the costs of and any other costs incidental to this petition.
- f) Any further remedies as the court may deem fit.

PETITIONER

I, AKIROMO GRACE, certify that the statements above are true to the best of my knowledge, information and belief.

PETITIONER

Drawn and filed by:

before me

SUI GENERIS AND CO ADVOCATES,

P.O BOX 7117, KAMPALA, COMMISSIONER FOR OATHS.UGANDA.

DIVORCE UNDER MOHAMMEDAN MARRIAGES

There are three types of divorce under Mohammedan law, and they are discussed below, thus;

TALAK DIVORCE

In its primitive sense, the word *talaq* means dismissal [to dismiss], but in law it signifies a release from the marriage tie. The Muhammadan law of divorce is founded upon express injunctions contained in the Qur'an, as well as in the Traditions, and its rules occupy a very large section in all Muhammadan works on jurisprudence⁶.

In this mode of divorce, if it is Talak Aslam, the husband has to pronounce Talak every month for three months. Talak Bidad is taken before a court of competent jurisdiction; it can in writing or can be oral. If it is deduced to writing, it has to be delivered to the wife.

The conditions for talak include the following:

The man should be sane;

He should not be a minor;

Pronouncement of the talak should be at his own discretion.

The talak should be pronounced when the wife is in a state of purity.

The last talak should be pronounced in the presence of witnesses.

FASK DIVORCE

This is an annulment or an abrogation of marriage. It is a decree passed by the Qadi after careful consideration of an application by the wife.

The grounds a wife can rely on include the following;

1. Separation due to defects in one of the spouses
2. Separation due to difficulties of the husband.

⁶Excerpt from "Dictionary of Islam" by Thomas Patrick Hughes © 1886

3. Separation due to apostasy of one of the spouses.
4. separation due to lack of equality of status of the husband

KHUL DIVORCE

This type of divorce is at the instance of the wife; she has to prove any of the following grounds:

Cruelty or maltreatment

Quitting conjugal domicile without making provision for the wife

Insanity on the part of the husband.

Any other case, which in the opinion of the Qadi justifies divorce.

HINDU MARRAIGES

Divorce under this type of marriage is regulated by the Divorce Act by virtue of Section 8 of the Divorce Act.

NULLITY OF MARRIAGES

In law, a marriage can be rendered null and void if it is an unlawful marriage by virtue of conditions existing at the time of the marriage. These conditions can mean lack of capacity to contract. Evidence of fraud or duress preventing legal consent to the marriage and sexual impotence of one spouse that exist at the time the marriage is contracted and that was unknown to the other spouse.

Nullity of marriage should be differentiated from divorce. A decree of nullity declares, in effect, that the parties were never married, and at one time it absolved them from all obligations to each other. Thus, a decree of nullity is a judgment in rem, so no one can subsequently allege that the marriage is valid.

Divorce on the other hand is an acknowledgement of a valid and subsisting marriage, which the parties wish to terminate through a recognized process.

Another distinction which ought to be noted is that between void and voidable marriages. A void marriage is one where, although the parties have gone through a ceremony of marriage, they have not acquired the status of husband and wife owing to the presence of some impediment.

OBJECTION MY LORD

Lord Greene held in **De Reneville vs De Reneville [1948] 1 All ER 56** that a void marriage is one that will be declared will be regarded by every court in any case in which the existence of the marriage is in issue as never taken place and can be so treated by both parties to it without the necessity of any decree annulling to it.

A voidable marriage is a marriage which seems to be valid on the face of it, save for some reason, which if used at the instance of either party does terminate the marriage. **Some of the grounds one can rely on to terminate a voidable marriage include the following:**

FAILURE TO CONSUMMATE THE MARRIAGE.

A marriage is said to be consummated as soon as the parties have sexual intercourse just after the marriage. Failure to consummate a marriage will be a ground for petitioning court for a decree of decree of nullity if the failure to consummate is a willful refusal of the part of the Respondent. Refusal to have sexual intercourse in any form will be a ground; particularly where the respondent refuses to take treatment to remove the physical or psychological impediment to consummation. This was fortified by **S v S (1954)**.⁷

It must be noted however, that the possibility of conception is irrelevant; what matters is the act, whether a sheath has been used or not. This was held in **Baxter vs Baxter (1942) 2 All ER 886**.

LACK OF CONSENT

It must be noted that a marriage is a contract and therefore lack of consent will invalidate the contract. A marriage shall be voidable if either party did not validly consent to it.

UNSOUNDNESS OF MIND

If, at the time of celebration of the ceremony, either party was unable to understand the nature of the contract he was entering into, this will affect a marriage. The test to be applied was laid down in the **Estate of Park 1953(2) All ER 1411 C/ A** where court held that where the person was not capable of understanding the nature of the contract into which he was entering or was in a condition such that he was incapable of understanding it. This therefore means that a person must be capable of appreciating the responsibilities and duties normally attached to marriages.

⁷ 3 All ER Reprint 736 at 743-744.

OTHER GROUNDS INCLUDE:

DRUNKENNESS AND DRUGS;

Effect of Drunkenness and drugs can be taken

MISTAKE AS TO THE IDENTITY OF THE CONTRACTING PARTY.

Where one is mistaken as to the person he or she is marrying, this can be a ground for nullity of the marriages.

FRAUD AND MISREPRESENTATION;

According to **Sing Vs Sing (1971) 2 All ER 828** court held that where it is proved that the will of one of the parties was overborne by genuine and reasonably held fear caused by threat and immediate danger to life, limb and liberty so that the constraint destroys the reality of consent in wedlock.

VENEREAL DISEASES

The husband may petition court for a nullity of marriage if at the time of the marriage, the Respondent was suffering from a venereal disease.

PREGNANCY *PER ALIUM*

The husband may petition court for a nullity of marriage if at the time of the marriage, the Respondent was pregnant by someone other than the petitioner.

BARS TO RELIEF OF NULLITY

There are three bars at common law against a party to a voidable marriage where he/she puts it out of his/her power to obtain a decree of nullity by his/her own conduct. These include the following:

a) Petitioner's Conduct:

OBJECTION MY LORD

This is premised on The Matrimonial Causes Act 1973 section 13(1) which provides that court shall not grant a decree of nullity on the ground that the marriage is voidable if the respondent satisfies court that the petitioner knew of the voidability of the marriage but conducted himself or herself in such a way that led the respondent to believe that the petitioner would not seek to annul the marriage.

ii) Delay

This is evident in situations where the Petitioner knows that it is open to him to him or her to have the marriage avoided but delays to take any legal steps to effect his intentions. The length of the delay is defendant on many factors and varies from case to case.

ii) Injustice of Decree

Where it is clear on the face of it that the decree will cause injustice to the respondent, the relief is not granted. In this case, court looks at the length of the marriage as one of the factors.

iii) Lapse of Time:

Under common law (s.13 of the Matrimonial Causes Act 1973) In all cases except those based on importance or willful refusal to consummate, a decree of nullity must be refused if the proceedings were not instituted within three years of the date of the marriage. The purpose for this is to ensure that the validity of the marriage is not in doubt for too long. It must be noted that the lapse of time is not a bar in a case of inability or willful refusal to consummate marriage because the petitioner may try to overcome the impediment for a longer period than three years.

iv. Petitioner's Knowledge

If the petition is based on the Respondent's venereal] disease or pregnancy per aluim, the court must be satisfied that the petitioner was ignorant of the facts alleged at the time of marriage. If these facts were within the Petitioner's knowledge, court will be slow to consider granting of relief to the Petitioner.

ISAAC CHRISTOPHER LUBOGO

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006**

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

SUMMONS TO ANSWER PETITION

WHEREAS the Petitioner has petitioned this court for a decree for nullity of marriage;

YOU ARE hereby summoned to file an answer to the Petition in this court within 15 days from the date of service of summon to you.

AND TAKE FURTHER NOTICE that in default of doing so, the petition will be heard and determined in your absence

Dated at Kampala this Day of 2006

.....

REGISTRAR

TO BE SERVED UPON

NYADOI MARY

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006

OGWANG BOB**PETITIONER**

VERSUS

NYADOI MARY **RESPONDENT**

PETITION FOR NULLITY OF MARRIAGE

THE HUMBLE PETITION OF OGWANG BOB SHOWETH;

1. THAT the Petitioner is an adult male Ugandan, for sound mind resident at Kikuba Mutwe, Ggabba, Kampala and your petitioner's address for purposes of this suit is C/O SUI GENERIS and Co. Advocates, P.O.BOX 7117, Kampala.
2. THAT the Respondent is a female adult Ugandan of sound mind and the Petitioner undertakes to effect service of the court process on her.
3. THAT your Petitioner Professes the Christian Religion.
4. THAT your Petitioner and the Respondent are domiciled in Uganda with a matrimonial home at Ggabba.
5. THAT your Petitioner was married to the Respondent vide a church marriage at All saints Cathedral on the 21st day of July 2006; solemnized in accordance with the provision of the marriage Act in force in Uganda; and have two issues to the marriage aged 3 and 5 respectively.
6. THAT after the solemnization of the marriage, the Petitioner discovered on 9th October that the Respondent was three months pregnant with a child not being his.
7. THAT owing to this pregnancy per alium, there has been an irretrievable breakdown of the said marriage between you petitioner and the said respondent.

8. THAT this petition is not prosecuted in collusion or connivance with the Respondent or with any other person connected in any way with these proceedings nor is your petitioner guilty of condonation.
9. THAT Notice to institute legal action was communicated to the Respondent.
10. THAT this cause of action arose in Kampala within the jurisdiction of this Honorable Court.

WHEREFORE, the Petitioner prays for

- e) A Decree for nullity of marriage.
- f) Other Relief as Court Deems fit

DATED at Kampala the day of 2006

.....
Counsel for Petitioner

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....
PETITIONER

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MATRIMONIAL CAUSE NO. 002 OF 2006

OGWANG BOBPETITIONER

VERSUS

NYADOI MARY RESPONDENT

SUMMARY OF EVIDENCE

The Petitioner will adduce evidence to show that after solemnization of the said marriage, the Petitioner discovered that the Respondent was pregnant with a child not being his, meaning that at the solemnization of the marriage, the Respondent was pregnant and that the marriage has irretrievably broken down.

LIST OF WITNESSES

Ogwang Bob

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

CASE LAW

Common Law and Doctrines of Equity

Others with leave of court

LIST OF DOCUMENTS

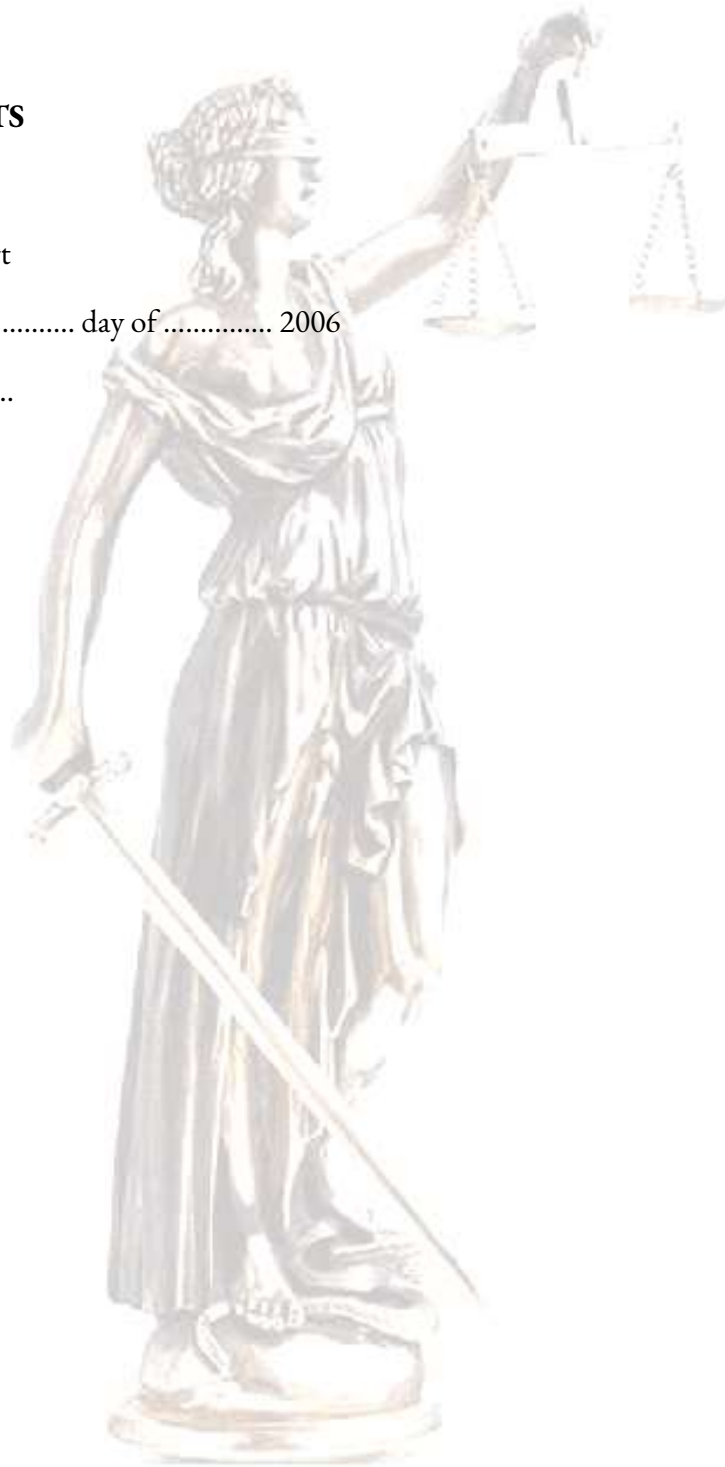
The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....

Counsel for Petitioner.



OBJECTION MY LORD

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006**

OGWANG BOBPETITIONER

VERSUS

NYADOI MARY RESPONDENT

REPLY TO PETITION

THE HUMBLE PETITION OF THE RESPONDENT SHOWETH;

1. THAT the Respondent is a female adult Ugandan of sound mind and the Respondent undertakes to effect service of the court process on her.
2. THAT your Respondent Professes the Christian Religion.
3. THAT your Respondent and the Petitioner are domiciled in Uganda with a matrimonial home at Ggabba.
4. THAT your Respondent was married to the Petitioner vide a church marriage at All saints Cathedral on the 21st day of July 2006; solemnized in accordance with the provision of the marriage Act in force in Uganda, and begot two issues of the marriage aged 3 and 5 years respectively.
5. THAT the Respondent has never had any other affair other than that with the Petitioner and as a result, the alleged pregnancy is out of my union with him.

WHEREFORE, the Respondent prays that the petition be dismissed with costs to the Respondent.

DATED at Kampala the day of 2006

.....

Counsel for Respondent

VERIFICATION

ISAAC CHRISTOPHER LUBOGO

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

RESPONDENT

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006

OGWANG BOB**PETITIONER**

VERSUS

NYADOI MARY **RESPONDENT**

SUMMARY OF EVIDENCE

The Respondent will adduce evidence to show that the alleged pregnancy is as a result of her union with the Petitioner and as a result the petition should not be granted.

LIST OF WITNESSES

Nyadoi Mary

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

CASE LAW

Common Law and Doctrines of Equity

Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....

Counsel for Respondent

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala



OBJECTION MY LORD

CASES

Sumaya Nabawanuka V Med Makumbi Divorce Cause No. 39 Of 2011. Justice Kainamura.

The petitioner filed this petition seeking for a decree nisi dissolving the marriage between the petitioner and the respondent custody of the child, maintenance of the petitioner and the respondent custody of the child, maintenance of the child, alimony, share of the matrimonial property, costs and any further order. The respondent in his reply refuted the allegations and by way of a P.o. applied for the petition to be dismissed because it is rededicated since the matter before court had been finally determined by the sharia Court of the Muslim Supreme Council counsel for the respondent argued that same parties and laid already been determined by the court with competent jurisdiction, A.129 (1) (d) of the constitution. That it is the court envisaged under the marriages and Divorce of Mohammedans Act Cap 252. Counsel for the petitioner urged that Parliament has not yet operationalized A. 129(1) (d) that requires parliament to establish Qadhi courts and that High court has inherent powers to give remedies to all aggrieved parties before it.

It was held: - sharia Courts of the Muslim supreme council are operating within the law and are competent courts to handle divorce cases and grant relief. Therefore, the matter was heard and determined by a competent court would surely run afoul of S.7 of the CPA as it is res judicata.

Julius Chama V Specioza Rwalinda Mbabazi Divorce Cause No.25 Of 2011.

The petitioner sought orders of the court for dissolution of his marriage with Specioza Rwalinda Mbabazi and he prayed for custody of the only child in the marriage and costs of the petition. The petition was based on the ground of cruelty as set out in the petition.

Uganda Association of women Lawyers and 5 others v A.G const. petition No.2 of 2003 where the constitutional court nullified sections 4(1), (2), 5,22,23,24 and 26 of the Divorce Act Cap 249. The said provisions are of no legal consequence and are no longer valid. This remains the position of the law (*Han Herman Kock v Victonu kageba D.C NO.6 of 2011*)

What courts have done to bridge the gap is to look at the totality of the facts before it and determine whether the facts lead to the finding that the marriage has irretrievably broken down then divorce is granted (*Gershom Masiko v Florence Nasiko CA No.8 of 2011*)

The court held that since the acts of adultery, desertion and crudely have according to the uncontroverted evidence of the cross petition and her witness been established, the marriage between the petitioner and the respondent has interievably broken down and should be dissolved.

Absence of proof of existence of and ownership of the said properties fails the issue as court has no property to distribute.

Kanweru V Kanweru [2003] 2 E.A 484

The appellant had filed a divorce petition in the High court seeking dissolution of his marriage on ground of adultery committed with three persons, Evidence was adduced that the appellant had caught an SID from the respondent though no medical records were produced, and the respondent used not to be at home at midnight when the app would call from abroad.

Held:- the standard of proof is set out in S.10 of the Matrimonial causes Act. The requirement is that court must be satisfied that a matrimonial offence has been proved.

The Act does not refer to proof beyond reasonable doubt and it is proper to put the burden of proof at the level of a feeling certain.

Mayambala V Nayambala Divorce Cause No.3 Of 1998.

The petitioner filed this petition against her husband (respondent) seeking orders for dissolution of their marriage under the Divorce Acts custody of the children of their marriages, payment of the debts owed to the petitioner by the respondent, her contribution to the matrimonial house, and expenses for the education and maintenance of the children of the adultery and cruelty. Adultery has been defined as the voluntary sexual intercourse between a married to each other.

To be a ground, the adultery must be committed since the celebration of the marriage. It is immaterial whether the marriage has been consummated or not.

One act of adultery is sufficient Douglas v Douglas [1952] ALL ER 748. It must carry a high degree of probability.

Cruelty may be defined as willful and unjustified conduct of such character as to course danger to life or health (bodily or mental) or as to give rise to reasonable apprehension of such danger. The conduct complained of must be serious .it must be higher than the ordinary tear and wear of a married life (*Habyarimana v Habyarimaria*).

The petitioner contributed 70% and in case the house is sold, she gets 70% of the market price.

Bruno L.Kiwuwa V Ivan Serunkuma And Juliet Namazzi

The plaintiff instituted this suit to challenge the celebration of marriage of the first and second defendants on the grounds that both defendants, like the plaintiff, being Buganda by tribe, and belonging to the same clan of "Naliga" that is to say "sheep could not lawfully by reason of an obtaining custom, contract such a marriage.

Held:-

OBJECTION MY LORD

1. It is settled that where customary law is not documented, or so notorious for the court to take judicial.
2. A custom is defined as a practice that has been followed in a particular locality in such circumstances that is to be accepted as part of the law of that locality.
3. It must be in conformity with the constitution.
4. The Marriage Act recognizes the validity of customary marriages, the custom in issue applies to marriage under the Marriage Act.
5. A custom is repugnant to justice and morality if it causes a version and disgust to the principles of good behavior and as to what is reasonable and fair.

It is repugnant if it violates natural justice equity and good conscience. In this case, the custom is not barred and not in conflict or inconsistent with the Marriage Act.

Mifumi (U) Ltd & 12 Ors V A.G Anor Const. Petition No. 12 Of 2007.

The petition is brought under A.2 (1) and (2), d37, (3), 93(a) and (d) of the constitution of Uganda and Rule 3 of the const. court (petitions and Reference Rules 5.191 of 2009) they challenge the constitutionality of the customary practice of demand for and payment of bride price.

Bride price is an amount of money of property or wealth paid by the groom or his family to the parents of a woman upon the marriage of their daughter to groom.

Dowry is paid to the groom, or used by the bride to help establish the new household, and dower, which is property settled on the bride herself by the groom at the time of marriage.

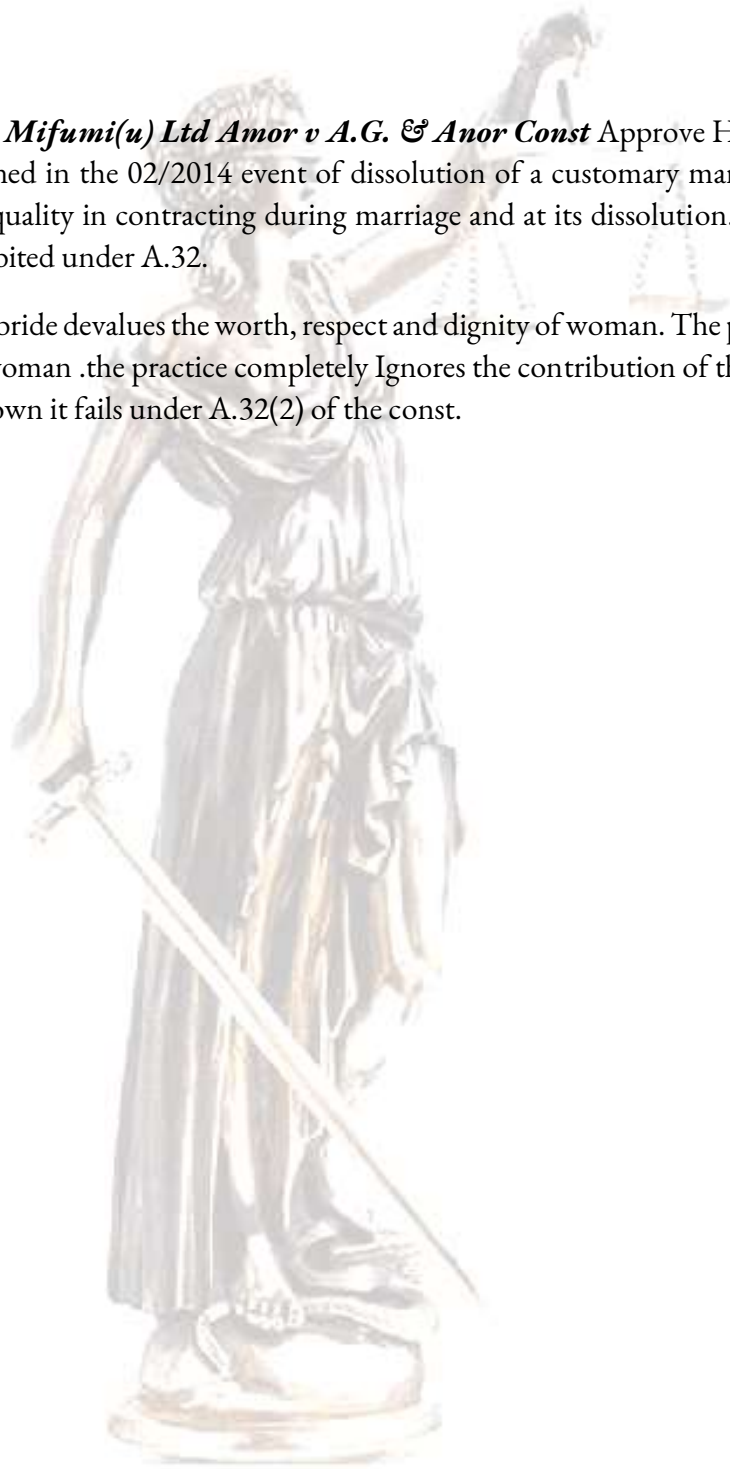
It is intended to reflect the perceived value of the girl or young women (bride price).

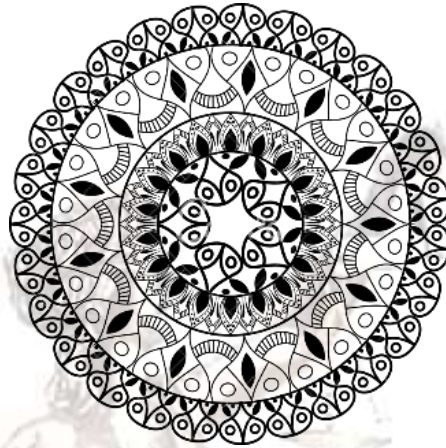
Justice L.E.M Mukasa Kikonyogo: - a bride price agreement is intended to show appreciation to the parents of a bride. It is entered into with joy by 2 parties seeking the facilities of a marriage relationship. it is not barred by the constitution. A man and a woman have the constitutional right to so choose the bride price option as the way they wish to get married. Any payment of bride price must be conditional upon voluntary consent of the 2 parties to the marriage.

However, the refund in the event of dissolution of marriage demeans and undermines the dignity of a woman and is in violation of A.33(6) of the constitution and violates the equal entitlements to equal right with the man in marriage A.31(1).

Supreme Court decision; *Mifumi(u) Ltd Amor v A.G. & Anor Const* Approve Husbands can no longer did that bride price be returned in the 02/2014 event of dissolution of a customary marriage. It is contrary to the constitution regarding equality in contracting during marriage and at its dissolution.it violates A31 (1) (b) and 33(1). It should be prohibited under A.32.

The custom of refund of bride devalues the worth, respect and dignity of woman. The practice completely ignores the contribution of the woman .the practice completely Ignores the contribution of the woman to e marriage up to the time of its break down it fails under A.32(2) of the const.





SEPARATION OF SPOUSES

SEPARATION BY AGREEMENT

The law applicable to this scope of study includes the following:

The Constitution 1995

The Judicature Act Cap 13

The Contract Act Cap 73

Case Law

COMMON LAW AND DOCTRINES OF EQUITY

It must be noted from the onset that parties can come to an agreement whereby, they spell out the terms of the separation. This is not provided for in any statute but is backed by common law. The guiding principle on separation agreements was upheld in *Fender Vs Mildmay (1938)* where court held that the husband and wife can enter into separation agreements, which should not lack conformity with principles of public morality.

Court further held in *Wilson Vs Wilson (1848) HLCAS 538* that there is nothing wrong or illegal per se in an agreement for immediate separation. It is not against public policy that separation agreements be allowed to stand. Thus, where a marriage has irrevocably broken down, then an agreement can be made, where the parties agree to stay apart.

CLAUSES IN A SEPARATION AGREEMENT

The first and cardinal clause to include in a separation agreement is that the parties should agree to leave apart. This is fortified by the case of **Pearson Vs Aylespard [1884] 14 QBD 729**. Other terms in a separation agreement include the following:

DESCRIPTION OF THE PARTIES

Non molestation Clause

Agreement to live apart

Maintenance clause

Dum Custa Clause

Amendment Clause

Duration Clause

Control of Matrimonial Home Clause

Custody clause

Property clause

Termination Clause

It must be noted that just like any other contract, the agreement should be signed by the parties and witnesses to, most preferably by a lawyer. Parties usually opt to go for separation agreements when they can go for judicial separation because they lack the grounds to pursue such remedies in courts of law. The agreement ceases to have effect when the wife commits adultery and this is a ground for divorce.

DRAFTING OF SEPARATION AGREEMENTS

OBJECTION MY LORD

The agreement is drafted like a standard contract agreement, where both parties provide consideration of consortium. A copy is drafted below.



ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

THE CONTRACT ACT CAP 2010

SEPARATION AGREEMENT

THIS AGREEMENT made this day of Two Thousand and Six

BETWEEN

OGWANG BOB of P.O.BOX 7117, KAMPALA (hereinafter referred to as the Husband) of the one part.

AND

NYADOI MARY of P.O.BOX 7117, KAMPALA (hereinafter referred to as the Wife) of the other part), where the context permits shall be called the Parties;

WHEREAS the parties were married on or about the 20th day of August 1982;

AND WHEREAS the wife after solemnization of the said marriage bore two issues aged 5 and 3 years respectively (hereinafter referred to as the children)

AND WHEREAS the relationship between the parties because of the numerous reasons, has irrevocably broken down, for which reason is constrained;

NOW THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS.

1. In Consideration of the parties having each other's consortium and mutually accepting to stay apart, the parties enter into this agreement with conditions and terms as provided hereunder.
2. The parties agree that the custody of the children shall go to the wife in respect of the fact that they are of tender age and the husband shall have access to them.
3. The parties mutually agree that there shall be no molestation of one by the other during the continuance of this agreement.

OBJECTION MY LORD

4. The husband shall Provide for the maintenance of the children and the wife shall also be entitled to a claim for maintenance from the husband in all matter's incidental to her welfare.
5. The maintenance of the wife shall continue subsisting on condition she remains chaste.
6. Breach of clause 4 above shall relinquish maintenance to herself save for that which will be incidental to the maintenance of the children.
7. Each of the parties will be entitled to take property which constitutes necessary wearing; other property shall be shared equally among the parties.
8. There shall be no institution of suits for restitution of conjugal rights during the subsistence of this agreement.
9. This agreement shall, unless otherwise agreed upon by the parties run for three years from the date of execution, save herein; this agreement can be terminated by mutual consent.
10. This agreement may be amended anytime upon agreement by the parties hereto and the amendments shall be reflected in writing duly signed by the parties and witnessed to.

IN WITNESS whereof, the parties unto have set their hands hereto the date and year first above mentioned.

Signed by the said **HUSBAND** }- _____

In the Presence of } _____

Signed by the said **WIFE** }- _____

In the Presence of } _____

Drawn and filed by

SUIGENERIS AND COMPANY ADVOCATES

P.O.BOX 71117

Kampala, UGANDA

JUDICIAL SEPARATION

This comes as a remedy to spouses who cannot have the remedy for divorce because of lack of the grounds. Judicial separation is provided for in section 14 of the Divorce Act, thus, a husband or wife may apply by petition to court for a judicial separation on the grounds of cruelty, adultery, or desertion without reasonable excuse for a period of two years or upwards, and the court on being satisfied that the allegations of the petition are true, and that there is no legal ground because the application should not be granted, may decree judicial separation accordingly.

Grounds for Judicial Separation under section 14 of the Divorce Act (for emphasis)

- Cruelty,
- Adultery,
- Desertion without reasonable excuse for a period of two years

MATRIMONIAL OFFENCES

These offences are specifically provided for in the Divorce Act and the Marriage Act and they are listed below;

Adultery under section 4(1) of the Divorce Act

This is defined in *Habyarimana vs Habyarimana (1980) HCB 139* as the consensual sexual intercourse during subsistence of a marriage between a spouse and a person of the opposite sex, not being his spouse.

Court held in *Ruhara vs Ruhara (1977) HCB 86* that in proof of adultery, court will look for corroborative evidence.

Cruelty under section 4(2)(b)(v)

This was discussed in *Mugonya vs Mugonya (1975) HCB 95*; where court held that legal cruelty is defendant on facts of each case. The essential ingredient to prove is injury of life, limb or health. Common law laid down a yardstick for cruelty in the area of sexual intercourse, in *Sheldon vs Sheldon (1962) 2 All ER 257* where court held that denial of sexual intercourse may amount to cruelty; a husband's persistent refusal over a long period of time without reasonable excuse to have sexual intercourse with his wife can be cruelty.

OBJECTION MY LORD

Desertion under section 4(2)(b)(vi)

Desertion is defined as the withdrawal from the society of the other without reasonable excuse. In the act, it has to be for two years or more before one can rely on it as a ground for either judicial separation or divorce.

The elements for proof of desertion are discussed in **Patel vs Patel [1965] EA 56** where court held that first and foremost, the petitioner should prove that the respondent left the matrimonial home;

Secondly that it was without consent of the other spouse,

Thirdly, with intention to permanently end cohabitation.

OTHER OFFENCES INCLUDE;

- Incestuous Adultery under section 4(2)(b)(i) of the Divorce Act
- Bigamy under section 4(2)(b)(ii) of the Divorce Act and sec. 41 of the Marriage Act.
- Marriage with a person previously married, under section 42 of the Marriage Act.
- Making false declarations for marriage, under section 43 of the Marriage Act.
- False pretence of impediments to marriage, under section 44 of the Marriage Act.
- Unlawfully performance of a marriage ceremony, under section 45 of the Marriage Act.
- Willful neglect of duty to fill up certificate, under section 46 of the Marriage Act.
- Personation of marriage, under section 46 of the Marriage Act.
- Fictitious marriage, under section 48 of the Marriage Act.
- Contracting a marriage when already married under customary law, under section 49 of the Marriage Act.
- Contracting a customary marriage when already married under marriage act, under section 50 of the Marriage Act.
- Rape, Sodomy, or bestiality under section 4(2)(b)(iv) of the Divorce Act.

PROCEDURE FOR PETITIONING FOR A JUDICIAL SEPARATION.

One applies to court by Petition. This is grounded on section 30 of the Divorce Act which states that all proceedings under the act shall be regulated by the CPR SI 71-1. in addition to this, section 31(1) of the Divorce Act provides that the procedure is by petition, where every petition shall state, as distinctly as possible, as the nature of the case permits, the facts on which the claim is based, and shall be verified as if it were a plaint, and may at the hearing be referred to as evidence.

It must be noted further that section 31(2) of the Divorce Act provides that petitions for dissolution of marriage, nullity of marriage or for judicial separation should always state that there is no collusion or connivance between the petitioner and the respondent. The petition is either supported by an affidavit or verified.

Secondly, after filing the petition, it is served on the Respondent who is supposed to file a reply to the petition. The reply is filed 15 days from the date of service of the petition. This is premised on the law of service of the court process under **Order 5 of the CPR SI 71-1**

Thirdly, upon filing of the Reply, the petition is set down for hearing under Order 9 rule 11(1) of the CPR SI 71-1.

DOCUMENTS

Summon to reply to the Petition; (court document)

Petition

Affidavit (if the petition is not verified)

Summary of Evidence,

List of Witnesses,

List of Documents,

List of Authorities

Affidavit of service on respondent (if the petition is not verified)

Reply to Petition

Affidavit in support of Reply to Petition

OBJECTION MY LORD

Summary of Evidence

List of Witnesses

List of Documents

List of Authorities

Affidavit of service on Petitioner.

JURISDICTION (FORUM)

This is conversed in section 3 of the Divorce Act which states that where all parties are Africans, or where a petition for damages 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.

The High Court has jurisdiction where not all the parties are African. It should be noted however that the High Court has original jurisdiction in all matters, so one can invoke the inherent powers of the High Court to hear the matter.

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006**

OGWANG BOB**PETITIONER**

VERSUS

NYADOI MARY **RESPONDENT**

SUMMONS TO ANSWER PETITION

WHEREAS the Petitioner has petitioned this court for a decree for a judicial separation

YOU ARE hereby summoned to file an answer to the Petition in this court within 15 days from the date of service of summon to you.

AND TAKE FURTHER NOTICE that in default of doing so, the petition will be heard and determined in your absence

Dated at Kampala this Day of 2006

.....

REGISTRAR

TO BE SERVED UPON

NYADOI MARY

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006

OGWANG BOB**PETITIONER**

VERSUS

NYADOI MARY **RESPONDENT**

PETITION

(under section 3, 14, 30 and 31(1) of the Divorce Act, and section 98 of the CPA Cap 71)

THE HUMBLE PETITION OF OGWANG BOB SHOWETH;

1. THAT the Petitioner is an adult male Ugandan, for sound mind resident at Kikuba Mutwe, Ggabba, Kampala and your petitioner's address for purposes of this suit is C/O SUI GENERIS and Co. Advocates, P.O.BOX 7117, Kampala.
2. THAT the Respondent is a female adult Ugandan of sound mind and the Petitioner undertakes to effect service of the court process on her.
3. THAT your Petitioner Professes the Christian Religion.
4. THAT your Petitioner and the Respondent are domiciled in Uganda with a matrimonial home at Ggabba.
5. THAT your Petitioner was married to the Respondent vide a church marriage at All saints Cathedral on the 21st day of August 1998; solemnized in accordance with the provision of the marriage Act in force in Uganda.

6. THAT in early 2004, the Respondent started being very cruel at your humble Petitioner by continuously hurling insults at your petitioner without cause; and threatening actual violence on several occasions.
7. THAT the respondent has on several occasion denied the Petitioner access to their matrimonial home in Ggabba.
8. THAT owing to the cruelty of the respondent, there has been an irretrievable breakdown of the said marriage between you petitioner and the said respondent.
9. THAT this petitioner is not prosecuted in collusion or connivance with the Respondent or with any other person connected in any way with these proceedings nor is your petitioner guilty of condonation.
10. THAT Notice to institute legal action was communicated to the Respondent.
11. THAT this cause of action arose in Kampala within the jurisdiction of this Honorable Court.

WHEREFORE, the Petitioner prays for

- (a) An order of Judicial Separation against the Respondent.
- (b) An order of Maintenance for the Respondent.
- (c) Other Relief as Court Deems fit

DATED at Kampala the day of 2006

.....

Counsel for Petitioner

OBJECTION MY LORD



VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

PETITIONER

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006

OGWANG BOB **PETITIONER**

VERSUS

NYADOI MARY **RESPONDENT**

SUMMARY OF EVIDENCE

The Petitioner will adduce evidence to show that the Respondent has been cruel towards him and that the marriage has irretrievably broken down.

LIST OF WITNESSES

Ogwang Bob

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

Mugonya vs Mugonya (1975) HCB 95

Sheldon vs Sheldon (1962) 2 All ER 257

Common Law and Doctrines of Equity

Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....

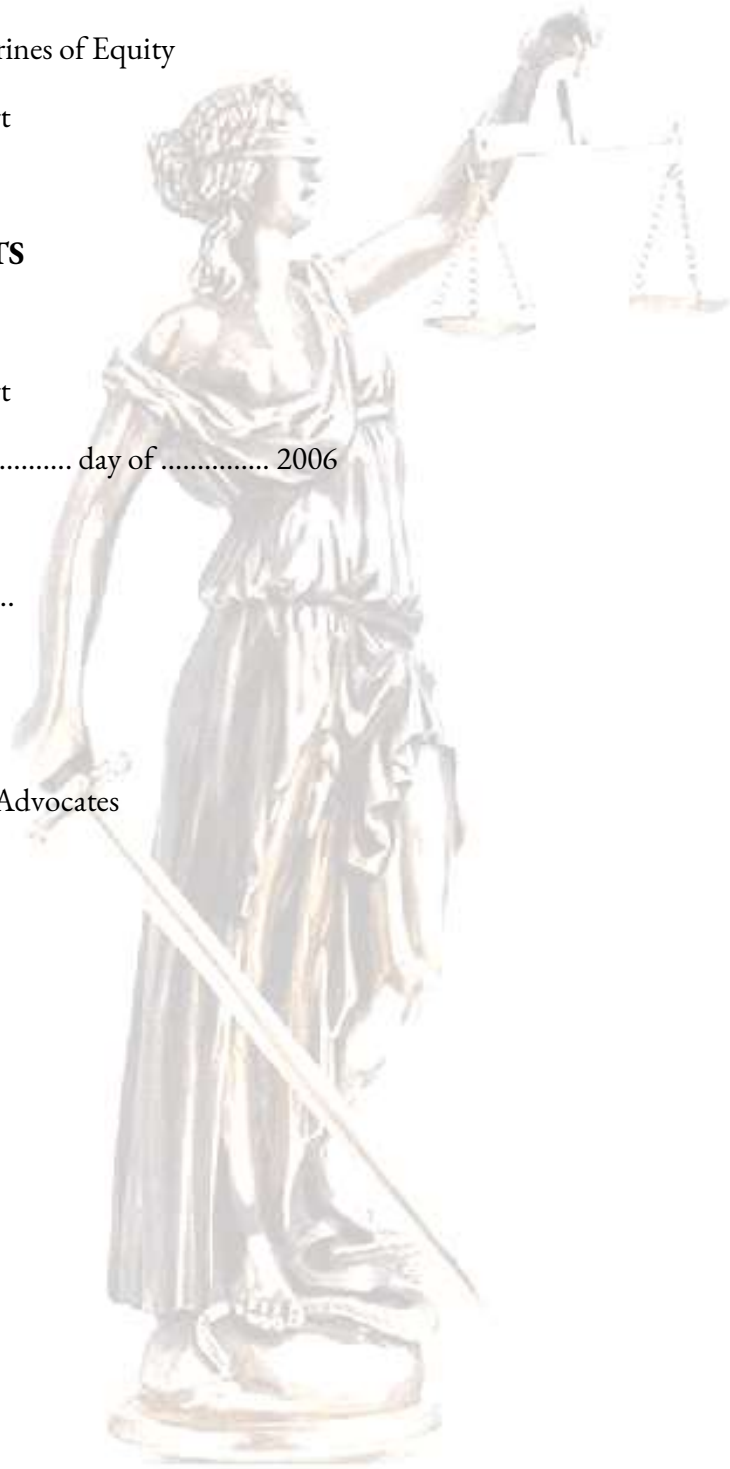
Counsel for Petitioner

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006

OGWANG BOB**PETITIONER**

VERSUS

NYADOI MARY **RESPONDENT**

REPLY TO PETITION

(under section 3, 14, 30 and 31(1) of the Divorce Act, and section 98 of the CPA Cap 71)

THE HUMBLE PETITION OF NYADOI MARY SHOWETH;

1. THAT the Respondent is a female adult Ugandan of sound mind and the Respondent undertakes to effect service of the court process on her.
2. THAT your Respondent Professes the Christian Religion.
3. THAT your Respondent and the Petitioner are domiciled in Uganda with a matrimonial home at Ggabba.
4. THAT your Respondent was married to the Petitioner vide a church marriage at All saints Cathedral on the 21st day of August 1998; solemnized in accordance with the provision of the marriage Act in force in Uganda.
5. THAT in early 2004, the Petitioner started being very cruel at your humble Respondent by continuously hurling insults at your Respondent without cause; and threatening actual violence on several occasions.
6. THAT the Petitioner has on several occasion denied the Respondent access to their matrimonial home in Ggabba.
7. THAT owing to the cruelty of the Petitioner, there has been an irretrievable breakdown of the said marriage between you Respondent and the said respondent.

8. THAT this Reply to the Petition is not prosecuted in collusion or connivance with the Petitioner or with any other person connected in any way with these proceedings nor is your Respondent guilty of condonation.

WHEREFORE, the Respondent prays that the petition be dismissed with costs to the Respondent.

DATED at Kampala the day of 2006

.....

Counsel for Respondent

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

RESPONDENT

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006**

OGWANG BOB RESPONDENT

VERSUS

NYADOI MARY RESPONDENT

SUMMARY OF EVIDENCE

The Respondent will adduce evidence to show that the Respondent has never been cruel towards him and that the marriage has never irretrievably broken down.

LIST OF WITNESSES

Nyadoi Mary

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

Mugonya vs Mugonya (1975) HCB 95

Sheldon vs Sheldon (1962) 2 All ER 257

Common Law and Doctrines of Equity

Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....

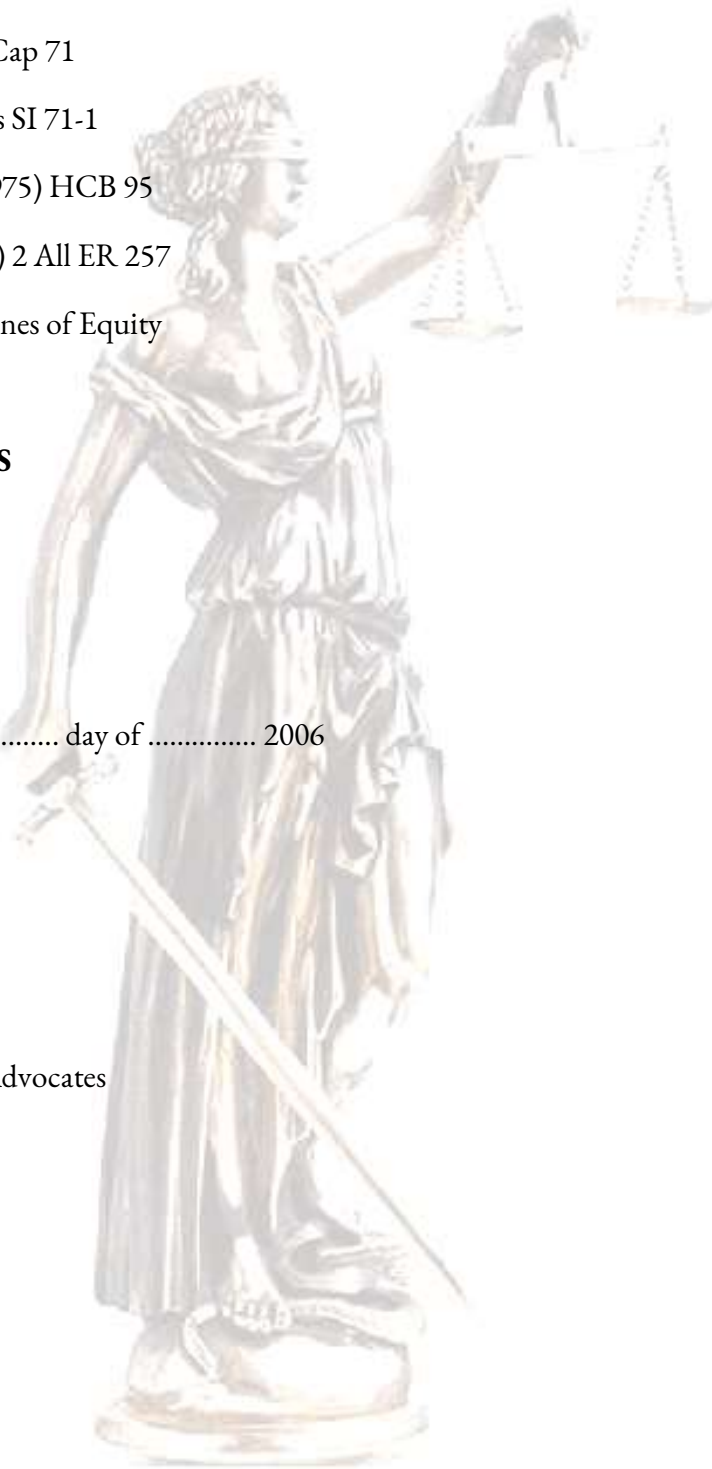
Counsel for Respondent

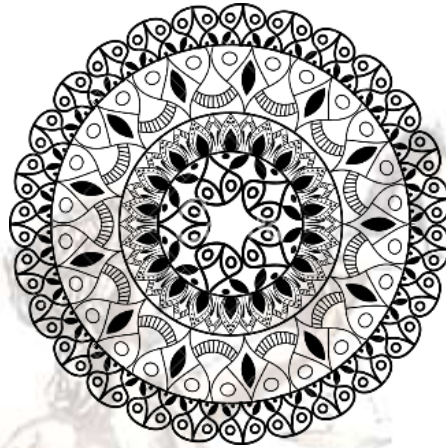
Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,

Kampala





CHILDREN MATTERS.

Who is a child and what rights accruing to them.

S.2 of the children's act defines a child as person below the age of 18 years. Also Art.257 (1) (c).

RIGHTS OF CHILDREN.

Children have the rights conferred onto all persons by virtual being human beings however under Art.34 of the constitution specific rights accrue to them by virtual of being children and these include the following rights:

1. Right to know and be cared for by their parents or those entitled by law to bring them up.
2. Right to basic education which is the responsibility of the state and the parents of the child.
3. Right to non-deprivation by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.
4. Right to be protected from social or economic exploitation and not to be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical mental ,spiritual , moral or social development.
5. Other rights are stipulated under S.4 of the children's act and the CRC.

WELFARE PRINCIPLE

The welfare principle as was laid down in the case of **J V C (1970) AC 668** is to the effect that in any matter relating to a child, the child's welfare is the paramount consideration.

This has been codified under Article 3(1) of the convention on the rights of the child and S.3 (1) of the children's act of Uganda as amended.

In **KAMUGISHA THEOPY V KAKITOKA PASCAL (1996)4 KALR 116**, court emphasized the fact that the interest of the child is paramount and so the paramount consideration in children's cases.

In **J V C**, where the matter was between the biological parents and the foster parents, the court stated that the rights and wishes of the parents whether unimpeachable or otherwise must be assessed and weighed on their bearing on the welfare of the child which is paramount in conjunction with all the other factors relevant to the issue. In this case it was in the child's best interest to stay in the custody of the foster parents in as much as the natural parents had a strong claim to have their wishes considered as normally the proper persons to have the upbringing of the child they have brought into the world.

In **RE B (1988) AC 199**, the HOL sanctioned an operation to sterilize a 17-year-old girl upon proof that due to limited intellectual capacity she was incapable of knowing the relationship between sexual intercourses and child birth. The operation was held to be her best interest.

In determining what is in the best interest of the child, the court according to S.3 (3) of the children's act as amended must have regard to:

- a) The ascertainable wishes and feelings of the child concerned with due regard to his or her age and understanding. Gillick's competence principle it's to the effect that where a child has sufficient understanding to make an informal decision about their life, they should be allowed to do so. The principle was established in the case of **GILLICKS V WEST NORFOLK AND WISBECH AREA HEALTH**, the child must understand the advice being given and what is involved.
- b) The child's physical, emotional and educational needs. Under physical needs, courts major concern is the child's security and not concerns of material prospects. The quality of the home is measured against time, energy devoted to care and upbringing. In **STEPHENSON V STEPHENSON**, the court stated that disadvantages of a material sort must be given little weight. Under emotional needs, the presumption leans in favor of the emotional needs to stay with both parents. Whereas the court in **TEOPISTA KAYONG V RICHARD SEKIZIYIVU (1979) HCB 261**, the court recognized that there is a strong notion that young children need to stay with their mothers however there is no rule of law to that effect and thus the best interest of the child be the paramount consideration. Young children were defined as children of tender years below the age of seven years.

OBJECTION MY LORD

- c) The likely effects of any change in the child's circumstances
- d) The child's sex, age, background and any other circumstances relevant in the matter. Courts say in guardianship applications will be more inclined to grant the guardianship/custody in applications for custody to applicant of the same sex as a child.
- e) Any harm that the child has suffered or is at the risk of suffering.
- f) Where relevant, the capacity of the child's parents, guardian or any other person involved in the care of the child and in meeting the needs of the child. Financial stability does not entitle the applicant to any order to automatic grant. What court must consider is the best interest of the child. A financial stable parent might have to surrender the child to the other in custody application if it's the view of the court that the child lives with the other parent. **IN AYYIYA V AYYIYA**, the court emphasized that it is not necessary that one who is rich will be in better position to look after the children but the psychological attitude towards the children and the loving and warm atmosphere in a home means more in the upbringing of a child.

APPLICATION OF THE PRINCIPLE WHERE THERE ARE TWO CHILDREN.

Where there are two children, the welfare of the child in issue is what is paramount.

IN BIRMINGHAM CITY COUNCIL V H, which related to a 15-year-old child and her baby who both had been made the subjects of interim care orders. The 15-year-old mother was aggressive and made attempts to harm self which caused the baby to be moved to foster parents. She sought contact with the baby and evidence was led that it was not in the baby's best interest that the contact with the 15-year-old mother continues but was in the mother's best interest that it continues. The issue before court was whose welfare was paramount. The baby or the mother? The court held that the baby's upbringing and thus it's its welfare which must be the courts paramount consideration. The fact that the parent is also a child does not mean that both parents and child's welfare is paramount and that each has to be balanced against the other.

PARENTAGE.

Who is a parent.

IN RE W, the court held that this takes into account recent developments in human assisted reproduction which made the earlier test of parentage which was blood ties or genetic link. The person who gave birth to the child was considered the mother and the person by whom she conceived the father. With procedures such as

artificial insemination, insert fertilization, egg and embryo donation and surrogacy, the person who gives birth to child or by whom the person conceived may not necessarily be the parent.

In JOGNSON V CALVERT, in pursuance of a surrogacy agreement, one the commissioning mother's egg was fertilized in vitro with her husband's sperm and transferred to the surrogate who successfully carried it to term. During the pregnancy the surrogate and the commissioning couple fell out and each sought a declaration of parentage of the child. In holding that the commissioning parents were the child's legal parents, the court stated that it was.

S.1 (cc) of the children's act as amended defines a parent to mean the biological mother or father or adoptive mother or father of a child.

PROOF OF PARENTAGE.

At common law

A child born to a couple during a subsisting marriage was presumed to be a child of the couple. The man was presumed to be the father and the woman the mother. The presumption could be rebutted with evidence to the contrary.

In PRESTONE V PRESTONE (1956)1 ALL ER 124, the court recognized the presumption but held that the man had successfully rebutted the presumption having established that within the one year when the child was born, he had not had sexual intercourse with the wife.

In MPRIWE V OLIVER NINSIMBIMANE HCCS NO.5 OF 1990, Tsekooko j held that the evidence of similarity in physical features between a child and alleged parent is admissible to prove paternity, although the evidence is not conclusive.

Under the children's act.

Under S.71 of the children's act, there is prima facie evidence of parentage were

1. The name of the father or the mother of a child is entered in the register of births in relation to a child.
2. An instrument executed as a deed or signed jointly or severally by each of the persons in the presence of a witness acknowledging parentage as either the mother or father.
3. An order of a court for maintenance against a person under any written law has been issued in respect of that child
4. An order made by a competent court outside Uganda in any affiliation or similar proceedings declaring or having the effect of declaring a person the mother or father of a child.

OBJECTION MY LORD

5. A reference, express or implied in a will written or oral where the person names the child as a daughter or son.
6. A statement, written or oral by a deceased person confided to a person in a position of authority indicating that the deceased is or was the father or the mother of a particular child.

Under S.71 (4) a declaration of parentage by a court is conclusive proof of parentage.

AN APPLICATION FOR A DECLARATION OF PARENTAGE.

Forum

According to practice direction no.1 of 2011, magistrate grade one courts exercise jurisdiction over family and children's court

Under S.67, of the children's act as amended, the application for a declaration of parentage is made to the family and children's court having jurisdiction in the place where the applicant resides.

WHO MAY MAKE THE APPLICATION.

According to S.67 of the children's act, the application may be made by:

- a) The mother of a child
- b) The father of a child
- c) The guardian of a child
- d) The child himself or herself through a next of friend
- e) The man alleged to be the father
- f) The woman alleged to be the mother of the child.

WHEN CAN THE APPLICATION BE MADE.

Under S.68 (1) of the children's act, the application may be made:

- a) During pregnancy
- b) Any time before the child attains 18 years of age.
- c) Within 3 years after the death of the alleged father or mother.

Under S.68 (2), the application may with leave of court be made at any time after the 3 years from the date of the death of the alleged father or mother.

PROCEDURE FOR APPLICATION FOR DECLARATION OF PARENTAGE.

1. Under S.67 of the children's act, the application is by **complaint on oath** to a family and children court. Rule 20 of the children (family and children court rules, S.I no.59-2, the application for a declaration of parentage shall be by a complaint on oath as specified in form 2 in the schedule to the rules.
2. Under S.69 (5) of the children's act, any person sought to be tested must be made a party to the proceedings.
3. The court to which the application is made must issue summons to the person alleged to be the father or mother of the child to appear before the court on a day named. S.69 (1) of children's act. Rule 21 of the rules
4. On the appearance of the person summoned or on proof that the summons was duly served on him or her at his or her place of abode seven days or more before the hearing the court will hear the evidence of the applicant and also hear that of the alleged father or mother if any . S.69(2)
5. If satisfied by the evidence of the applicant, the court may adjudge the person to be the mother or father of the child.

BLOOD TESTS AND SCIENTIFIC PROOF OF PARENTAGE.

Under S.69(4) of the children's act, a court may on application or on its own motion during the proceedings for a declaration of parentage make an order any person to give a blood sample for the purpose of blood tests.

S.69 (5) requires that the person sought to be tested must be made a party to the proceedings.

EFFECT OF DECLARATION OF PARENTAGE.

S.72(1) of the children's act provides that a declaration of parentage by a court shall have the effect of establishing a blood relationship of father and child or of mother and child and the child shall be in the same legal position towards the parent as a child actually born in lawful wedlock.

The declaration however does not of itself confer rights of custody of the child upon the declared parent. S.72 (2) of the children's act

OBJECTION MY LORD

NECESSARY DOCUMENTS

1. Complaint on oath (form 2 in the schedule to the rules)
2. Summons (form 3 in the schedule to the rules)

APPEALS

Under S.74, a party that is not contented with the declaration of parentage may appeal to the chief magistrate's court in respect of the same.



ISAAC CHRISTOPHER LUBOGO

Complaint on oath.

THE REPUBLIC OF UGANDA

FORM 2

APPLICATION FOR DECLARATION OF PARENTAGE

THE CHILDREN ACT

IN THE FAMILY AND CHILDREN COURT AT

MUKONO.

IN THE MATTER OF LAWRENCE MUSIGIRE (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION

OF PARENTAGE

FAMILY CAUSE NO 01 OF 2022

COMPLAINT ON OATH.

I, JOHN BYARUHANGA of SUI GENERIS AND CO. ADVOCATES, P.O BOX 7117, KAMPALA, being the father apply for a declaration of parentage against MIRIA NAIKOBA being the grandmother of KEVIN KAWINO ATEENYI on the following grounds:

1. That I am the father to Kevin kawino Ateenyi.
2. That the respondent, Miria Naikoba, the mother to my deceased wife has custody of Kevin kawino and won't allow me have his custody as the father.
3. That the respondent disputes that I am the father of the named minor and alleges my deceased wife told her so.
4. That it is in the best interest of the child that this declaration of parentage is made.

SWORN AT KAMPALA this 30th day of November, 2019 by the said JOHN BYARUHANGA.

COMPLAINANT

Before me

OBJECTION MY LORD

COMMISSIONER FOR OATHS.

SUMMONS.

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT

MUKONO

IN THE MATTER OF THE CHILDREN ACT AS AMMENDED CAP

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION

OF PARENTAGE

FAMILY CAUSE NO.01OF 2019

SUMMONS IN CHAMBERS

TO: MIRIA NAIKOBA

WHEREAS JOHN BYARUHANGA has instituted proceedings for a declaration of parentage, you are summoned to appear in the chambers of the magistrate grade one at the family and children court at Mukono, in person or by an advocate duly instructed on the 8th day of December 2019 at 9:00 o'clock in the forenoon to answer to the claim.

TAKE NOTICE that, in default of your appearance on the day above mentioned, the application shall be heard and determined and such order as is deemed necessary will be rendered in your absence.

GIVEN under my hand and seal of this court on the 1st day of December 2019.

MAGISTRATE.

CUSTODY

S.1 (f) of the children's act as amended defines a custodian as a person in whose care a child is physically placed. Thus, custody means physical caring of a child. It means who lives with and has the right to make decisions concerning that child pertaining to all areas of parental responsibility.

In the case of **ALI ISSA V FAITH YUSUF**, the court observed that the word custody if used in connection with children concerns control and preservation and care of a child's personal, physical, mental and moral integrity and are responsible for the child in regard to their basic needs and rights.

S.5(1) of the children's act as amended impose a duty on any parent ,guardian or any person having custody of a child and the duty confers onto the child the right to: education and guidance ,immunization, adequate diet, clothing, shelter and medical attention. Also, article 34.

Further under S.5 (2) the person having custody of a child shall protect the child from discrimination, violence, abuse and neglect.

Married couples living together have equal rights whereas parents who have divorced or separated or under any circumstances are not living with the child may apply to court to decide on who must have the custody of the child.

APPLICATION FOR CUSTODY

FORUM

The family and children's court in the local jurisdiction where the child resides. (Rule 5 of the fee rules. S.14 of children's act.

WHO CAN APPLY FOR CUSTODY ORDER.

- Mother of the child
- Father of the child
- Guardian
- Probation and social welfare officer.

OBJECTION MY LORD

PROCEDURE

1. Under Rule 19(3) of the rules, the application is as specified in form 1 in the schedule to the rules.
2. Rule 19(1) requires that the application is supported by an affidavit and any reports or documents to be relied upon.
3. Under rule 21 summons which must be as specified in form 3 to the schedule of the rules must be issued to the respondent.
4. On the day stipulated upon the respondent appearing or proof of service being filed, the court will proceed to hear the application and rule accordingly
 - S.73(3) mandates court to primarily consider the welfare of the child when arriving at the decision for an order of custody

NECESSARY DOCUMENTS

1. Application (form 1)
2. Affidavit in support
3. Summons

ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA
IN THE FAMILY AND CHILDRENS COURT AT
MUKONO
THE CHILDREN'S ACT
IN THE MATTER OF KEVIN KAWINO ATEENYI
AND
IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER
FAMILY CAUSE NO.1 OF 2019

APPLICATION FOR A CUSTODY ORDER.

I, JOHN BYARUHANGA OF SUI GENERIS AND CO ADVOCATES, P.O BOX 7117, KAMPALA being the father apply for a custody order against MIRIA NAIKOBA being the grandmother of KEVIN KAWINO ATEENYI on the following grounds

1. That I am the father of the child and I have been taking care of all his needs for his life time.
2. That it is his best interest that he grows living together with his other two siblings who are in my custody
3. The respondent, Miria Naikoba in whose custody the child is now is a heavy drinker, and when drunk uses profane and lewd language which is likely to negatively affect the child.
4. That it is in the best interest of the child that this application is granted.

Dated this 30th day of November, 2019.

APPLICANT.

OBJECTION MY LORD

AFFIDAVIT IN SUPPORT.

IN THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER

FAMILY CAUSE NO. 01 OF 2019

**AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR A
CUSTODY ORDER.**

I, JOHN BYARUHANGA OF SUI GENERIS AND CO ADVOCATES, P.O BOX 7117, KAMPALA do here by make wan oath and solemnly state as follows;

1. THAT I am a male adult Ugandan of sound mind aged 38 years and the applicant in this matter and I swear this affidavit in that capacity
2. THAT I am the biological father of the minor Kevin Kawino Ateenyi aged 5 years old. (Attached is the birth certificate of the said minor.)
3. THAT I lost my wife to post-natal complication three days after giving birth to the said minor. (Attached is a death certificate of Elizabeth Namukose my deceased wife.)
4. THAT my deceased wife's grandmother, Yayeri Babirye offered to look after the baby and I obliged given it was very tender.
5. THAT my mother-in-law, Miria Naikoba picked the minor from Yayeri Babirye and took over its custody.
6. THAT throughout the five years, I have materially and financially provided for Kevin. (attached are the receipts for all expenses ranging from baby diapers, clothes ,toys, milk, medical expenses and Kevin's tuition, scholastic materials among others)
7. THAT I have and continue to visit Kevin every weekend in the company of her siblings
8. THAT Maria Naikoba who is in custody of Kevin is a heavy drinker who on many occasions returns to her home in a drunken state and uses profane and lewd language which will in the long negatively impact on the grow of Kevin.

ISAAC CHRISTOPHER LUBOGO

9. THAT it is in the best interest of Kevin that this honorable court issues the order so that she can grow up with her siblings and in a loving and caring home.
10. THAT I swear this affidavit in support of my application for a custody order for Kevin.
11. THAT what is stated herein above is true and correct to the best of my knowledge and belief.

SWORN AT KAMPALA by the said JOHN BYARUHANGA on this 30th day of November 2019.

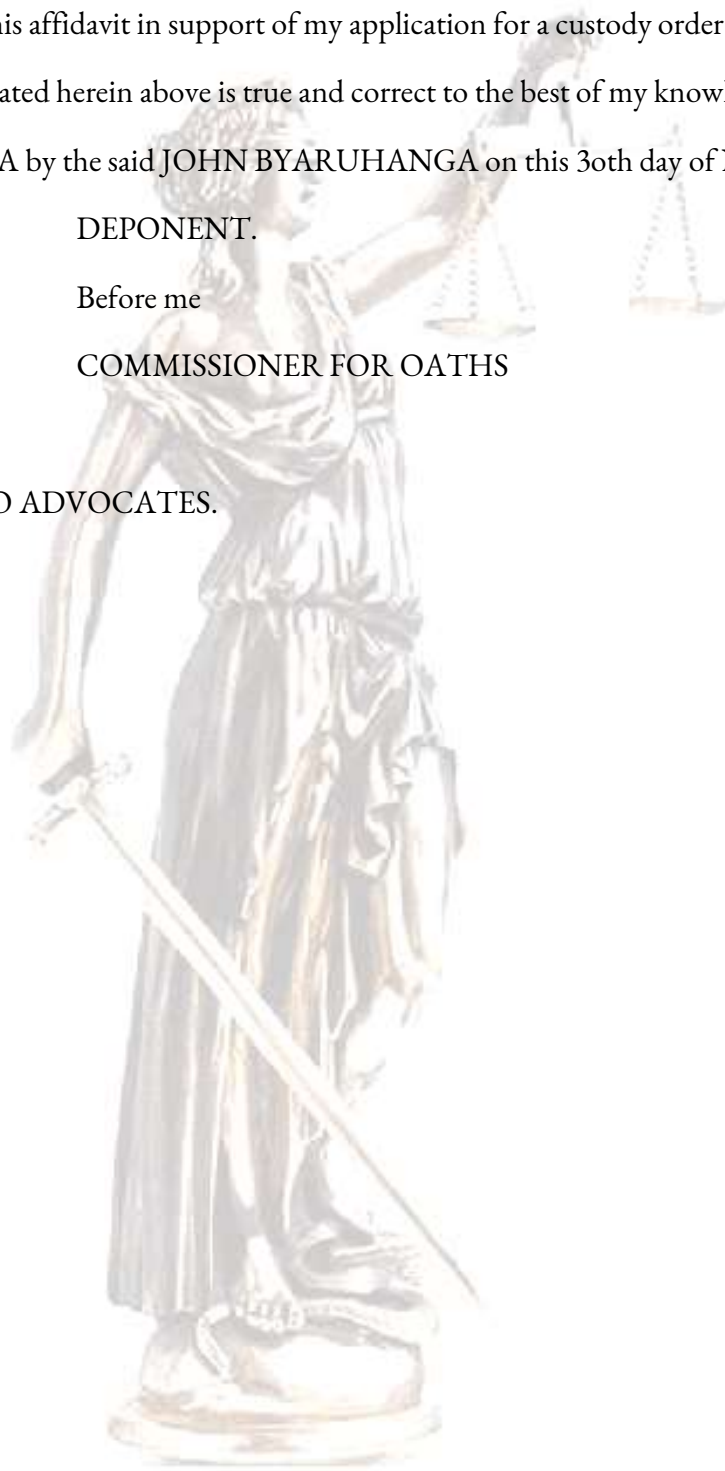
DEPONENT.

Before me

COMMISSIONER FOR OATHS

Drawn and filed by

SUI GENERIS AND CO ADVOCATES.



OBJECTION MY LORD

SUMMONS

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

FAMILY CAUSE NO.01 OF 2019

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER.

SUMMONS IN CHAMBERS.

TO: MARIA NAIKOBA

WHEREAS JOHN BYARUHANGA has instituted proceeding for a custody order for Kevin Kawino Ateenyi you are summoned to appear in the chambers of the magistrate Grade one court at Mukono in person or by an advocate duly instructed on the 10th day of December, 2019 at 9:00 o'clock in the forenoon to answer to the claim.

TAKE NOTICE that in default of your appearance on the day above mentioned, in the application shall be heard and determined and such order as is deemed necessary will be rendered in your absence.

GIVEN under my hand and the seal of this court on the 1st day of December 2019.

MAGISTRATE.

INTERIM CUSTODY ORDER.

An interim custody order as stated under S.73A (3) of the children’s act be issued where the court is satisfied that:

- a) The child is suffering or likely to suffer harm if the order for the interim custody is not issued.
- b) The order is the best interests of the child.

The application for an interim order act stated under S.73A (1) may be brought by:

- A probation and social welfare officer
- Mother of a child
- Father of the child
- Guardian of the child

PROCEDURE.

The application is by notice of motion under O.52 of CPR and as required under S.73A (2) of the children’s act must be supported by an affidavit in support.

NECESSARY DOCUMENTS.

- Notice of motion
- Affidavit in support
- Summons

FORUM

The family and children court with jurisdiction in the area where the child resides.(Rule 5 of Rules).

FCC COURT RULES.

Under R.4 (1) (b) of rules general principles on procedure that apply to CPR apply. Under O.52, where a procedure isn’t stipulated, you proceed by notice of motion.



MAINTENANCE.

Section 76 (8) provides that maintenance includes feeding, clothing, education and the general welfare of the child. Under Art.34 and S.4 of the children's act, every child has a right to be maintained by his or her parents.

Under S.5 (1) of the children's act, it's the duty of every parent, guardian or any person having custody of a child to maintain that child and in particular to things like education and guidance, immunization, adequate diet clothing, shelter and medical attention.

In the case of **RWABUHEMBA TIM MUSINGUZI V HARRIET KAMAKUMA CIVIL APPLICATION NO. 142 OF 2009**, the court observed that parents have a fundamental right to care and bring up their children and such rights is a constitutional right and should not be considered in isolation.

APPLICATION FOR A MAINTENANCE ORDER.

FORUM

S.76 (5), states that the application for maintenance order is to the family and children court having jurisdiction in the place where the applicant resides.

WHO CAN MAKE THE APPLICATION?

S.76(1) states that any person who has custody of a child and who is:

- a) The mother of the child
- b) The father of the child
- c) The guardian of the child

may apply for a maintenance order against the father or mother of the child. Under S.78(3) it can be made and enforced against the estate of a deceased who has been declared the mother or father of a child under a parental declaration.

- Under S.76 (2), a child in respect of whom a declaration of parentage has been made may also make an application through a next of friend.

WHEN CAN THE APPLICATION BE MADE.

Subject to S.76 (3) the application may be made:

- a) During a subsisting marriage
- b) During proceedings for divorce, separation or nullity of marriage.
- c) During separation.
- d) During proceedings for declaration of parentage
- e) After a declaration of parentage has been made.

Under S.76 (4) the application may be made:

- a) At any time during pregnancy
- b) Before the child attains 18 years of age.

PROCEDURE.

S.76 (5) states that the application is made by **complaint on oath** to a family court

S.76 (6) summons must be issued to the father or mother of the child to appear before the court on a day named in the summons

S.76(7) on appearance of the person or on proof that the summons were served on the person or more days before the hearing, court will hear the evidence of the applicant and where the respondent is in court, also hear their evidence and if satisfied make the maintenance order for payment to the applicant:

- a) A monthly sum as determined by the court having regard to the circumstances of the case and the financial means of respondent.
- b) Funeral expenses of the child if it died before the making of the order
- c) Costs incurred to obtain the order.

OBJECTION MY LORD

RECOVERY OF MAINTENANCE MONEY.

If after a month the sums ordered have not been paid and the respondent neglects all efforts to have him/her pay, a magistrate may by warrant under S.77 of children's act direct:

- a) That an attachment of earnings be made.
- b) That the sum due, together with any costs incurred, be recovered by distress and sale or redistribution of the property of the father or mother unless he or she gives security by way of recognizance or otherwise to the satisfaction of court for his or her appearance before the court on a day appointed for the return of the warrant of distress, but not more than 7 days from the taking of the security.

VARIATION OF MAINTENANCE ORDER.

Under S.78(1) a maintenance order may on the application of the applicant at the time of grant or by the person against whom the order was made , court may vary by increasing the sums or decreasing the amount previously order having due regard to the circumstances.

NECESSARY DOCUMENTS

1. Notice of motion
2. Affidavit in support

Omnibus application for declaration of parentage and a maintenance order.

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

FAMILY CAUSE NO.002 OF 2019

IN THE MATTER OF KEVIN KAWINO ATEENYI, (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF
PARENTAGE AND

IN THE MATTER OF AN APPLICATION FOR A MAINTENANCE ORDER.

IN THE MATTER OF THE CHILDRENS ACT AS AMMENDED.

COMPLAINT ON OATH.

I, MERIDA KWAGALA OF SUI GENERIS AND CO. ADVOCATES, being the mother of Kevin Kawino Ateenyi apply for a declaration of parentage and an order of maintenance against JOHN BYARUHANGA being the father of Kevin Kawino Ateenyi on the following grounds:

1. THAT I had a love relationship with John Byaruhanga.
2. THAT the relationship resulted into the birth of a baby girl, Kevin Kawino Ateenyi.
3. THAT from the time I conceived until 2017, the respondent John Byaruhanga used to provide financial support for Kevin's needs
4. THAT after he discovered Kevin was epileptic, he stopped providing financial support stating that he had no epileptic history in his family.
5. THAT the respondent has since denied fathering Kevin and rendering any financial support for her needs.
6. THAT it's in the best interest of Kevin that declaration for parentage is made against john Byaruhanga and a maintenance order issued against him.

WHEREOF THE applicant prays for orders that:

- a) Declaration of parentage

OBJECTION MY LORD

- b) Maintenance of the child to be paid to the applicant
- c) Custody of the child to the applicant

SWORN at Kampala by MERIDA KWAGALA on the 30th day of November 2019,

APPLICANT

COMMISSIONER FOR OATHS.



INTERIM ORDERS AND ORDERS THAT CAN BE ISSUED FOR CARE, PROTECTION AND WELFARE OF THE CHILD.

SUPERVISION ORDERS/INTERIM SUPERVISION ORDERS.

Under S.19 (a) of the children's act, a probation and social welfare officer or an authorized person may apply to an FCC for a supervision order placing a child under the supervision of a probation and social welfare officer while leaving the child in the custody of his or her parents or relatives.

APPLICATION

Under S.22 the applicant must satisfy themselves that

- a) The local government councils from village to sub county level where the child resides have dealt with the matter without success
- b) There is need for continuous supervision enforced by a court order before making the application.

The application is as provided in form 2 and in the schedule to the rules with a valid affidavit.

DURATION OF SUPERVISION ORDER.

Under S.24 (1) of the children's act, a supervision order shall be for one year though may be extended for further year on the application of the probation and social welfare officer.

DUTIES OF A SUPERVISOR WHILE A SUPERVISION ORDER IS IN FORCE.

These are stated under S.23 of the children's act and they are:

- a) To be friendly to, advise and assist the supervised child
- b) To advise the parents
- c) To make plans for the child's future in consultation with the child and his or her parents or guardian.
- d) To apply to the court to discharge or vary the order if necessary.
- e) To take such reasonable steps as may be necessary.

OBJECTION MY LORD

CARE ORDER AND INTERIM CARE ORDER.

Under S.19 (b) a probation and social welfare officer or an authorized person may apply to an FCC for a care order or interim care order placing a child in the care of the warden of an approved home or with an approved foster parent in accordance with the foster care placement rules in the 2nd schedule to the act. (S.27 (1))

APPLICATION

Under S.27 (2) the applicant must prove that:

- a) All possible alternative methods of assisting the child have been tried without success and the significant harm from which the child is suffering or is likely to suffer requires him or her to be removed from where he or she is living.
- b) The danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

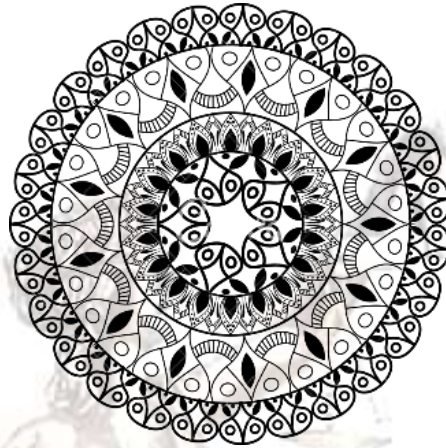
DURATION

S.29 (1) states that a care order shall be for a maximum of three years or until the child reaches 18 years whichever is shorter.

GROUND FOR MAKING A SUPERVISION OR CARE ORDER.

These are stipulated under S.21 of the children's act and they are:

- a) The child concerned is suffering or is likely to suffer significant harm
- b) That the harm or probability of harm, is attributable to
 - I. The care given to the child or likely to be given to the child if the order were not made, not being what it would be
 - II. The child's being beyond parental control.



ADOPTION OF CHILDREN

Introduction

Adoption is defined in Collin's Dictionary of law⁸ as the legal process by which a parent child relationship is created between an adult and a child; who is not biologically theirs.

Nigel Lowe and Gillian Douglas in Bromley's family law 11th edition, they define adoption at page 682 as the processes by which a child's legal parentage is entirely and irrevocably transferred from set of adults usually the birth parents and vested on other adults, namely the adoptive parents.

It involves the complete severance of the legal relationship between parents and child and the establishment of a new one between the child and the adoptive parents.

Adoption vests full parental responsibility exclusively in the adopters.

LAW APPLICABLE TO ADOPTION.

- The constitution of the republic of Uganda (1995) as amended
- Children's act cap 59 as amended.
- The children (Adoption of children) rules.

⁸ 2nd Edition Pg. 14

OBJECTION MY LORD

RE: EDISON MUGAGA, ADOPTION CAUSE 15/2019, justice Mutonyi defined adoption as the creation of a parent-child relationship by a judicial order between two parties who are unrationed creating a lifelong relationship of parentage between the child and the adoptive parent.

Distinction between guardianship and adoption.

1. S.51, Adoption severs the legal ties between the child and his/her birth parents unlike guardianship where the ties of the child with his/her biological parents are not severed. S.43 states that guardianship order only vests the guardian with parental responsibility over the child.
2. Further under S.51, of the children's act, the adoption order unless revoked under S.46A is permanent and the child even upon attaining 18 years remains a member of the adoptive family and can under S.52(1), inherit the property of the adoptive parents upon their demise. While under S.43 H (2), a guardianship order only remains in force until the child attains 18 years.

Adoption is premised on the provision of section 6 of the Children's Act that every parent shall have parental responsibility of his or her child. Article 31(4) makes it a right and duty of parents to care and bring up their children.

THE CHECKLIST FOR RESOLUTION INCLUDES THE FOLLOWING:

1. Whether the prospective adoptee can be adopted?
2. Whether the prospective adopter can adopt?
3. What is the forum, procedure and documents?

BELOW ARE THE PREREQUISITES AS ENUNCIATED IN THE CHILDREN'S ACT

- The applicant should be above 25 years or 21 years older than the child in question.
- Secondly, if the applicant is a foreigner, he or she should have stayed in Uganda for a period of at least 3 years.
- Thirdly, the applicant should have fostered the child for 36 months, under supervision.
- The applicant should not have a criminal record.
- A foreign applicant should have a recommendation concerning his or her suitability to adopt the child.

- The foreigner should satisfy court that his or her country of origin will recognize the adoption order.
- If the parents, guardians or person in custody of the child can be got, they ought to consent to the adoption.
- If the child is above 14 years of age, he or she ought to consent to the adoption.
- A male adoptor should only adopt male children and a female adoptor should only adopt female children. This was stated in **O' Connor vs O' Connor**.
- It must be noted from the onset that court looks at the welfare principle in considering adoption of a child.

IN RELATION TO WHO CAN BE ADOPTED;

The context of section 2 of the Children's Act shows that the person should be below 18 years and secondly, the child need not be a Ugandan to be adopted. This is fortified by section 44 of the Children's Act.

PROCEDURE OF ADOPTING CHILDREN

THE FORUM IS;

The Chief Magistrate's Court if all parties are Ugandan as provided for in Rule 3 (1) of the Children (Adoption of Children) Rules SI 59-1.

If the Respondent is non-Uganda, the forum is the High Court per Rule 3 (2) of the Children (Adoption of Children) Rules SI 59-1

THE PROCEDURE IS AS FOLLOWS

The prospective adopter files a Petition in Form B to the Rules, supported by an affidavit.

A consent Form of the Parents/ guardians/ persons in custody of the child should be attached. It is in form C to the rules.

A Consent Form of the child if the child is above 14 years should be attached. It is form D to the rules.

OBJECTION MY LORD

A Medical Examination in Form E should be attached.

Upon filing the Petition, a notice of hearing is obtained.

It must be noted that in the petition, the following matters should be addressed:

The particulars of the subject/ adoptor,

The capacity of the adoptor,

The age and citizenship of the adoptor,

That this is done pursuant to the welfare principle.

One should aver that he or she is not receiving any award for the adoption.

WHO MAY APPLY.

S.45 (1) of C.A states that an adoption order may be granted to sole applicant or jointly to spouses.

Where the application is by one spouse, S.45 (1) (b) requires that the other spouse's consent is sought and obtained however the same maybe dispensed with by the court under S.45(2) if the spouse whose consent is required cannot be found or is incapable of giving consent or the spouses are separated and living apart and the separation is likely to be permanent

S.45(3) of C.A bars the issuance of an adoption order in favor of a sole male applicant in respect of a female child and the other way round except if the court is satisfied that there are special circumstances that justify the making of the order.

REQUIREMENTS FOR ADOPTION FOR A UGANDAN CITIZEN FOR A UGANDAN CHILD.

1. Both applicants and the child must be Ugandan citizens. S.44(1)(a)
2. Age. S.45(1)(a) states that the applicant or at least one of the joint applicants must have attained the age of twenty-five years (25) and is at least twenty-one (21) years older than the child.
3. Foster care

S.45 (4) of the C.A makes it a mandatory requirement that the applicant has fostered the child for a period of not less than 12 months under the supervision of a probation and social welfare officer. **IN RE; CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA H.C ADOPTION CAUSE NO.03 OF 2019**,the court noted that proof of foster care was subject to the issuance of a foster care order which should be presented in court. It was not sufficient that the report of the social welfare officer alleges that the applicants(s) fostered the children for a given period of time as was in the case. Further the requirement could be satisfied by the evidence

of the child where they are of age. In this case the children stated that they had been in the care of their parents all through and not the applicants. The children were aged 14 and 17 years.

4. Report of the probation and social welfare officer.

This is a requirement under S.45(5) of the C.A and report submitted must state the ability of the applicants to cater for the needs of the child presently and in future and whether or not the child has bonded with the applicants during the foster care period i.e. the suitability of the applicant to adopt the child. **IN RE: CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA**, the probation and social welfare officers report was found wanting as it alleged that the applicant were suitable adoptive parents yet they had never fostered the children. **In RE ARTHURSHYAKA BUTARE ADOPTION CAUSE NO.61 OF 2013**, the court ordered that formal report of the probation and social welfare officer be submitted before it grants the order.

5. Consent

S.47 (1) OF CA requires that the consent of the parents of the child if known must be obtained. **In RE: CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA**, both parents consented to the application and were present during the hearing. Equally in **RE: ARTHUR SHYAKA BUTARE ADOPTION CAUSE NO.61 OF 2018**, the parents of the child consented to the adoption and gave evidence in court stating that it was in best interest of the child who had intellectual disabilities to be adopted by the grandmother who was a US citizen and go live with her in the USA as that would help to have his condition better managed and enable him grow into an independent adult albeit the intellectual disability. Consent is in the form stipulated in form C in the schedule to the rules. The children (adoption of children) rules S.1 59-1)

Under S.47(6) of C.A , where the child is at least 14 years of age, his or her consent to the adoption must be obtained unless it's impossible for him or her to express his or her wishes.

In RE:CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA, both the children were above 14 years of age and thus the court granted them an opportunity to express their wishes as to the application to which they consented to. Consent is given in the form stipulated in form D in the schedule to rules.

Under S.47 (7), the consent of any person who is not the parent of the child but has any rights or obligations in respect of the child by either an order of court, or agreement or under customary law must be obtained.

IN OCHAYA CHRISTOPHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA(a wild) H.C.M.A 0028/2017, the consent of the child's grandfather was required and only after it had been obtained was it granted.

Equally in **RE: BIRABWA MUTAKA ADOPTION CAUSE O.4/2018**, the maternal grandfather was called to court to give consent to the adoption.

OBJECTION MY LORD

DISPENSING WITH CONSENT.

The consent of the parents required under S.47 (1) of C.A may be dispensed with under S.47 (2) if the court is satisfied that the parent(s) are incapable of giving such consent or his whereabouts are unknown as was the case with the father of Lamaro Lillian in **OCHAYA CHRISTOPHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA (A CHILD) H.C.M.A 0028/2017.**

RE: BIRABWA MUTAKA ADOPTION CAUSE 014/2018, Justice Eva Luswata, dispensed with the consent of the mother noting that despite the mother and her previous situation of being in a foster care home she had never bothered to look out for her and had actually dumped her at her estranged lovers place knowing he wasn't the father of the child. It could not be in the best interest of the child to be re united with such a person.

6. The best interest of the child.

PROCEDURE

1. Under rule 3(1) of the children (adoption of children) rules S.1 59-1, the application for adoption is by petition to the chief magistrate's court in FORM A in the schedule to the rules supported by an affidavit (Rule 7)
2. Rule 3(3) states that the petition is presented ex parte by the person or their advocate to the CM sitting in chambers and the CM shall give directions as to service, appointment of a guardian ad litem and may further consent as may be required.
3. Under Rule 5, the petition must be served on the
 - a) Parent or parents of the child if any
 - b) The guardians of the child or if none
 - c) The person or persons having the actual custody of the child or if none
 - d) The person or persons liable to contribute to the support of the child
 - e) The child if of the age of 14 years or above.
- Rule 6(1) provides that service of the petition shall unless otherwise directed by the C.M be served by an officer of the court by delivering or tendering a copy of it signed by the registrar or the CM and sealed with the seal of the court to the person to be served.

Rule 6(2) requires that the service of every petition is verified by affidavit unless the CM directs otherwise.

INTERCOUNTRY ADOPTION.

S.46 (1) of the C.A provides that a person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child subject to satisfying the requirements listed under the provision. Under S.46 (6) intercountry adoption should be the last option for any child.

REQUIREMENTS FOR INTERCOUNTRY ADOPTION

The requirements discussed under adoption by citizens apply in addition to: S.46 (3)

1. Applicant must have stayed in Uganda for at least one year. (S.46 (1) (a)).
2. Has fostered the child for at least one year under the supervision of a probation and social welfare officer.
 - The notes under adoption by citizens apply. However, under S.46 (4) the court may in exceptional circumstances waive any of the requirements including that's one.

In RE: MUSINGUZI DAVIS ALIAS ELIJAH DAVID HARPER (A CHILD) ADOPTION CAUSE NO.0001 OF 2018, the applicants had only fostered the child for nine months. The court waived the requirement for 12 months because the applicants were to travel back to the USA in a short time and needed to start processing the child's travel documents so as to travel with it.

In the matter of adoption of Apolot Betty adoption cause no 33 of 2018, the applicant had not fostered the child for 12 months as she was away in the USA working but visited occasionally while the child was under the physical care of her appointed 3rd party. She provided for all the needs of the child. The court noted that it was in the best interest of the child that the requirement be waived given the bond exhibited between the applicant and the child while in court.

IN THE MATTER OF ADOPTION OF MIREMBE ANGEL BY RUDY RAY LEE AND JESSICA LEE JOE LEE, ADOPTION CAUSE NO.32 OF 2018, court noted that constructive fostering may be permissible in certain instances. Constructive fostering is where an adoptive parent appoints a capable 3rd party to do physical fostering while the needs of the child are met by the prospective adoptive parent. In this case, the adoptive parents had minor children and also were in permanent employment and it was not proper to expect them to put all these duties for 12 months thus there was a genuine cause for the constructive fostering and in that period the applicants had visited the child for four times staying four two weeks each time so as to bond with the child.

3. Does not have a criminal record (S.46(1)(C))\

In OCHAYA CHRISTOPHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA (A CHILD) H.C.M.A 0028 OF 2017, police reports from the applicant's respective country reports (Uganda and Australia) were accepted as proof that they did not have a criminal record. Interpol reported have also been accepted as was in

OBJECTION MY LORD

4. Recommendation on the suitability of the applicants to adopt a child from their country of origin by a probation and welfare officer or other competent authorities. S.46 (1) (C) (d).

In RE: ARTHUR SHYAKA BUTARE ADOPTIVE CAUSE NO.61 OF 2018, the inter country home study report showing suitability of the applicant to adopt the child had not been submitted. Court order it be produced before it went on to grant the adoption order.

5. Satisfies court that his or her country of origin will respect and recognize the adoption order . S.46(1)(c)
6. Consent under S.47 OF CA

FORUM FOR THE APPLICATION

S.44 (1) (b) and Rule 3 (2) of the rules stipulate that the forum is the high court of Uganda.

PROCEDURE

- (as is in the adoption by citizens)
- Petition is as in the form in form B of the notes. (Rule 3(2)).

THE DOCUMENTS

Petition

Consent Forms

Affidavit (if petition is not verified)

CONSEQUENCES OF ADOPTION

The implications of adoption should be noted;

The rights of the natural parent cease, and the adopter gains rights of parental responsibility.

The child acquires the domicile and name of the adopter.

Where the adopter dies intestate, the property devolves to the adoptive child. If the distribution is unfair, the adoptive child can seek to apply to vary a will.

An adoptive child loses the right to inherit from its natural parents. This was held in **Lumu's Case AC 8 Of 2000**

S.51 of CA states that an adoption order severs all ties between the child and the biological parents and the same is vested on the adoptive parents. The order is permanent and even after attaining the age of 18 the child remains a member of the adoptive family.

However, under S.46A(1), the court can on the application of the adopted child, a parent of the adopted child or guardian, the adoptive parent, any person who is consented to the adoption and the minister in case of an inter country adoption and the minister in case of an inter country adoptive , in exceptional circumstances rescind an adoption order.

S.46A (2), states that the order can only be rescinded if it's in the best interest of the child or if the order was obtained through fraud.

S.46A(3), states that where the adoption order is rescinded, the order shall cease to apply and all responsibilities ,rights and other matters which had been terminated by the adoption order in respect of the child will be restored.

Extraction of an adoption order and registration of the order.

Under S.54 of the children act, the registrar of births and death is mandated to maintain an adopted children register. Thus, an adoption order must be extracted in the form prescribed under form H in the schedule to the rules for purposes of registration pursuant to Rule 17.

Upon registration of the order, counsel must obtain certified copies of the same and give a copy to his or her client.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ADOPTION CAUSE NO. OF 2005

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

IN THE MATTER OF NAMULI IRENEA CHILD OF BUTALEJA PARISH, BUTALEJA SUB-COUNTY, BUTALEJA DISTRICT.

PETITION

The **JOINT PETITION OF WAGUBI EMMY and WAGUBI EMMA** both of St. Francis BUTALEJA Hospital P.O. Box 22004, BUTALEJA states as follows:

1. The Respondents are desirous of adopting the child **NAMULI IRENE** under the provisions of the Children Act Cap 59.
2. The joint Respondents are residents of BUTALEJA Professionals Village LC1, BUTALEJA Parish, BUTALEJA Sub-County, BUTALEJA District, Uganda and are citizens of South Africa who first arrived in Uganda in July 2000 and stayed up to January 2003 and went back to Italy and returned to Uganda in November 2004 and have been residents in Uganda since then.
3. THAT the Joint Respondents address while in South Africa is 1 Canteen Tentway, 09 Johannesburg, SOUTH AFRICA.
4. THAT the Joint Respondents, **WAGUBI EMMY and WAGUBI EMMA** are married to each other, having married in Italy on the 23rd day of April 1994 but do not have children (copies of the marriage certificate-cum-Wedding Certificate and its translation are annexed hereto and marked as Annexure **"B"** and **"C"** respectively).
5. THAT the Joint Respondents, **WAGUBI EMMY and WAGUBI EMMA** are by occupation Medical Doctors working at St. Francis Hospital BUTALEJA and both are fit to adopt the said children.

6. THAT the Joint Respondents are not related to the child **NAMULI IRENE** and the Child **Nakimuli Sicholastic** respectively.
7. THAT the Joint Respondents, **WAGUBI EMMY** is 55 years of age and **WAGUBI EMMA** is 40 years of age (Copies of the Joint Respondent's Passports are attached hereto as Annexure "**D₁**" and "**D₂**" respectively).
8. THAT the Joint Respondents, **WAGUBI EMMY** have annexed a Certificate marked "**E₁**" and its translation as "**E₂**", **WAGUBI EMMA** a certificate marked "**E₃**" and its translation as "**E₄**", both to the effect that the Joint Respondents do not have a criminal record in Italy their country of origin.
9. THAT the Joint Respondents, have annexed certificates marked "**E₅**" and "**E₆**" respectively, both to affirm that the joint Respondents do not have any criminal record in Uganda or any other country.
10. THAT the Joint Respondents attach their recommendations of their suitability to adopt the said children from:
 - i) **Ogwang Bob**, Chairman LC1, BUTALEJA
 - ii) **Rt. Rev. Nanima Bob** , Bishop of Tororo Diocese.(Copies of recommendations are attached hereto and marked as Annexure "**F₁**", and "**F₂** respectively).
11. THAT the said Respondents are resident with the child **NAMULI IRENE** aged 7 years (a copy of the child's birth certificate is attached hereto as Annexures "**G₁**").
12. THAT the child **NAMULI** is of the female sex, unmarried, a child of an unknown person, having been found abandoned at BUTALEJA TRADING CENTRE. (see a copy of the sworn statements of **HYALO BEN the** probation and social welfare officer, BUTALEJA attached hereto as Annexures' "**H₁**").
13. That the child is a citizen of Uganda, a resident of BUTALEJA, and now in the custody of the joint Respondents both of whom are residents at the stated address.
14. THAT the good health (copies of certificate of good health are attached hereto as Annexures' "**H₃**" and "**H₄**" respectively).
15. THAT the joint Respondents **WAGUBI EMMY and WAGUBI EMMA** of St. Francis BUTALEJA Hospital P.O. Box 22004, BUTALEJA are liable to contribute to the support of the child **NAMULI IRENE**.
16. THAT the said child **NAMULI IRENE** has not been the subject of an adoption order or an application or petition for an adoption order.

OBJECTION MY LORD

17. THAT the Respondents or either of them have neither received nor agreed to receive nor has any person made or given or agreed to make or give to the Respondents or either of them any payment or reward in consideration of the adoption of the said child **NAMULI IRENE**.
18. THAT the child **NAMULI IRENE** and has been fostered by the joint Respondents since the 4th day of November 2004 under the supervision of a Probation and Social Welfare Officer, whose report is attached to this petition and marked as Annexures **"I"**.
19. That the joint Respondents have been granted guardianship of the child **NAMULI IRENE** by the High Court of Uganda at Kampala *vide High Court Family Cause No. 026 of 2005* (A copy of the Ruling and Orders are attached hereto as annexures **"J₁"** and **"J₂"** respectively).
20. That the joint Respondents' contracts of service at St. Francis Hospital, BUTALEJA will terminate in March 2007 and the Respondents will relocate to South Africa, their home country thereafter. (Copy of the letter showing expiry of the Respondents' contracts is attached hereto and marked as annexure **"K"**
21. That the joint Respondents will find it difficult and costly to stay in Uganda beyond March 2007 and to be able to foster the child **NAMULI IRENE** for the remainder of the required statutory period of 36 months.
22. That the joint Respondents would find it more difficult to obtain adoption of the children in issue in South Africa if the same is not granted to the joint Respondents by this Honorable Court while the joint Respondents are still in Uganda.
23. That both children would miss rights and benefits which accrue to south African citizens which otherwise would have accrued to them.
24. That the joint Respondents believe that the above do constitute exceptional circumstances where this Honorable Court should exercise its discretion to dispense with the statutory requirement for the Respondents to have fostered the children, the subject of the adoption for an aggregate period of 36 months under the supervision of a Probation and Social Welfare Officer.
25. That it is in the interests of the welfare of the child **NAMULI IRENE** that adoption of the said children be granted to the joint Respondents in the circumstances.
26. That the joint Respondents affirm that an adoption order made by this Honorable court will be respected and recognized in South Africa, the country of origin of the joint Respondents and produce letter from the Italian Consul annexed hereto as **"L"** as proof thereof.
27. It is proposed that the costs of this petition be paid by the Respondents **WAGUBI EMMY** and **WAGUBI EMMA**.

WHEREFORE, The Respondents pray:

- a) That an order for adoption of the child **NAMULI IRENE** by the Respondents be made under the Children Act with all the necessary directions.
- b) That the costs of this petition be provided for as above mentioned or otherwise as the court may direct.
- c) That such further or other order be made as the nature of the case may require.

Signed **Respondent**

Signed **Respondent**

All in the presence of; **Witness**

NAME:

DATED at KAMPALA this day of 2005.

DRAWN & FILED BY:

SUI GENERIS AND CO. ADVOCATES,

P.O Box 7117,

KAMPALA.

OBJECTION MY LORD



ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ADOPTION CAUSE NO. OF 2005

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

IN THE MATTER OF NAMULI IRENEA CHILD OF BUTALEJA PARISH, BUTALEJA SUB-COUNTY, , BUTALEJADISTRICT.

RESPONDENTS' SUMMARY OF EVIDENCE.

The Respondents will state that they do not have any criminal record in South Africa or Uganda or any other country. The Respondents will further state that they have neither received nor agreed to receive nor has any person made or given or agreed to give or make to the Respondents any payment or reward in consideration of the adoption of the child **NAMULI IRENE**. The Respondents will also state that they have fostered the said children since 4th day of November 2004 under the supervision of the probation and social welfare officer and that they been granted guardianship of the said children. They will seek that the Honorable Court dispenses with the statutory requirement that they need to have fostered the children in issue for a period of 36 months due to exceptional circumstances of the instant case. And that it is in the interests of the welfare of the said children that the Respondents should be appointed guardians of the said children.

LIST OF WITNESSES:

1. WAGUBI EMMY
2. WAGUBI EMMA
3. Chairman LC1, BUTALEJA
5. His Lordship, Bishop of Tororo Catholic Diocese
7. Any other with leave of court

OBJECTION MY LORD

LIST OF DOCUMENTS TO BE RELIED ON:

1. The Respondent's entry permits
2. The Marriage Certificates of the joint Respondents
3. Translation of the Marriage Certificates
4. Passports of the joint Respondents
5. Certificates of Good Conduct of the Respondents
6. Translation of the certificates of Good Conduct
7. Certificates of Good Criminal Record from Interpol
8. Recommendation letters from Chairman LC1 BUTALEJA; Rt. Rev., Bishop of Tororo Catholic Diocese; Social Welfare Officer.
9. Birth Certificates of the Infant
8. Probation and Welfare Report
9. Sworn Statements of the Probation and Welfare Officer, Tororo
10. Certificates of Good Health of the infants
11. Ruling and Order of the High Court in Guardianship Application
12. Letter confirming expiry of the Respondents' contracts of service in Uganda
13. Letter from the South African Embassy
14. Any other to be tendered with leave of court.

LIST OF AUTHORITIES:

1. The Constitution of Republic of Uganda 1995.
2. The Children's Act Cap 59
3. The Adoption of Children's Rules, S.I. No. 59-1

ISAAC CHRISTOPHER LUBOGO

4. Re Namukasa Annie Sanyu Small Misc. Appl No. 58 of 1998.
5. Re Margaret Laker and Another Adoption cause No. 3/1998.
6. Re Ali Issa Abdi Misc. Appli. No. 904/1997.
7. In Re Moses Kirabo Clay. Adoption Cause No. 30 of 2004.
8. In Re M (an infant Civil S.C. Appeal No. 22 of 1994.
9. Edward Byaruhanga Katumba -Vs- Daniel Kiwalabye Rusoke, Court of Appeal Civil Appeal No. 2 of 1998.
10. Any other to be tendered with leave of court.

DATED at KAMPALA this Day of 2005.

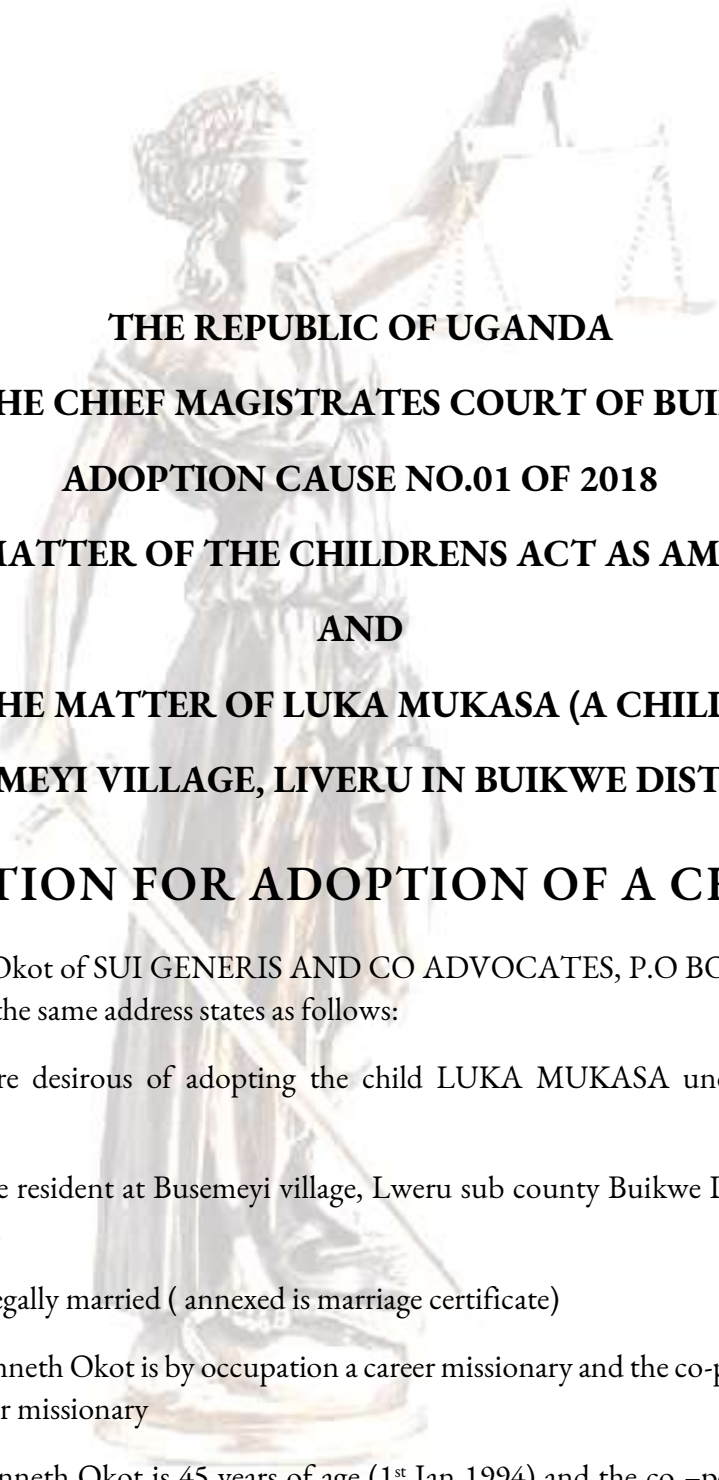
.....
FOR: SUI GENERIS AND CO. ADVOCATES
COUNSEL FOR THE RESPONDENTS.

DRAWN & FILED BY:

SUI GENERIS AND CO. ADVOCATES,

P.O Box 7117,

KAMPALA.



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF BUIKWE
ADOPTION CAUSE NO.01 OF 2018
IN THE MATTER OF THE CHILDRENS ACT AS AMMENDED
AND
IN THE MATTER OF LUKA MUKASA (A CHILD) OF
BUSEMEYI VILLAGE, LIVERU IN BUIKWE DISTRICT
PETITION FOR ADOPTION OF A CHILD.

The petition of Kenneth Okot of SUI GENERIS AND CO ADVOCATES, P.O BOX 7117, KAMPALA and Suzan Okot his spouse of the same address states as follows:

1. The petitioners are desirous of adopting the child LUKA MUKASA under the provisions of the children's act.
2. The petitioners are resident at Busemeyi village, Lweru sub county Buikwe District of Uganda and are citizens of Uganda
3. The petitioner is legally married (annexed is marriage certificate)
4. The petitioner Kenneth Okot is by occupation a career missionary and the co-petitioner Susan Okot is by occupation a career missionary
5. The petitioner Kenneth Okot is 45 years of age (1st Jan 1994) and the co –petitioner Susan Okot is 40 years of age (6th June 1979). Annexed are their birth certificates)

ISAAC CHRISTOPHER LUBOGO

6. The petitioners have resident with them the following persons namely, Samuel Okot (son) aged 3 years.
7. The petitioners Kenneth Okot and Susan Okot are not related to the child
8. The child, Luka Mukasa is of male sex, unmarried, a child of Mukasa Musa, whose whereabouts are unknown and of Sarah Nankya who is deceased , a citizen of Uganda, aged 8 years, having been born at Busemyi village, Luweru Buikwe district now in the actual custody Kenneth Okot and Suzan Okot of Busemyi village,luweru sub county, Buikwe district under the guardianship of Kenneth Okot and Suzan Okot of Busemyi village, Luweru sub county in Buikwe district
9. The petitioners Kenneth Okot and Suzan Okot annex the following consents required under the children's act.
 - a) Name of person, relationship , age of consent
10. The child, Luka Mukasa has not been the subject of an adoption order or of an application or petition for an adoption order.
11. The petitioners have not nor has either of them received or agreed to receive and no person has made or given or agreed to make or give to the petitioners or either of them any payment or reward in consideration of the adoption of the child, LUKA MUKASA.
12. The child, LUKA MUKASA has been fostered by the petitioners since the 21st June 2017, under the supervision of ZAINA NAMATA, approbation and social welfare officer, whose report is attached to this petition.
13. It is proposed that the costs of this petition shall be paid by the petitioners.

The petitioners pray:

- a) That an order for adoption of the child LUKA MUKASA by the petitioners be made under the children act with all necessary directions
- b) That the costs of this petition be provided for as above mentioned or otherwise as the court may direct
- c) That such further or other order be made as the nature of the case may require.

Signed by

KENNETH OKOT
PETITIONER

SUZAN OKOT
CO-PETITIONER

OBJECTION MY LORD

Witnessed by

1. SUI GENERIS

2. ZAINA NAMATA

ADVOCATE
SOCIAL WELFARE OFFICER BUIKWE DISTRICT.

DISTRICT PROBATION AND AND

- Application should be verified by an affidavit in support
- Attach all documents to be relied on
- Summary of evidence.



ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

ADOPTION CAUSE NO.01 OF 2019

IN THE MATTER OF THE CHILDREN ACT CAP 59 AS AMENDED AND

IN THE MATTER OF LUKA MUKASA (A CHILD) OF

BUSEMEYI VILLAGE, LWERU SUB COUNTY, BUIKWE DISTRICT.

PETITION FOR ADOPTION OF A CHILD

The petition of Kenneth Okot of SUI GENERIS AND CO ADVOCATES P.O BOX 7117, KAMPALA, In Uganda and 40 ORR ST. ATTENBORO MB 02663, UNITED STATES OF AMERICA and Susan Okot his spouse, of the same address states as follows.

1. The petitioners are desirous of adopting the child LUUKA MUKASA under the provisions of the children act.
2. (a) The petitioner Kenneth Okot of Busemeyi village, Luweru sub county Buikwe District, Uganda is a citizen of Uganda and stays at the mentioned address.

(b) The co-petitioner, Suzan Okot of Busemeyi village, Luweru sub county, Buikwe district, Uganda is a citizen of the United States of America who first arrived in Uganda on 10th October 2010 and has stayed at the above-mentioned address.

3. The petitioner Kenneth Okot was married to the co-petitioner ,Suzan Okot on the 6th June 2015 (marriage certificate is attached to this petition as annexure A)
4. The petitioner Kenneth Okot is by occupation a career missionary and the co-petitioner Suzan Okot is by occupation a career missionary
5. The petitioner Kenneth Okot is 45 years of age (1st Jan 1974) and the co-petitioner Suzan Okot is 40 years of age (6th June 1979). (annexed are their birth certificates)
6. The petitioner ,Kenneth Okot and the co-petitioner Suzan Okot are not, nor is either of them related to the child

7. (a) The petitioner Kenneth Okot annexes marked “Annexure C” from Uganda police showing that he does not have a criminal record and affirms he does not have a criminal record in Uganda or any other country.

OBJECTION MY LORD

b) The co-petitioner Suzan Okot annexes a certificate marked “D” that she does not have a criminal record from the Texas police department of the United States of America and affirms that she does not have a criminal record in Uganda or any other country.

8. The petitioner Kenneth Okot and Suzan Okot attach a recommendation concerning their suitability to adopt a child from (name recommended) of the probation and welfare office of Texas in USA, the country of origin of the petitioner.

9. The petitioners have resident with them the following person, namely, Samuel Okot their son aged 4 years.

10. The child, Luuka Mukasa is of the male sex

- A child of Mukasa Musa, whose whereabouts are unknown
- And of Sarah Nankya aged 8 years having been a citizen of Uganda, aged 8 years having been born at Busemeyei village on the 14th February 2011, resident at Busemeyei village, Luweru sub county Buikwe district now in actual custody of Kenneth Okot and Suzan Okot of Busemeyei village, Luweru sub county Buikwe district under the guardianship of Kenneth Okot and Suzan Okot of Busemeyei village, Lweru sub county in Buikwe district.

11. The petitioners Kenneth Okot and Susan Okot annex the following consents marked “C” as required under the children act

a) Name of person relationship of date of consent

Consenting child

12. The child LUUKA MUKASA has not been the subject of an adoption order as of an application or petition for an adoption order

13. The petitioners have not nor has either of them received or agreed to receive and no person has made or given or agreed to make or give to the petitioners or either of them any payment or reward in consideration of the adoption of the child LUKA Mukasa.

14. The child, LUUKA MUKASA has been fostered by the petitioners since the 21st June 2017 under the supervision of Zaina Namata, a probation and social welfare officer ,whose report is attached and marked “E”

15. The petitioners affirm that an adoption order made by this honorable court will be respected and recognized by the United States of America the country of origin of the co-petitioner Suzan Okot and produces a sworn statement annexed marked “F” to that effect.

ISAAC CHRISTOPHER LUBOGO

16. It is proposed that the costs of this petition shall be paid by the petitioners, Kenneth Okot and Suzan Okot.

The petitioners pay

- a) That an order for the adoption of the child, LUKA MUKASA by the petitioners be made under the children act with all necessary directions
- b) That the cost of this petition be provided for as above –mentioned or otherwise as the court may directly and
- c) That such further or other order who made as the nature of the case may require.

DATED this 5th day of December 2019.

Signed by

KENNETH OKOT SUSAN OKOT
PETITIONER CO-PETITIONER.

In witness of

SUI GENERIS ZAINA NAMATA

SUI GENERIS AND CO ADVOCATES DISTRICT PROBATION AND SOCIAL WELFARE OFFICER
BUIKWE DISTRICT.ADVOCATE

- Verify with affidavit
- Summary of evidence
- Summons.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
ADOPTION CAUSE NO.01 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59
AS AMENDED AND
IN THE MATTER OF LUKA MUKASA (A CHILD) OF
BUSEMEYI VILLAGE, LWERU SUB COUNTY, BUIKWE DISTRICT.

ADOPTION ORDER.

On reading the petition of KENNETH OKOT AND SUZAN OKOT, and the affidavit of KENNETH OKOT AND SUZAN OKOT and the exhibits annexed to them which included, a marriage certificate for the petitioners, birth certificates of the petitioner, the child's birth certificate ,certificate of good conduct from their respective country police departments, probation and social welfare reports and on hearing (name person heard) and the evidence of:

- a) Names and address.

And the court being satisfied that the declarations contained in the petition are true and being also satisfied with the undertaking of Kenneth Okot and Suzan Okot as to the care and protection and other provisions to be made for the child ,LUKA MUKASA and being further satisfied that for the benefit of the child he could be adopted by Kenneth Okot and Suzan Okot and that all the requirements of the children act have been complied with:

IT IS HEREBY ORDERED that:

Kenneth Okot and Suzan Okot be authorized to adopt the child.

And it is ordered that the parties to their proceedings other than Kenneth Okot and Suzan Okot recover their costs against Kenneth Okot and Suzan Okot, the costs to be taxed by the registrar and it is ordered that Kenneth Okot and Suzan Okot pay the amount of the costs when taxed to the registrar this court within 14 days after the date of the certificate of taxation

And it is ordered that the parties to these proceedings other than Kenneth Okot and Suzan Okot recover their costs against Kenneth Okot and Suzan Okot, the costs to be taxed by the registrar this court within 14 days after the date of the certificate of taxation.

ISAAC CHRISTOPHER LUBOGO

And it is directed that the registrar of births and death shall make an entry recording this adoption in the adopted children register in the form set out in form H.

Dated this 5th day of December 2019 at Mukono.

JUDGE OF THE HIGH COURT.



GUARDIANSHIP

A guardian in section 1(k) of the Children's Act as a person vested with the parental responsibility of a child. The fallacy with guardian ship is that the child does not take on the rights from the guardian in relation to inheritance.

In the matter of ONEN CLIFF MILLS AND LAKER JOY ONEN, MISC APP NO.22 OF 2018, Stephen mubiru j defined guardianship as a legal relationship between a competent adult (guardian) and a person who because of incapacity such as minority, is incapable of taking care of his or her own affairs (the ward).

He further defined a guardian as a person who is given the legal power to make decisions for another person because he or she is considered not competent to decide for himself/herself.

S.1 (W) of the children act as amended defines a guardian as a person having parental responsibility for a child.

Functions of a guardian.

In the matter of ONEN CLIFF courted that the functions of a guardian are:

1. Make decisions on behalf of a ward relating to legal. Financial, shelter, education, food and health care decisions though he or she may be required to seek court approval for various decisions especially those regarding the investment and disposal of the property of the ward.
2. Guardian acts as legal parent of the ward for the entirety of the guardianship. Although the guardian has the same responsibilities to care for the child as a parent would a guardianship does not sever the legal relationship that exists between a child and his or her biological parents. Instead, it co-exists with that legal relationship.

DUTIES OF GUARDIAN.

1. Utmost good faith (men case)
2. Avoid conflict of interest
3. Duty to act in the best interest of the child. (onen case)

TYPES OF GUARDIANSHIP

1. Legal guardianship
 - S.43A AND 43B of the children act.

2. Customary guardianship.

- S.43C of the children act
- S.43C (1) states that family members may appoint a guardian of a child in accordance with their customs, culture or tradition where both parents of the child are deceased or cannot be found, the surviving parent is incapacitated or the child has no guardian or any other person having parental responsibility for him or her.

The person as per S.43C (2) acts as a trustee in respect of the property of the child.

3. Testamentary guardian.

This is a guardian appointed in the last will of the deceased. Such a person is recognized under common law as a testamentary guardian.

4. Guardian by agreement.

A parent of a child may pursuant to S.43D (1) of C.A by agreement/deed appoint any person to be a guardian.

The appointment is only effective under S.43D(2) if the agreement/deed is dated and signed by the parent in the presence of two witnesses one of whom must be a probation and social welfare officer and other must be a local councilor at LC 1 level.

HOW TO APPLY FOR LEGAL GUARDIANSHIP

FORUM

Pursuant to S.43B (b) of CA, an application for legal; guardianship is made to the high court.

WHO CAN APPLY FOR LEGAL GUARDIANSHIP?

- 1) Applicant must be a citizen of Uganda. S.43A(2)
- 2) Must be above the age of 18 years.

CONSIDERATIONS FOR GRANT OF LEGAL GUARDIANSHIP

There are pursuant to S.43F (1) and they are:

- a) There is no known relative or Next of kin of the child.

OBJECTION MY LORD

- b) The relatives or next of kin are unwilling or unable to take parental responsibility of the child
- c) All alternative care options available to the child have been exhausted
- d) The child is suffering or likely to suffer significant harm under present custody.
- e) Wishes of the child having regard to their age.
- f) Consent of the child to the guardianship where the child is 12 years and above
- g) Applicant has continuously lived in Uganda for at least 3 months. (S.43F (2)(a))
- h) Applicant has no criminal record (S.43F(2)(B))
- i) A recommendation concerning his or her ability as a guardian from a probation and social welfare officer or other competent authority in Uganda or applicant's county of residence (S.43F (2) (c)).

PROCEDURE.

The petition is pursuant to S.43B(C) of CA By petition in Form 1 set out in the 3rd schedule and subject to S.43B(d) be accompanied by a report of the probation and social welfare officer

An affidavit verifying the petition must be deponed

Where you want to sell the property of a minor.

- Petition for legal guardianship
- Extract an order
- Write a formal letter to the registrar of title at ministerial zonal office where land is located requesting it to be registered in guardians' names
- You can transact in the property in guardians' names
- You can transact in the property for the best interest of the child once registered.

IT MUST BE NOTED THAT THE RESPONSIBILITY COVERS THE FOLLOWING:

Parental responsibilities

Parental appointments

Cultural Obligations.

IN RELATION TO CAPACITY TO APPLY TO BE A GUARDIAN,

It must be noted that there is no clear-cut legal provision on this. To this end therefore, on the strength of the case of; **In The Matter of Ayla Mayanja; Misc. Application 20 of 2003** the following person can apply to be guardians:

Biological parents;

Any relative;

Any person not related to the child;

Any person above 18 years of age; of sound mind.

It must be noted that court follows the welfare principles before one is appointed as guardian to the child.

PROCEDURE FOR APPLYING FOR GUARDIANSHIP

Application is by notice of motion supported by an affidavit. This is because there is no clear-cut procedure and therefore, we are enjoined to use the default mode of application under Order 51 of the **CPR SI 71-1**. this is fortified by the case of **Re Kangame Teres (An Infant) (1996) HCB 69** where court held that the procedure in applying for a guardianship order is by notice of motion supported by an affidavit.

DOCUMENTS:

Notice of Motion supported by an affidavit:

Summary of evidence;

List of Authorities;

List of Documents;

List of witnesses;

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
MISCELLANEOUS APPLICATION NO.OF 2005
IN THE MATTER OF NAMULI IRENE
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP
BY DR. BOB DOYA

NOTICE OF MOTION

(Under Articles 139 (I) and 34 (I) and (2) of the 1995, Sections 14, 33 and 39 of the Judicature Act, Cap 13, Section 98 of the CPA Cap 71, Sec 3,4, 5, and 6 of the Children Act Cap 59, and 0.51 r.r. 1,2 and 3 of the CPR S.1 71-1).

TAKE NOTICE that this Honorable Court will be moved on theday of2006 atO'clock in the forenoon or so soon thereafter as Counsel for the Applicants can be heard in an application for orders:

1. THAT the Applicant be appointed guardian of the infant, **Namuli Irene**
2. THAT the Applicant be granted custody of the said infants.
3. THAT costs of this application be provided for.

TAKE FURTHER NOTICE that this application is premised on the following grounds:-

1. THAT the infant' parents are unknown and the said infant is in dire need of care and protection.

- 2. THAT the welfare of the said infant will be better served if the infant is placed under the guardianship and custody of the Applicant.
- 3. THAT applicant is a suitable person and has the means to cater for the infant.
- 4. THAT it is in the best interests of the infant that the Application be granted.

TAKE FURTHER NOTICE that further and other grounds of the Application are contained in the affidavit of **DR. BOB DOYA** dated the day of2005 and filed herein which shall be read and relied upon at the hearing of this Application.

DATED at KAMPALA this.....day of.....2005.

.....
FOR: SUI GENERIS AND CO. ADVOCATES
COUNSEL FOR THE APPLICANTS

GIVEN UNDER my Hand and the Seal of the Court this.....day of.....2005.

.....
DEPUTY REGISTRAR
(FAMILY)

DRAWN & FILED BY:
 SUI GENERIS AND CO. ADVOCATES,

OBJECTION MY LORD

P.O.BOX 7117, *KAMPALA*.



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
MISCELLANEOUS APPLICATION NO.OF 2005
IN THE MATTER OF NAMULI IRENE – INFANT
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP
BY DR. NAMUKASA MARIA ROSE

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION:

I, **DR. NAMUKASA MARIA ROSE** of St. Francis BUTALEJA Hospital P.O. Box 22004, BUTALEJA, do hereby swear and sincerely state as hereunder:-

1. THAT I am an adult female Italian citizen of sound mind and the **2nd** Applicant herein and swear this affidavit as such.
2. THAT the plight of the infant, **Namuli Irene** was drawn to our attention when I visited BUKOTO Babies Home in September 2003 whereat I were informed by a social worker volunteer at BUKOTO Babies Home which I verily believed to be true that the said infant was abandoned children with unknown parents. (See a copy of Sworn Statements of Ntege James, Probation & Social Welfare Officer, Mukono, attached hereto and marked as **Annexure“C₁”**).
3. THAT I was further informed by the authorities of BUKOTO Babies Home which we verily believed to be true that the said infant was in dire need of care and protection.
4. THAT after thorough discussions and mutual consultations, I applied and was granted Fostership of the said infant by the Family and Children Court of BUTALEJA and have fostered the said infant since **29th day of December 2003**. (See copies of the orders attached hereto and marked as **Annexures’ “D₁”**, and **“D₂”**, respectively).
5. THAT after thorough discussions and mutual consultations, I have decided to apply for guardianship of the said infants.

OBJECTION MY LORD

6. THAT I am better placed to cater for the welfare of the said **Namuli Irene**, aged 4 years respectively while under my guardianship and physical custody (See Birth Certificates of the said infant marked as **Annextures“D₃”**
7. THAT the Applicant is desirous of taking the said infant with him to Kenya upon the expiry of his respective contracts.
8. THAT I have clearance from the Kenya High Commission and Certificate of Good Conduct from the Kenyan Director of Public Prosecutor shows that the orders of the High Court of Uganda would be recognized by the Kenyan Juvenile Court and my suitability to adopt the infant. (See copies of the Certificates of good conduct and their translations attached as **Annextures“E₁”, “E₂”, “E₃”, and “E₄”** and a letter from the Kenyan High Commission, attached hereto and marked as **Annexture“F₁”**).
9. THAT the 1st Applicant and I do not have a criminal record In Uganda or any other country. (See Clearance Certificate from Interpol for both Applicants, marked as **Annextures“G₁”** and **“G₂”** respectively).
10. THAT the child welfare and adoption society do not object and have thus recommended our guardianship of the infant, **Namuli Irene** (See recommendation from child welfare and adoption society annexed hereto and marked as **Annexure’s H”**).
11. THAT the said **Namuli Irene**, is of good health and have not been subject of guardianship order before. (See copies of certificates of good health annexed hereto and marked as **Annextures“H₁”** and **“H₂”** respectively).
12. THAT I have neither received nor agreed to receive and no person has made or given or agreed to make or give me any payment or reward in consideration of the guardianship of the child, **Namuli Irene**.
13. THAT the welfare and interests of the infant will be better served when I am granted the order of guardianship and physical custody of the said infant. (See Welfare Guardianship Report and recommendations annexed hereto and marked as **Annextures“I₁”, “I₂”, “I₃”, “I₄”, and “I₅”** respectively).
14. THAT I depone this affidavit in support of my application to this Honorable Court for Order of Guardianship.
15. THAT whatever I have stated in **paragraphs 1, 2, 3, 4, 5, 8, 9, 10, 11,12, 13, 14, and 15** are correct and true to the best of my knowledge and belief and whatever I have stated in paragraphs **6 and 7** is true and correct according to my information from the sources disclosed therein.

SWORN at Kampala by me the said }

DR. NAMUKASA MARIA ROSE }

this.....day of.....2005. }

DEPONENT

BEFORE ME:-

.....

A COMMISSIONER FOR OATHS

DRAWN & FILED BY:

SUI GENERIS and co. Advocates

P.O.BOX 7117

Kampala



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.02 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59 AS
AMENDED AND
IN THE MATTER OF KAKURU LUCAS AND KATO DEO
(CHILDREN) OF KAUGA VILLAGE, MUKONO DISTRICT.

PETITION FOR GUARDIANSHIP.

The petition of NATURINDA DORCUS OF SUI GENERIS AND CO ADVOCATES, P.O BOX 7117, and KAMPALA AND NEISER STREET 20 JEVER GERMANY states as follows:

1. The petitioner is desirous of obtaining legal guardianship of the children, Kakuru Kucas and Kato Deo under the provisions of the children act
2. The petitioner Natukunda Dorcus of kauga village, Mukono district is a citizen of Uganda and stays in Uganda at kauga village, Mukono district
3. The petitioner is unmarried
4. The petitioner Naturinda Dorcus is by occupation a coffee exporter
5. The petitioner is 45 years of age (6th June 1974). Attached and marked annexure "A" is my birth certificate
6. The petitioner Naturinda Dorcus is related to the children kakuru Lucas and Kato Deo being their paternal aunt.
7. The petitioner Naturinda Dorcus annexes a certificate marked "B" that she does not have a criminal record and affirms that she does not have a criminal record in Uganda or any other country.
8. The petitioner Naturinda Dorcus attached a recommendation concerning her suitability to be a huardian to the children from Zaina Namata, the probation and social welfare officer of Mukono
9. The petitioner has no other person resident with her except the children.
10. The children Kakuru Lucas and Kato Deo are:
 - a) Of the male sex

- b) Unmarried
- c) Children of Jackson Twesigye whose whereabouts are unknown and of Jovita Ankunda of Naguru, Nakawa division, Kampala.
- d) They are citizens of Uganda
- e) One year of age having been born at Mukono the 2nd December 2018
- f) Resident at kauga,mukono district
- g) Now in the actual custody of the petitioner, Naturinda Dorcus and under her guardianship

11. The children have not been the subject of a guardianship order or of an application or petition for a guardianship order.

12. The petitioner has not received or agreed to receive and no person has made or given any payment or reward in consideration of the child.

13. The petitioner undertakes that:

- a) She shall care for kakuru Lucas and Kato Deo as though they were my own children
- b) She will bring them up in accordance with the Anglican religion
- c) She will look after their health and allow them to be medically examined as required by the district probation and social welfare office
- d) She shall allow an officer of the district probation and social welfare office or representative of the ministry to visit my home and to see the child at any time.
- e) She shall inform the district probation and social welfare office immediately if the child is ill or is missing or is involved in an accident or in any kind of trouble.
- f) She shall inform the district and social welfare office immediately if she plans to change residence and address.
- g) She understands that an officer of the district probation and social welfare has the right to remove the child from our home in certain circumstances.

14. The petitioner affirms that this guardianship order made by this honorable court will be respected and recognized by Germany the petitioner's other country of residence.

15. It is proposed that the costs of the petition shall be paid by the petitioner Naturinda Dorcus.

The petitioner prays

OBJECTION MY LORD

- a) That an order for guardianship the children Kakuru Lucas and Kato Deo, by the petitioner be made under the children act will all necessary directions.
- b) That the petitioneris authorized to SELL the land described asand registered in the name ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
- c) That the cost of this petition be provided for as above mentioned or otherwise as the court may direct and
- d) That such further or other order be made as the nature of the case may be

Dated this 5th day of December 2019.

Signed by

NATURINDA DORCUS
PETITIONER

IN THE WITNESS OF:

SUI GENERIS
SUI GENERIS AND CO ADVOCTAES
ADVOCATE.

- Verify with an affidavit in support
- Summary of evidence
- Summons



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
MISCELLANEOUS APPLICATION NO.OF 2005
IN THE MATTER OF NAMULI IRENE– INFANT
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP
BY DR. NAMUKASA MARIA ROSE

SUMMARY OF EVIDENCE:

The Applicant a Kenyan doctor at Butaleja Hospital in Uganda. The applicant is seeking legal guardianship and custody of the foundling, namely **Namuli Irene**, currently in her fostership. The applicant is well suited to cater for the foundlings' welfare. The Applicant's home country will respect the orders of this Honourable Court.

LIST OF WITNESSES:

1. DR. NAMUKASA MARIA ROSE
2. Officers from Butaleja Hopital, Kampala
3. Any other with leave of court.

LIST OF DOCUMENTS TO BE RELIED ON:

1. Passports of the Applicant.
2. The Marriage Certificate of the joint Applicant.
3. Certificates of Good Conduct of the Applicants.
4. Translation of the Certificates of Good Conduct.
5. Letter from the Kenyan High Commission.

OBJECTION MY LORD

6. Recommendation letter from Child Welfare and Adoption Society.
7. Certificates of Good Health of the infants.
8. Birth Certificates of the infants.
9. Recommendation from LC1 Chairman, Butaleja Professionals.
10. Probation and Welfare Report.
11. Certificates of Good Conduct from Interpol.
12. Fostership documents.
13. Fostership Order.
14. Any other to be tendered with leave of court.

LIST OF AUTHORITIES:

1. The Constitution of the Republic of Uganda, 1995.
2. The Judicature Act Cap 13.
3. The Children Act Cap 59.
4. The Civil Procedure Act Cap 71.
5. The Civil Procedure Rules S.1 65-3
6. In Re Jane Namukasa - an infant H.C Misc. Applic. No. 78 of 1991.
7. In Re Okot Lawrence Ikeda and Beatrice Ikeda – Both infants H.C Misc. cause. No. 229 of 1993.
8. In Re Prossy Nalugwa – an infant H.C Misc. Applic. No. 500 of 1997.
9. In Re Sarah Namakula Misc. Applic. No. 91 of 1993.
10. In Re Erisa Lukwago Junior C.V FC 1 of 2003.
11. Any other with leave of court.

DATED at KAMPALA this.....day of.....2006.

.....

ISAAC CHRISTOPHER LUBOGO

FOR: SUI GENERISAND CO. ADVOCATES

COUNSEL FOR THE APPLICANT

DRAWN & FILED BY:

SUI GENERISAND CO. ADVOCATES,

P.O. BOX 7117, KAMPALA.



OBJECTION MY LORD

GUARDIANSHIP ORDER EXTRACTED.

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.2 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59
AS AMENDED) AND
IN THE MATTER OF A PETITION FOR LEGAL
GUARDIANSHIP OF KAKURU LUCAS AND KATO DEO
(CHILDREN) BY DORCUS NATURINDA**

ORDER.

This petition coming up for final disposal before Justice SUI GENERIS , in the presence of Dorcus Naturinda, the petitioner, Kakuru Lucus and Kato Deo (children) and Joel Lumala, counsel for the petitioner.

IT IS HEREBY ORDERED THAT:

DORCUS NATURINDA is hereby appointed the LEGAL GUARDIAN OF KAKURU LUCAS AND KATO DEO (CHILDREN).

GIVEN under my hand and the seal of this Honorable court this 5th day of December 2019

REGISTRAR

Extracted by

SUI GENERIS AND CO ADVOCATES.

**GUARDIANSHIP ORDER EXTRACTED WHERE THE GUARDIAN
SEEKS TO TRANSFER PROPERTY REGISTERED IN MINOR'S
NAMES.**

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.3 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59
(AS AMENDED AND
IN THE MATTER OF A PETITION FOR LEGAL
GUARDIANSHIP OF TOFA RUKUNDO (A CHILD)
BY BETH BEKUNDA**

ORDER

This matter coming up for final disposal before justice SUI GENERIS on this 5th day of December 2019 in the presence of both Bukunda, the petitioner, TOFA RUKUNDO (A CHILD) AND Lumala Joel, counsel for the petitioner.

IT IS HEREBY ORDERED THAT:

1. Beth Bekunda is hereby appointed LEGAL GUARDIAN of Tofa Rukundo (Aged 7)
2. Beth Bekunda is authorized to sell land described asand registered in the name of Tofa Rukundo (a child)
3. Beth Bekunda shall apply the proceeds of the sale of the said land for the welfare of Tofa Rukundo (a child)
4. This order shall be registered with URSB and the ministry of Gender, Labor and social development.

GIVEN UNDER my hand and seal of this honorable court this 5th day of December 2019.

REGISTRAR

Extracted by:

SUI GENERIS AND CO ADVOCATES.

OBJECTION MY LORD



CHECKLIST

MATTERS TO CONSIDER BEFORE GRANTING CUSTODY OF CHILDREN GENERALLY

The law applicable to this area of study includes the following;

1. The Constitution of the Republic of Uganda 1995
2. The Judicature Act cap 13
3. The Civil Procedure Act Cap 71
4. The Civil Procedure Rules SI 71-1
5. The Children Act Cap 59
6. The Children (Family and Children's Court) Rules SI 59-2
7. The Evidence Act Cap 6

The checklist for resolution includes the following:

1. Whether X can be granted custody of the children?
2. What is the forum, procedure and documents?

DISCUSSION

Custody of children is vested in the parents of a child. Court follows section 4 of the Children's Act in granting of custody. Thus, court follows the welfare principle. This is fortified by **Nakagwa vs Kigundu [1978] HCB 310**. In **Esther Najjuma Misc. Applic 21/2003**, court held that in looking at the welfare principle, court should put into consideration, the likely effects of any changes in the child's circumstances.

Court held further in **Kayonga vs Sekiziyivu [1978] HCB 240** that where the children are of tender years, custody goes to the mother. In addition, court held in **Hoffman vs Hoffman (1970) EA 100** that a father's superior position is irrelevant in matters of custody. In **Nyakairu vs Nyakairu [1979] HCB 261**; it was stated

OBJECTION MY LORD

among other things that a mother is a fit and proper person to have custody of the children unless it is shown that she is not a fit and proper person.

FORUM

The forum is the Family and Children's Court. This is because it is empowered to handle all matters affecting children.

PROCEDURE

The procedure is as follows;

The application is by way of petition to the Family and Children's Court in Form 1 to the Rules; supported by an affidavit

This petition is served on the Respondent who is expected to reply to the averments in the petition.

DOCUMENTS

Petition in Form 1 to the Rules

Affidavit

It must be noted that in this petition, one can include additional prayers like supervisory orders, care orders and maintenance order.

Secondly, if one has custody, then there is no need to apply for a custody order. One may however apply for a maintenance order.

MAINTENANCE OF CHILDREN

The law applicable to this area of study includes the following;

1. The Constitution of the Republic of Uganda 1995
2. The Judicature Act cap 13
3. The Civil Procedure Act Cap 71
4. The Civil Procedure Rules SI 71-1
5. The Children Act Cap 59
6. The Children (Family and Children's Court) Rules SI 59-2
7. The Evidence Act Cap 6

The checklist for resolution includes the following:

3. Whether X can be granted maintenance of the children?
4. What is the forum, procedure and documents?

DISCUSSION.

Maintenance of children is premised on article 31(4) which imposes a responsibility on the parents to care for their children. This is fortified by the case of **Mayambala vs Mayambala HCCA 3 of 1998**

The procedure for application for maintenance is by application by a person with custody of the children. This is premised on rule 19 of the Family and Children's Court Rules.

The Application takes the format of Form 2 to the Rules, and is supported by an affidavit.

PROVING PATERNITY & DECLARATION OF PARENTAGE

The law applicable includes the following:

1. The Constitution of the Republic of Uganda 1995

OBJECTION MY LORD

2. The Judicature Act cap 13
3. The Civil Procedure Act Cap 71
4. The Civil Procedure Rules SI 71-1
5. The Children Act Cap 59
6. The Children (Family and Children's Court) Rules SI 59-2
7. The Evidence Act Cap 6

The checklist for resolution includes the following:

1. Whether X has capacity to apply for a declaration of parentage?
2. what are the consequences of parentage
3. What is the forum, procedure and documents?

Declaration of parentage is provided for in section 67 of the Children Act Cap 59. According to this section, for one to have capacity to make this application, the following should be proved:

1. One must be the mother or the father of the child in question
2. It should be before the child attains 18 years of age
3. Thirdly, it should be within three years after death of parent
4. The declaration can also be sought during pregnancy.

The consequences of declaration of parentage are clear in the act; thus; it establishes a blood relationship between the father or mother and the child.

Secondly it does not however confer custody on the person declared as a parent.

Mpirirwe Vs Ninsabimana (1994) 4 ALR 88 enunciates some principles towards the jurisprudence of declaration of parentage, thus; court looks at closeness and resemblance, prior consistent statements and acts, and parents' names on the birth certificates.

Court noted further in **Mwambo vs Wandoa (1965) EA 243** that Loose morals are not a defence, and that evidence should be corroborative in effect that it shows the man to be the father of the child. Court held further in **Moore vs Hewitt (1947) KB 831** that if there is proof of association of person with the applicant, this can be good corroborative evidence.

In **Simpson vs Colon (1964) 1 All ER 262** court held that the question of resemblance is a guiding factor. In **CT vs MV (1969) EA 375**, court held that where a father admitted having sexual intercourse with the applicant within 4 months; the admission and the time span showed that the father was the parent of the child.

THE PROCEDURE FOR DECLARATION OF PARENTAGE IS AS FOLLOWS:

One fills out a complaint on oath form and submits it to the Chief Magistrate who will issue summons to person alleged to be mother or father of the child.

THE FORUM:

This is the Family and Children's Court as evidenced in section 16 of the Children's Act

THE DOCUMENT(S)

Form 2 in the schedule to the Rules

FORM 2: FOR DECLARATION OF PARENTAGE

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN'S COURT

IN THE MATTER OF

AND

IN THE MATTER OF AN APPLICATION FOR A

DECLARATION OF PARENTAGE

COMPLAINT ON OATH

I BEING THE Of the child do hereby apply for a declaration of parentage against being the of the child on the following grounds:

.....
.....
.....

sworn at this day of 2006

Complainant

Before me

Commissioner for oaths

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX 7117,
Kampala, Uganda



SUCCESSION

This is governed by ;

Succession Act Cap 162

Administration of Estates (Small Estates) (Special Provisions) Act Cap 156

Administrator General's Act Cap 157

Administration of Estates (Small Estates) (Special Provisions) Act Cap 156

Admin. of Estates (Persons of unsound mind) (Procedure) Rules SI 155-1

The Admin. of Estates (Small Estates) (Special Provisions) Rules SI 156-1

The Administrator General's Act Cap 157

The Administrator General's (Fees) Rules SI 157-1

The Evidence Act Cap 6

Succession is divided into either testate or intestate succession.

TESTATE SUCCESSION

The issues to consider under testate succession include the following:

(a) If one is desirous of making a will.

Whether X has capacity to make a will?

Who are the beneficiaries to the will?

Whether the property in question can be disposed of by will?

What additional information is needed to complete the will.

What is the formalities should be taken to make the will.

(b) If the will has already been made

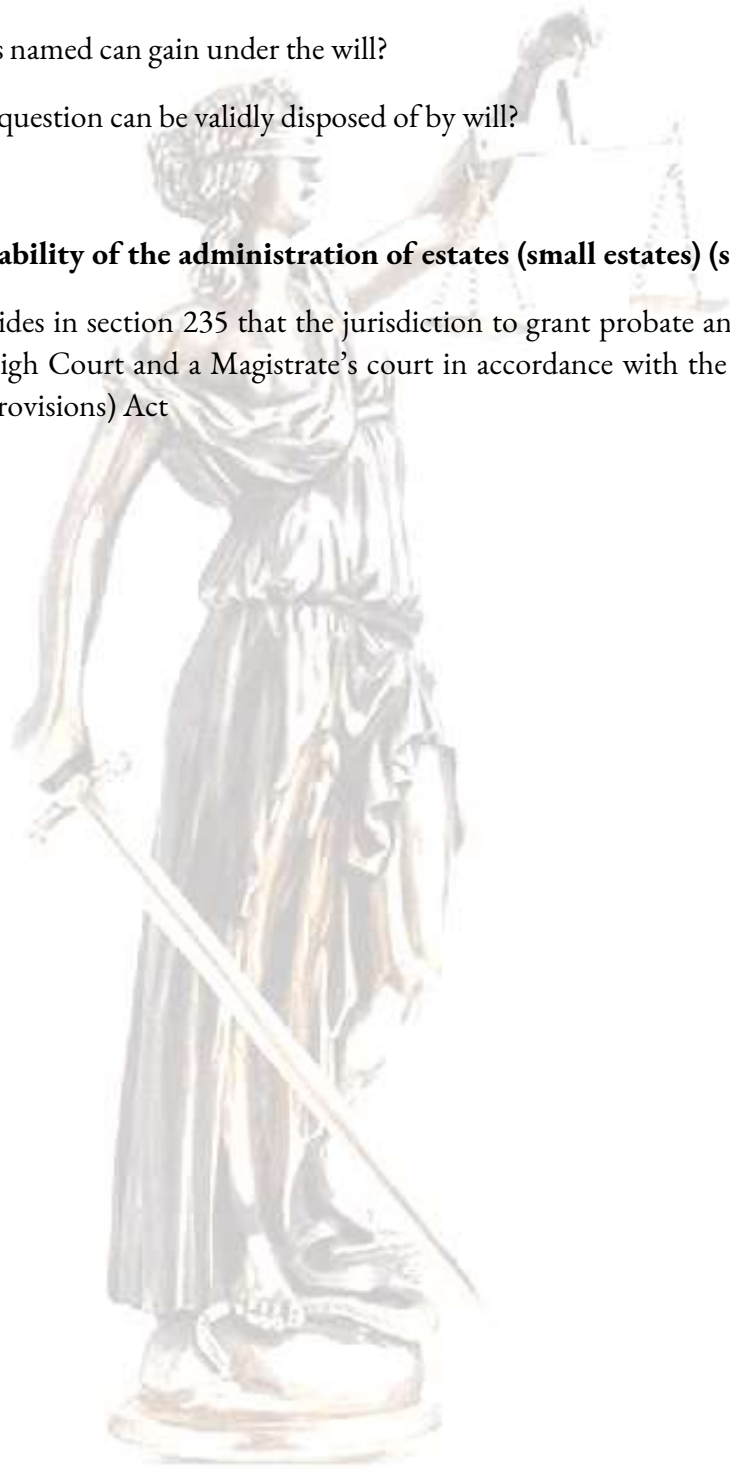
Whether the will is valid?

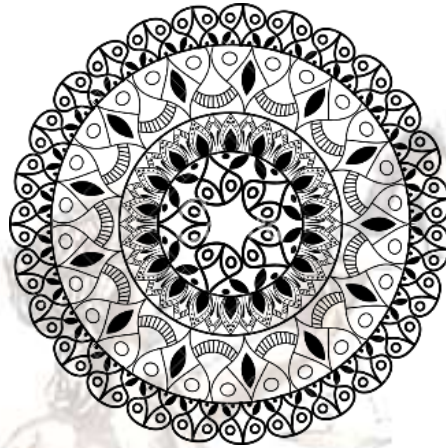
Whether the beneficiaries named can gain under the will?

Whether the property in question can be validly disposed of by will?

Jurisdiction and applicability of the administration of estates (small estates) (special provisions) act

The succession Act provides in section 235 that the jurisdiction to grant probate and letters of administration shall be exercised by a High Court and a Magistrate's court in accordance with the Administration of Estates (Small Estates) (Special Provisions) Act





TESTATE SUCCESSION

Testacy is where a person dies when he has disposed of his property by a valid testamentary disposition commonly referred to as a will.

Section 36(1) of the Succession Act Cap 162 provides that every person of sound mind and not a minor may by will dispose of his property. A will is defined as a testamentary disposition of one's property. This is fortified by *Hajji Sulaiti Vs Hajjatti Sanyu*⁹ by Byamugisha J.

A codicil on the other hand is defined in section 2 (c) of the Succession Act as an instrument explaining, altering or adding to a will and which is considered as being part of the will. A form of the will is provided for in the 4th schedule to the Act.

CAPACITY TO MAKE A WILL

Capacity to make a will is enunciated in *Bank Vs Goodfellow*¹⁰ where court held that one should understand the effect of a will and not simply the fact that one can make a will.

It must be noted further by virtue of section 47 of the section Act that a will or any part of a will, the making of which has been caused by fraud or coercion, by importunity as takes away the free agency of the testator is void.

⁹ *HCCS 718 of 1995*

¹⁰ (1870) 5 QB 579

Principles for interpretation of wills were laid out in **Rashida Begum vs. Administrator General and Karram Din**¹¹ thus;

1. The intention of the testator should be collected from a consideration of the whole will. This is further fortified by Halsbury's Laws of England Vol 34 para 240.
2. Words are given the meaning which is rendered necessary in the circumstances, in the first place without reference to or regard to the consequences of any rule of law or construction.
3. Court may then make reasonable inference from a particular passage; comparing the inference with what is apparent in the other parts of the will. This power of inference is however limited.
4. Court also takes into consideration surrounding circumstances, especially where the circumstances deprive the words of reasonable application.

THE PROPERTY SO DISPOSED OF BY WILL

Another cardinal rule to not about wills is enunciated in **James Katende and 2 others vs Dan Byabakama**¹² where Kireju J held that the testator should dispose of property or any interest belonging to the testator at the time of his or her death. This therefore means that any disposition by the testator of property in which he has no interest at the time of his death must fail. This should be read in conjunction with section 139 of the Succession Act.

BENEFICIARIES UNDER A WILL

CHILDREN

Children of a testator are entitled to benefit from under a will. Court held in **Kajubi vs Kabali (1944) EACA 341** that children include both legitimate and illegitimate children and so all children of a testator can benefit under the will.

¹¹ (1951) EACA 102

¹² HCCJ Vol 2 Pg 127

OBJECTION MY LORD

SPOUSES

Spouses are entitled to benefit from under the will provided they were not separated from the testator at the time of making the will. This is fortified under section 30(1) of the Succession Act. A case to illustrate this is **Mboijana and Mboigana HCCS 879 of 1990** and **Rwabaganda vs Bahemurwabusha**¹³. It must be noted that having children with a woman does not entitle her to benefit from under the will. This was the principle in **Male vs Namanda**¹⁴

DEPENDANTS

Section 37 of the act provides that every person shall by his will dispose of property making reasonable provision for the maintenance of his or her dependent relatives. This section is however qualified by section 38 (2) which provides that provision for maintenance shall be made by an order under section 38 (1); where the deceased's estate produces income; by way of periodic payments.

It must be noted that by virtue of section 38(2)(a)(i), that if the defendant relative is a wife or husband, the order shall terminate on his or her remarriage.

Section 38(2)(a)(ii) provides that, If the dependent relative is a daughter who is unmarried or cannot maintain herself by reason of some mental or physical disability; the order terminates on her remarriage or cessation of disability; Section 38(2)(a)(iii) provides that, If the defendant relative is an infant son or son who is incapable of maintaining himself by reason of some mental or physical disability; the order terminates on attaining majority age or cessation of disability; whichever is later.

Section 38(2)(b) provides that, in case the deceased estate does not produce any income or sufficient income; the applicant shall be authorised to receive a share as he would be entitled if the testator had died intestate. The mode of division would be subject to section 27 of the Succession Act.

It must be noted further that for court to entertain this application, it must be made within 6 months from the date of representation in regard to the estate of the deceased. If it is after six months, one must seek leave of court to bring the application. This is premised on section 39(1) of the Succession Act. It must be noted however, without prejudice to the foregoing that there is a reservation to the general rule which is to the effect that where letters of administration are revoked and probate is granted; the time begins to run from the date of grant of probate.

The persons and properties named in the will must be named in a will and they should be described definitely and in relation to the testator. Section 61 of the succession act provides that the wording of the will shall not necessarily have any technical terms but the wording should be such that the intentions of the wording of the testator can be

¹³ (1978) HCB 244

¹⁴ [1982] HCB 140.

known from the wording. Section 67 provides that where the words of the will are unambiguous, but it is found by extrinsic evidence finds they admit of applications are only of which could have been intended, the extrinsic evidence may be taken to show which of these applications was intended.

It must be noted however that where there is an ambiguity or deficiency on the face of the will; no extrinsic evidence as to the intentions of the testator shall be admitted;¹⁵ and the testator's intentions must be effected as far as possible.¹⁶ The society practice is to make wills in triplicate or quadruplicate; they are usually kept with banks, lawyers, firms or close friends. Court held in **Administrator General Vs Teddy Bukirwa**¹⁷ that once a will is kept poorly and is suspect of having been subject to alteration; the same may be excluded from the Estate in event of dispute.

REVOCATION OF WILLS

A will may be revoked by its maker at any time when he or she is competent to dispose of his or her property by will. The cardinal rule is evident in **Nsubuga and others vs Nsubuga and others HCCS 1081 of 1988** where Tsekoko J (as he then was) held that although the testator in the instant case used to be confused; he was never mad and was completely in his right mind and the signature therein was that of the testator and as a consequence; the will was valid. Section 56(1) of the Succession Act; which provides that every will is revoked by the marriage of the maker; except if it is a will made in exercise of an appointment; whereby the property over which the power of appointment is exercised would not; in default of the appointment pass to his or her executor or administrator or to the person entitled. This principle is followed **Farasia Rwabaganda Vs Donasio Bahemurwabusha (1978) HCB 244.**

Section 57 of the Succession Act provides that a will can be revoked by burning tearing or otherwise destroying of the will or codicil by the testator or by some person in his or her presence and by his or her direction, with the intention of revoking it. This is fortified by **Administrator General Vs Norah Nakiyaga and others AC 554 of 1990.**

It must be noted further that a will is invalid for non-attestation as per the requirements of section 50(1)(c) of the Succession Act.

A principle which should not go unnoticed; is evident in **Administrator General Vs Teddy Bukirwa and another (199-93) HCB 192** where Court held that if circumstances under which a will is alleged to have been made, attested and kept are shrouded in mystery and court cannot establish whether the will is made by the testator, this leads to exclusion of that will from the estate of deceased

¹⁵ Section 68 of the Succession Act.

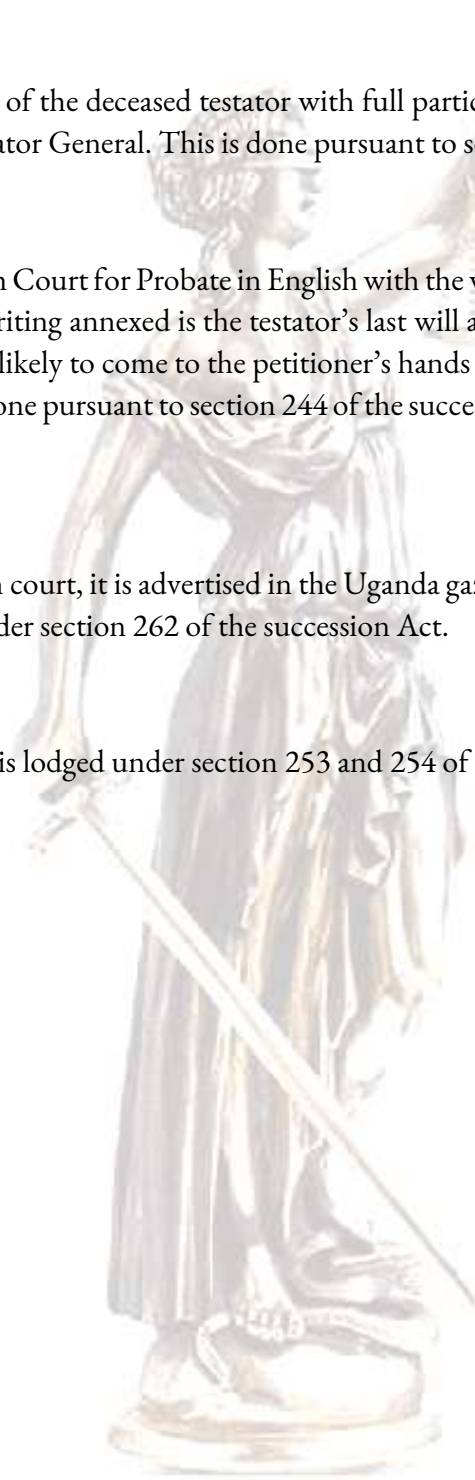
¹⁶ Section 74 of the Succession Act.

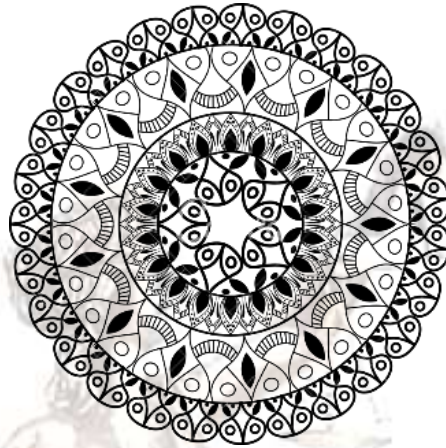
¹⁷ (1992-93) HCB at pg 192

OBJECTION MY LORD

Executors are usually named in a will to take care and manage the estate of the deceased. **The procedure to management of the estate is as follows:**

1. Report the death of the deceased testator with full particulars as to the properties, as far as ascertainable to the Administrator General. This is done pursuant to section 4 of the Administrator General's Act.
2. Petition the High Court for Probate in English with the will annexed and stating the time of the testator's death, that the writing annexed is the testator's last will and testament and that it was duly executed, the amount of assets likely to come to the petitioner's hands and that the petitioner is the named executor in the will. This is done pursuant to section 244 of the succession Act. An affidavit in support of the petition has to be made.
3. When it is filed in court, it is advertised in the Uganda gazette and a newspaper in circulation for a period of seven days, under section 262 of the succession Act.
4. Where no caveat is lodged under section 253 and 254 of the Succession Act, the court will grant probate to the executors.





INTESTATE SUCCESSION

A person dies intestate in respect of all property which has not been disposed by him through a valid testamentary disposition, as enunciated under section 25 of the Succession Act.

It must be noted that all property in an intestate's Estate is managed and held in trust by the personal representatives (persons appointed by law to administer the Estate of a deceased) of the deceased for those persons entitled to it (beneficiaries) as provided for under section 25 of the succession act.

Entitlement to intestate's property is governed by sections **S.27 to 45 of the Succession Act**. Spouses are entitled to benefit from under the will provided they were not separated from the testator at the time of making the will. This is fortified under section 30(1) of the Succession Act. A case to illustrate this is **Mboijana and Mboigana HCCS 879 of 1990** and **Rwabaganda vs Bahemurwabusha (1978) HCB 244**.

The issues which arise for resolution under this said topic include the following:

Who can apply for letters of administration?

What additional information is needed to effect the above?

What formalities should be followed in obtaining letters of administration?

The major documents include

Report of Death to the Administrator General

OBJECTION MY LORD

Certificate of No objection (Granted by the Administrator General's Office) Petition for letters of Administration supported by an affidavit

Who may apply;

Court held in **Ndugwa vs Nansikobi**¹⁸ that in applying for letters of administration, factors such as consanguinity, nature of interest, safety of the estate and probability of proper administration are taken into consideration.

Court held in **Kemutongo vs Katuramu**¹⁹ that the widow, or a surviving spouse is the most appropriate person to apply for letters of administration. This is the same principle in **Re Kibiago (1972) EA**

It must be noted that proof of a valid marriage must be adduced for purposes of granting a widow letter of administration. This is fortified by **Erinesto Babumba vs Nakase CS 173 of 1985**. therefore, if there is a customary marriage whereby the bride price was not completed, then such an individual would not benefit from under the estate.

DEVOLUTION OF THE RESIDENTIAL HOLDINGS

This is covered under section 26 of the succession Act which provides that the residential holding occupied by a person dying intestate as his or her principle residence shall be held by his personal representative upon trust for his or her legal heir subject to the rights and terms set out in the second schedule to the Act.

THE PROCEDURE FOR APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION

1. Report the death of the deceased with full particulars as to the properties, as far as ascertainable to the Administrator General. This is done pursuant to section 4 of the Administrator General's Act.

¹⁸ (1980) HCB 79

¹⁹ (1992-1993) HCB 155

ISAAC CHRISTOPHER LUBOGO

2. Apply to the Administrator General for a Certificate of no objection, showing that the Administrator General, the rest of the family and defendants do not object to grant of letters of administration to you
3. Petition the High Court for letters of administration in English, and stating the time of the testator's death, the family or other relatives of the deceased and their respective residences, the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the court to which the application is made and the amount of assets likely to come to the petitioner's hands. This is done pursuant to section 246 of the succession Act. An affidavit in support of the petition has to be made.
4. When it is filed in court, it is advertised in the Uganda gazette and a newspaper in circulation for a period of fourteen days, under section 262 of the succession Act.
5. Where no caveat is lodged under section 253 and 254 of the Succession Act, the court will grant letters of administration to the petitioner(s).

The petitions for both letters of Administration & Probate must be signed by the petitioner and his advocates under section 247 of the Succession Act and has to be verified by the Petitioner.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT TORORO

PROBATE AND ADMINISTRATION CAUSE NO..... OF 2006

**IN THE MATTER OF THE ESTATE OF THE LATE GEORGE SEWANYANA
SEFULUYA BOLINGO FORMERLY OF**

BUDUMBULU EAST, NALUWERERE, TORORO, UGANDA.

AND

**IN THE MATTER OF A JOINT APPLICATION FOR PROBATE BY DR. D.G.
BOLINGO AND JANET PHOEBE BOLINGO NAMED AS EXECUTOR AND
EXECUTRIX RESPECTIVELY.**

PETITION FOR PROBATE

WE, **DR. D.G. BOLINGO AND JANET PHOEBE BOLINGO** of C/O **MESSRS. B & CO. ADVOCATES, P.O BOX 7117, KAMPALA, UGANDA** do hereby apply to this Honorable Court for grant of probate of the Will of the late **OKELLO BOLINGO** who died at on the day of 2006 and state as follows: -

1. THAT, the writing annexed to this application is his last will and testament and was duly executed. See will attached hereto and marked Annexures "A".
2. THAT, the late **OKELLO BOLINGO** is survived by **NYADOI BOLINGO** widow; **EPODOI BOLINGO** widow; **DR. D.G. BOLINGO** Son; **JANET PHOEBE** Daughter; **FRED BOLINGO** Son; **SAMUEL BOLINGO** Son; **RUTH BOLINGO** Daughter; **GEOFFREY BOLINGO** Son; **DORA BOLINGO** Daughter; **HARRIET BOLINGO** Daughter and **JOSELINE BOLINGO** Daughter.

3. THAT, the deceased left the following property:-
- (a) Residential Buildings at Malaba, Naluwerere, Tororo.
 - (b) Commercial Building called “Intercontinental Building” at Naluwerere, Tororo.
 - (c) Land at Naluwerere, Tororo comprised in LRV 1889, Folio 2, Block 3, Plot 229.
4. THAT, the said **OKELLO BOLINGO** at the time of his death had a fixed place of abode at Malaba East, Naluwerere, Tororo, Uganda within the jurisdiction of this Honorable Court.
5. THAT, this application is made by us; **DR. D.G. BOLINGO AND JANET PHOEBE BOLINGO** a son and daughter respectively, named as **Executor and Executrix** of the Will of the late **GEORGE SEWANYANA SEFULUYA BOLINGO** and we believe that the value of the said estate is likely to be close to Ug. shs. 25,000,000/=.
6. THAT, we do hereby solemnly and sincerely declare that what is stated in the said application is true to the best of our own knowledge and belief and we make this solemn declaration consciously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 2000.

DECLARED at Kampala by the said

DR. D.G. BOLINGO AND JANET PHOEBE BOLINGO thisday of2006

DR. D.G. BOLINGO

1ST APPLICANT

JANET PHOEBE BOLINGO

2ND APPLICANT

BEFORE ME:

OBJECTION MY LORD

.....
A COMMISSIONER FOR OATHS

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....
PETITIONER

DRAWN & FILED BY:

Sui Generis & Co. Advocates,

P.O Box 7117,

KAMPALA.



LETTERS OF ADMINISTRATION

Sui Generis and Company Advocates

P.O.BOX 7117

Kampala

14th November, 2005

To: The Administrator General,
Kampala.

Dear Madam,

RE: APPLICATION FOR A CERTIFICATE OF NO OBJECTION TO THE ESTATE OF THE LATE ABBAGA MABUGA

We represent **KIRABO SUSAN**, DAUGHTER to the above-named deceased who intends to apply for Letters of Administration.

The deceased died intestate on the **28th April, 2005** at BUKOTO Hospital Kampala, Uganda and was buried on **29th April, 2005** at Nadiket Seminary, Kampala. Enclosed herein are the necessary documents to enable the applicants to acquire a **Certificate of No Objection**.

We, therefore, pray that the Administrator General issues the said **Certificate of No Objection** to our client.

Yours faithfully,

FOR: SUI GENERIS & CO. ADVOCATES.

OBJECTION MY LORD

cc. KIRABO SUSAN.



THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

PROBATE AND ADMINISTRATION CAUSE NO. OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE

ABBAGA MABUGA FORMERLY OF BUKOTO KAMPALA – UGANDA

AND

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION
BY KIRABO SUSAN, DAUGHTER OF THE DECEASED.**

PETITION FOR LETTERS OF ADMINISTRATION.

1. I, **KIRABO SUSAN**, of C/O of Ms. SUI GENERIS & Co. Advocates, P.O Box 7117 Kampala, Uganda do hereby apply for letters of Administration to the estate of the **ABBAGA MABUGA**(hereinafter called the deceased) who died on the **28th day of April, 2005**. The Medical Certificate of the cause of death is annexed hereto and marked **Annixture “A”**.
2. The deceased was single and a Radio Presenter.
3. The deceased is survived by a Brother, sister and other relatives namely:-
 - (i) **Ms Agwang Mary** sister aged 52 years of Iyolwa, Tororo District.
 - (ii) **Mr. Emmanuel Wadiba** brother aged 50 years of Kibuye Kampala.
 - (iii) **Ms KIRABO SUSAN** daughter aged 40 years of Seeta Mukon
4. The deceased left the following property:-
 - (i) Registered land comprised in Mailo Register Mawokota Block 111 Plot 222 land at Ntinda, Kampala currently registered in the names of one **Okoth Obore**.
 - (ii) Personal effects (see attached list marked **Annixture “B”**).
 - (iii) Bank accounts namely:
 - (a) Standard Chartered A/c No. 3555669023611.
 - (b) Barclays Bank City Branch A/c No. 0259954566225

OBJECTION MY LORD

- 5. The deceased at the time of his death had a fixed place of abode at BUKOTO within the jurisdiction of this Hounorable Court.
- 6. The approximate value of the estate is in the region of **U Shs.400,000,000/=** (four hundred million only).
- 7. This application is brought by me as a DAUGHTER to the deceased and the Administrator General and other surviving relatives not object to my application as evidenced by Certificate of No

Objection issued under his hand and consents annexed hereto and marked **Annextures“C” “D” and “E”** respectively.

DATED at KAMPALA thisday of2005.

KIRABO SUSAN

APPLICANT

VERIFICATION

I, **KIRABO SUSAN**, do solemnly Certify that all what is contained hereinafter is true and correct to the best of my knowledge.

KIRABO SUSAN

APPLICANT

BEFORE ME:-

A COMMISSIONER FOR OATHS.

Drawn & filed by:

sui generis & co. advocates,

ISAAC CHRISTOPHER LUBOGO

p.o box 7117,

KAMPALA.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
PROBATE AND ADMINISTRATION CAUSE NO. OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE
FORMERLY OF BUKOTO KAMPALA – UGANDA

AND

IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION BY KIRABO
SUSAN, DAUGHTER OF THE DECEASED.

NOTICE

TAKE NOTICE that an application for letters of administration to estate of the late **ABBAGA MABUGA** has been lodged in this Court by **KIRABO SUSAN, DAUGHTER** of the deceased.

The Court will proceed to grant the same if no caveat is lodged with the Registrar **within fourteen (14) days** from the date of publication of this notice unless cause be shown to the contrary.

DATED at KAMPALA this day of 2005.

REGISTRAR

DRAWN & FILED BY:

Sui Generis & Co .Advocates,

P.O Box 7117,

KAMPALA.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
PROBATE AND ADMINISTRATION CAUSE NO. OF 2005
IN THE MATTER OF THE ESTATE OF THE LATE
FORMERLY OF BUKOTO KAMPALA – UGANDA
AND
IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION
BY KIRABO SUSAN, DAUGHTER OF THE DECEASED.

DECLARATION

I, **KIRABO SUSAN**, of C/O of Sui Generis & Co. Advocates, P.O Box 7117 Kampala, Uganda **DO HEREBY SOLEMNLY AND SINCERELY DECLARE** that the Late **ABBAGA MABUGA** formerly of BUKOTO Kampala, Uganda died on **28th April, 2005** at BUKOTO Hospital and that I am a DAUGHTER to the deceased and I shall **FAITHFULLY ADMINISTER** the estate and effects of the deceased by paying his just debts and distributing the residue of his estate and effects according to the law.

THAT I shall make a true and perfect inventory and render a just and true account thereof whenever required by law to do so.

DECLARED at **KAMPALA** on the day of 2005.

KIRABO SUSAN,

APPLICANT

BEFORE ME:-

A COMMISSIONER FOR OATHS

DRAWN & FILED BY:

Sui Generis & Co. Advocates,

P.O Box 7117,

KAMPALA.



COPY OF WILL

THE REPUBLIC OF UGANDA

THE LAST WILL OF

THIS is the **LAST WILL** and **TESTAMENT** of of P.O. Box Kampala, Uganda voluntarily made by me in full and sober state of mind revoking all former Wills and Testamentary dispositions hereto fore made by me.

1. **I DO DECLARE AS FOLLOWS:-**

- a) I I am the son of my mother the Late and my father of District, Uganda.
- b) I have written the following voluntarily with a sound mind while conscious, I have not been forced by anybody.

2. I am married to my only wife, of Village, District Uganda and both of us are currently residing at District, Uganda.

3. I do have the following issues born of my said wife, viz:

-
-
-

4. I do possess the following properties:-

a) **Immovable:**

- (i) Unregistered Land at

(ii) A permanent residential house, at bordered as follows:

- ◆ on the Eastern part with
- ◆ on the Western part
- ◆ on the Northern part with
- ◆ on the Southern part with

Measuring approximately 1 (one) acre.

(iii) A Commercial Building at which is bordered as follows:

- ◆ on the Eastern part with **Lubowa**.
- ◆ on the Western part with the **Main Road (Biina Road)**.
- ◆ on the Northern part with **Mulokole**.
- ◆ on the Southern part with **Akiiki**.

b) Movable:

(i) Vehicles thus;

-
-
-

(ii) Cash in **Bank Ltd** **Branch A/c No.** in respect of which I am sole signatory.

(iii) Cash in **Ltd.** **Branch A/c No.** in respect of which I am sole signatory.

(iv) A running Life Policy Insurance No.with

5. **I DO GIVE, BEQUEATH and DEVISE** my above said immovable and movable properties to my dear wife and children to own them jointly in equal proportions.

OBJECTION MY LORD

6. **I DO HEREBY APPOINT AND NOMINATE:**

(I) My dear wife, of....., District, Uganda to be my sole **EXECUTRIX** of this **MY WILL**.

(II) In case both my wife and I die in common calamity, God forbid, **I DO APPOINT, NOMINATE** the following to be my **JOINT executrixes:**

1., and

2.

7. **I DO HEREBY APPOINT, NOMINATE AND ANNOINT** my Dear Son..... to be my customary Heir.

8. **I DO HEREBY CATEGORICALLY STATE THAT NO PERSON** other than my above said **EXECUTRIXES** should have a say on the Execution of this **MY WILL**.

9. **IT IS MY SINCERE WISH** that upon my death I should be buried at my country home at in accordance with

10. **FOR AVOIDANCE OF DOUBT, NONE OF THE DEPENDANTS I HAVE BEEN SUPPORTING OTHER THAN MY ABOVE** said lawful children should take any benefit of this **MY WILL**.

11. Copies of this **MY WILL** are kept as follows:

(i) ORIGINAL deposited with

(ii) A copy deposited with the

(iii) A copy deposited with

IN WITNESS WHEREOF I, TESTATOR have hereunto set my Hand this day of the year 2005

THE SIGNATURE of the said was affixed hereto as his **LAST WILL** and **TESTAMENT** in the joint presence of the Two who in his presence at his request and in the presence of each other hereunto Sub-scribed our names as witnesses.

1ST WITNESS (NAME & SIGNATURE)

2ND WITNESS (NAME & SIGNATURE)

DRAWN BY:

Sui Generis & Co. Advocates,

*P.O Box 7117 **KAMPALA***



OBJECTION MY LORD

FORM OF CAVEAT.

As per S.254, the caveat is in the following form

“Let nothing be done in the matter of the estate of, late of, deceased who died on theday of 20 atwithout notice to of.....

NOTICE TO BE PUBLISHED.

Rule 2 and 5 of the judicature (administration of estates) rules S.1 13-7. (First schedule)

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

ADMINISTRATION CAUSE NO.....OF 2020.

IN THE MATTER OF THE ESTATE OF THE LATE TIMOTHY KITAYIMBWA

TO ALL whom it may concern.

TAKE NOTICE than an application has been lodged in this court by NANKINGA RESTY OF KOLOLO, KAMPALA, Uganda, for probate of the will to the estate of the above-named deceased.

The court will proceed to grant the probate of the will, if no caveat is lodged with the registrar within fourteen days from the date of publication of this notice, unless cause is shown to the contrary.

Dated at Kampala this 3rd day of February, 2020.

DEPUTY REGISTRAR/MAGISTRATE.

PLAINT FOR REVOCATION OF A CAVEAT.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

CIVIL SUIT NO. 2387 OF 2020

(Arising from probate administration cause no.283 of 2020)

RESTY TENDOPLAINTIFF

SANTA NAMULONDODEFENDANT

PLAINT

1. The plaintiff is a female adult Ugandan of sound mind and the widow of the late Geoffrey Semakula whose address for purposes of this suit is SUI GENERIS AND CO ADVOCATES, P.O BOX 7117, and KAMPALA.
2. The defendant is a female adult Ugandan presumed to be of sound mind and the plaintiffs' advocates undertake to effect service of court process upon him.
3. The plaintiffs claim against the defendant is for vacation of a caveat lodged against the defendant is for vacation of a caveat lodged against the petition for letters of administration and costs for the suit.
4. The plaintiff's cause of action against the defendant is for unlawful lodgment of a caveat against the petition for letters of administration.
5. The facts giving rise to the cause of action are as follows:
 - a) The plaintiff and the deceased were legally married on the 26th day of January 2020. (Annexure A)
 - b) They then lived together in their matrimonial home at Bweyogerere and were blessed with two issues: martin aged 20 and Harriet aged 18.
 - c) In 2019, the plaintiff left for the United Kingdom to pursue a master's degree of law at the University of Manchester. (Attached and marked annexure "B" is the admission letter and marked Annexure "C" is a photocopy of her master's transcript.)

OBJECTION MY LORD

- d) In January 2020, the deceased past on leaving no will behind. (Attached hereto is a copy of the death certificate marked annexure “D”).
- e) Following the death of the deceased, the plaintiff as the wife of the deceased applied for letters of administration to the estate of the deceased.
- f) The defendant without any color of right caveated the application for the grant of letters of administration.

6. The plaintiff avers that actions of the defendant have caused and continue to lead to waiting of the estate of the deceased.

7. The defendant was issued with a notice to vacate the caveat but she did not heed to the notice. (Attached and marked Annexure “E” is the notice to vacate the caveat issued to the defendant.)

8. The facts giving rise to this suit arose within the jurisdiction of this honorable court at kira Wakiso district.

WHEREFORE the plaintiff prays for judgement against the defendant for orders that:

- a) The defendant’s caveat be vacated
- b) Cost of the suit.

Dated at Kampala this 3rd day of February 2020

M/S SUI GENERIS AND CO ADVOCATES
COUNSEL FOR THE PLAINTIFF

Drawn and filed by

SUI GENERIS AND CO ADVOCATES

P.O BOX 7117, KAMPALA

UGANDA.

SAFE CUSTODY OF WILLS.

This is governed by S.337 of the succession act and the succession (safe custody of wills) rules S I 162-1.

S.337 (1) stipulates that the will may be kept with the chief registrar or deputy registrar of the high court.

Its prudent practice that more than one copy of the will is made and the other copies are kept with the testator's advocate, bank or trusted friend.

This practice is aimed at ruling out suspicions in the will presented after the testator's death is a forgery.

GRANT OF PROBATE

Under S.182 of the succession act, probate can only be granted to an executor appointed by the will.

S.2 (5) defines probate to mean the grant by a court of competent jurisdiction authorizing the executor named in the testator's last will to administer the testator's estate.

S.235 states that the jurisdiction to grant probate and letters of administration is exercised by the high court and a magistrate court in accordance with the administration of estates (small estates) (special provisions) act.

The petition for grant of probate.

The application for grant of probate is by petition as provided under S.244 of the succession act. It must be written in the English language with the will annexed and stating:

- a) The time of the testator's death
 - b) That the writing annexed is the testator's last will and testament and that it was duly executed.
 - c) The amount of assets which are likely to come to the petitioners' hands
 - d) That the petitioner is the executor named in the will.
- S.238 provides that the civil procedure rules are applicable to their proceedings and so the petition must be accompanied by a summary of evidence.

WHERE WILL IS NOT IN ENGLISH.

OBJECTION MY LORD

Under S.245, the translation of the will must be annexed to the petition. The translation must be annexed to the petition. The translation must be verified.

“I SUI GENERIS , do declare that I read and perfectly understand the language and character of the original and that the above is a true and accurate translation of it.”

DECLARANT

Before me

COMMISSIONER FOR OATHS.

VERIFICATION OF THE PETITION.

Pursuant to S.247, the petitioner must verify the petition.

VERIFICATION OF PETITION BY ONE WITNESS TO THE WILL

Under S.248, one witness at least must verify the petition when procurable.

PROCEDURE FOR OBTAINING PROBATE.

1. Obtain a death certificate to prove death of the testator. This may be obtained from the hospital if the testator died there. Then if it was in any place, then L.C should issue a letter certifying the death of the person.
2. Obtain a copy of the will which must be in English or have it translated if it is not in English and the translation verified
3. valuation/estimation of the value of the testator’s estate to determine the court with the appropriate jurisdiction to grant probate
4. Draft the petition with the necessary annexures

5. Lodge at the court registry for assessment of court fees.
6. Pay the court fees and then file the petition with court and obtain a court file number.
7. Issue a notice of intention to apply for probate by advertising in the gazette, any newspaper of wide circulation in Uganda as per Rule 2 of the judicature (administration for estates) rules S.I 13-7

The form of the notice is as provided in the first schedule to the rules.

UNDER Rule 3 of the judicature (administration of estates) rules S.I 13-7, probate cannot be granted before the lapse of 14 days from the date when the notice was issued on upon lapse, the petitioner must adduce evidence of the notice.

8. If there is no caveat lodged on the application then the probate is granted if everything pertaining to the petition is in order. The form of caveat to be lodged is provided under S.253
9. On grant executor must distribute the estate as per the will.
10. File a complete report with the court on the distribution. S.278 (1)

REVOCAION OF LETTERS OF ADMINISTRATION/PROBATE

Pursuant to S.234 (1) of the succession act, the letters of administration may be revoked or annulled for just cause.

Just cause is defined to mean:

- a) That the proceedings to obtain the grant were defective in substance
- b) That the grant was obtained fraudulently by making a false suggestion or by concealing from the court something material to the case. In *Romano Salim Ogwanga And 5 Ors V Saida Atala*²⁰, Justice Remmy Kasule stated in order to impeach the letters on grounds of fraud, the fraud must be specifically pleaded and the allegations of fraud must be specifically pleaded and the allegations of fraud must be strictly proved. The standard of proof is more than a mere balance of probabilities.
- c) That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant, though the allegations was made in ignorance or inadvertently.
- d) That the grant has become useless and inoperative through circumstances.

²⁰ HCT -02-CV-CS-0020,2005

OBJECTION MY LORD

- e) That the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with part xxxiv of this act or has exhibited under that part an inventory or account which is untrue in material respect.

PROCEDURE

- I. File a suit by way of plaint seeking orders for revocation of the letters of administration.

CITATION

An application by the plaintiff to temporary withdraw the letters pending disposal of the suit.

NECESSARY DOCUMENTS

- i. Notice of intention to sue
- ii. A plaint
- iii. Summary of evidence.

In **AMECHO V TWALIB AND 2 ORS H.C.C.S NO.9 OF 2008**, it was held that it is trite law that a grant remains valid until revoked even if obtained by fraud so long as the grant remains unrevoked, the grantee represents the estate of the deceased.

RICHARD BABUMBA AND 13 ORS V JAMES SSALI BABUMBA H.C.C.S NO.78 OF 2012

Amendment of letters of administration/probate.

Amendment of letters of administration is made pursuant to S.98 of the civil procedure act, S.33 of the judicature act and O.52 rules 1 and 2 of the CPR.

In *Joseph Buye and 3 ors v Dr. Samuel Ssenyange*²¹, court was moved under the aforementioned provision so as to cancel two executors from the probate having not been around to carry out such activities.

PROCEDURE

- Lodge a notice of motion with a valid affidavit
- Pay court fees.

²¹ H.C.M CAUSE NO.15 OF 2015

DOCUMENTS

- Notice of motion
- Affidavit

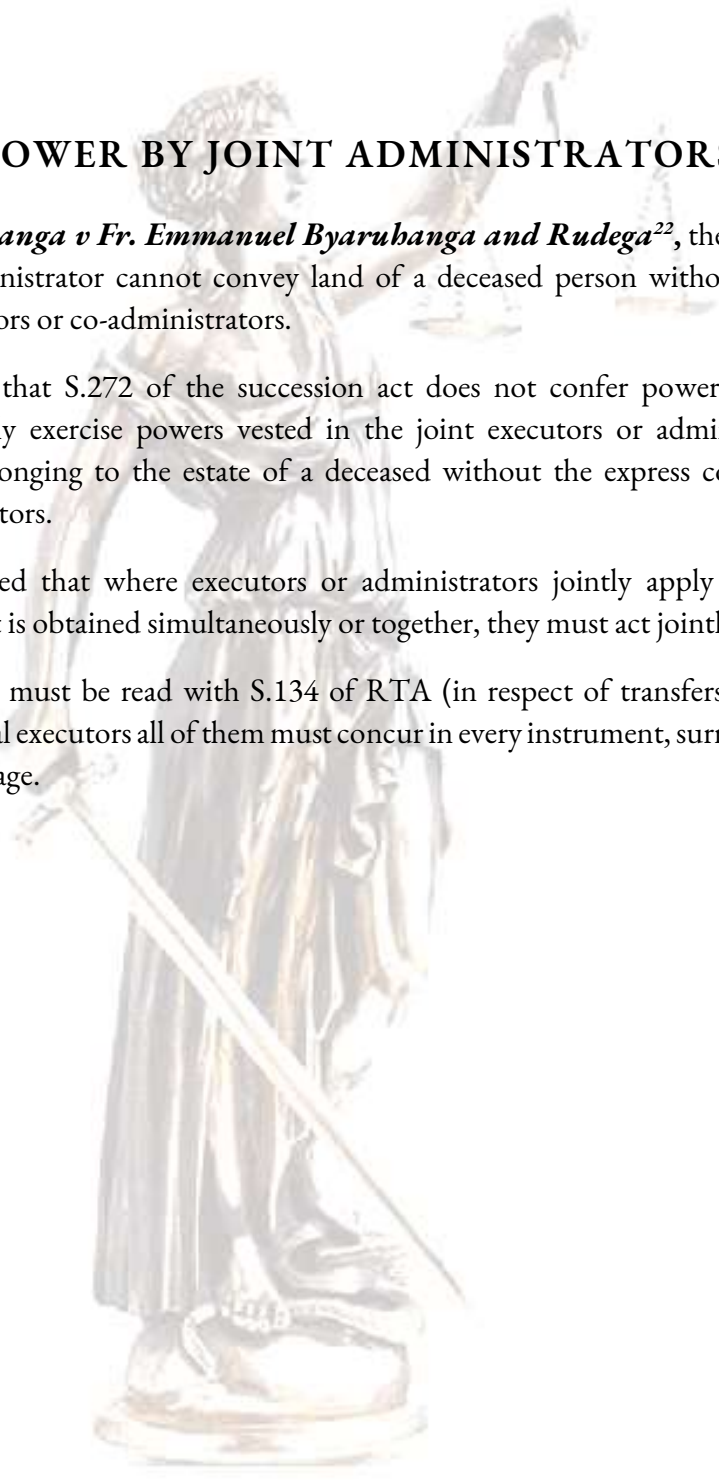
EXERCISE OF POWER BY JOINT ADMINISTRATORS/EXECUTORS.

In *silver Byarubanga v Fr. Emmanuel Byarubanga and Rudega*²², the Supreme Court held that a single executor or administrator cannot convey land of a deceased person without the express consent or authority of the co-executors or co-administrators.

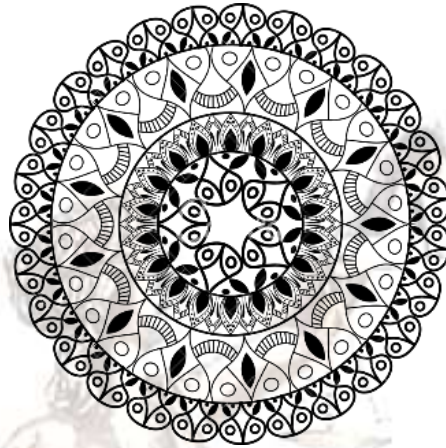
The court stated that S.272 of the succession act does not confer powers on a single executor or administrator to singularly exercise powers vested in the joint executors or administrators with respect to conveyancing of land belonging to the estate of a deceased without the express consent or authority of co executors or co administrators.

The court reasoned that where executors or administrators jointly apply for probate or letters of administration and a grant is obtained simultaneously or together, they must act jointly at all times.

The section (272) must be read with S.134 of RTA (in respect of transfers) which states that where probate is granted to several executors all of them must concur in every instrument, surrender or discharge relating to the land, lease or mortgage.



²² CIVIL APPEAL NO.9 OF 2014



LODGMENT AND REMOVAL OF CAVEATS.

Caveats are lodged if there is any opposition to the grant of letters of administration.

A caveat is lodged pursuant to S.253 of the succession act. Form of caveat is provided in S.254 supported by an affidavit with grounds.

Under S.255 of the succession act, no proceedings in relation to the petition can take place until after reasonable notice requiring the caveator to vacate the same has been given.

The caveat before placing a caveat must have a caveatable interest.

In *Adong Suzan And 2 Ors V Otack Raymond*²³, the defendant who was not related to the deceased lodged a caveat against the grant of letters to the plaintiffs' children to the deceased. His ground was that the application included customary land. Karia J, held that the defendant not being in any way related to the deceased was not entitled to lodge a caveat forbidding the grant. Court awarded 2,000,000 general damages were awarded against the defendant for preventing the proper management of the estate causing losses to the plaintiff.

Removal of caveat. (Suit is instituted pursuant to S.265 and it by ordinary plaintiffs as its contentious)

Procedure

²³ HCT -02- CU -0089-2002HC

1. Issue a notice to the caveator requiring them to remove the caveat or commence a suit to have the caveat vacated pursuant to S.255 of the succession act. The notice mandatory as failure to issue the same makes the subsequent suit filed liable for dismissal on a preliminary point of law.

In The Matter Of The Estate Of The Late Justice David Kirunda, HCMA NO.252 OF 2014, justice Percy night Tuhaise citing the decision in *Margret Kabahunguli V Eliazali Tibekinga And Anor*²⁴ with approval held that the notice in section 255 of the succession act is a mandatory statutory notice which must be effected on the caveator notifying him of an intended suit should he or she fail or refuse to remove the caveat.

2. Where the caveator fails to heed to the notice then the petitioner can bring a suit under S.265 of the succession act in which they will be plaintiffs and the caveator defendants.

3. Drafting of plaint and the necessary accompanying documents. O.6 R 2 of the CPR.

4. Lodgment for assessment of court fees.

5. Payment of court fees. Judicature (court fees) rules rule 4.

6. Filing of the plaint and the accompanying documents and the receipts of payment.

7. Extracting summons to file a defense. O.5 R 1 OF CPR.

8. Serving the summons onto the defendant within 21 days. O.5 R 1 CPR

9. Affidavit of service deponed and filed on court record. O.5 R 16 OF CPR.

RESEALING OF PROBATE OR LETTERS OF ADMINISTRATION

Resealing of probate or letters of administration applies to grants made in other commonwealth counties other than Uganda where the deceased had some of his properties in Uganda.

PROCEDURE

1. Have the copies of the grant certified by the common wealth court issuing them or obtain the original grant. S.5 of the probate (Resealing) act cap 160.

2. Draft an application letter for resealing addressed to the deputy registrar of the high court

- On the letter attach a copy of the certified grant that is to be resealed , a will if any pursuant to Rule 3 of the Probate (resealing) rules S.1 .160-1

²⁴ HCAC 08/95

OBJECTION MY LORD

3. Make oath as per rule 4(b) and the form of the Oath is prescribed in form c of the schedule and attach it to the application.
4. Pay probate duty as required by S.3 of the probate (resealing) act and attach evidence of payment to the application
5. Payment of requisite fees which are UGSHS 45 as per Rule 5 of the rules and attach the evidence of payment to the application.
6. File the application with the high court registrar
7. under Rule 4 (a), advertisement of the application if directed by the registrar and the advertisement is as prescribed under form C.

ADMINISTRATION OF ESTATES OF MISSING PERSONS AND PERSONS OF UNSOUND MIND

WHO IS A MISSING PERSON?

S.1 (f) of the estates of missing persons management act cap 159, defines a missing person who disappears from Uganda without making provision for the administration of his or her estate and investigations have shown that his or her whereabouts are unknown.

Who can apply to manage estates?

S.2 (1) of the EMPMA, is to the effect that where a person in the act referred to as a “missing person” disappears without making provision for the admin of their estate on the maintenance of his/her dependent relatives if any and is not heard of within 6months, any relative of the missing person may with the concurrence of the family of the missing person, apply the court to be granted an order to manage his estate but the court may, if it considers it necessary or desirable, grant an order to more than one relative to manage the estate jointly.

S.2(c) defines a family member to include a parent, grand parent, uncle, first cousin, child, grandchild, wife’s or husband of a missing person.

S.1(2) postulates that an order of management of an estate a missing person shall not be granted to any person under the age of 21 years.

PROCEDURES, FORUM AND DOCUMENTS NECESSARY.

FILING OF APPLICATION.

S.4 of the act provides that an application for grant of an order under the act must be made subject to such modification as may be necessary in the same form as an application for grant of letters of administration.

S.246 of the succession act provides that an application for L.O.A shall be made by petition.

S.247 of the S.A postulates that a petition for L.O.A must in all cases be subscribed by the petitioner and his/her advocates, if any and must be verified by the petitioner.

The application for administration of estate of missing person is made by way of petition, verified by the petitioner.

Jurisdiction

This is stipulated under S.3 of the act:

- a) M.G 2 where the total value of the estate does not exceed 10,000 shillings
- b) M.G. 1 where the total value of the estate exceeds 10,000 shillings but does not exceed 20 million
- c) CM where value of the estate exceeds 20 million but not above 50 million.

What are the powers and duties of a manager of the estate of a missing person.

S.1 (d) defines a manager to mean any person to whom an order to manage an estate of a missing person is granted under the act.

1. under S.8(1) a manager has general and special power for the management of the estate of the missing person as appears to court to be necessary and stipulated in the order of the appointment or any subsequent order.

S.8 (2) bars any manager without the permission of court from:

- a) Mortgaging, charging or transferring by will, sale or gift, involves, surrender, exchange or otherwise any immovable property of a missing person.
- b) Lease any such property for term exceeding three years
- c) Invest any property of a missing person in any securities other than those authorized by the trustee's Act.

2. under S.11(1), the manager has a duty to collect all debts owing to the estate by issuing a notice to the debtor in writing, showing the amount due and to have it settled within the notice period. The notice should be verified with an affidavit.

OBJECTION MY LORD

3. Under S.13 (1), the manager has the power to appoint an agent for the efficient and economic management of the estate, on such terms and remuneration as she considers reasonable in the circumstances.

4. Furnish court with inventory and annual accounts as per S.15 (1)

- Person can by petition impugn the accuracy of any inventory.

DUTIES OF THE MANAGER.

1. under S.12(3), they have a duty to clear the outstanding insurance premiums and pay the regular premiums within 3 months from date of appointment or else the policy, if any will lapse.

2. S.15(1) obliges a manager to furnish an inventory within 6 months from their date of appointment or on such other time as the court may order and also furnish an account annually.

PRESUMPTION OF DEATH AND DEATH.

Under S.20 upon lapse of 3 years from date of disappearance, the missing person is presumed dead.

WHEN PERSON DIES (PROCEDURE)

1. Report to the A.G within one month of the confirming the death. S.21 (1). The report should be accompanied by all accounts and any other documents relating to the estate. S.21 (2).

Under S.21 (1) of the act, the manager must report the presumption of death within one month, in writing to the administrator general and then cease to manage the estate.

S.47 (2) of the registration of persons act no.4 of 2015, a person is presumed dead in accordance with subsection (1), any person who would have been duty bound under S.43 to give notice of the death of the person of presumed dead may apply for an order of presumption of death in a court of competent jurisdiction and order shall issue and be served upon the authority and shall have the same effect as a certificate of death.²⁵

PERSONS OF UNSOUND MIND OR MENTAL ILLNESS

Legal issues:

1. Who is a person who has a mental illness?

²⁵ re yekoyasi, hcma no.6 of 2017

2. Who can administer the estate of a person of unsound mind?
3. What are the remedies available to a person seeking to administer the estate of another of unsound mind?
4. What is the procedure, forum and documents necessary?
5. What ethical issues may arise in the course of executing such a remedy?

Law applicable:

1. The Constitution of the Republic of Uganda, 1995 as amended.
2. CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)
3. Mental Health Act, 2018
4. The Mental Health Act (Commencement) Instrument No. 25 of 2021. The Magistrates Court Act, Cap. 16
5. Succession Act, Cap 162
6. The Judicature (Court Fees) Rules
7. Principles for the protection of persons with mental illness and improvement of mental health care. Adopted by General Assembly resolution 46/119 of 17th December 1991 Office of the High Commissioner for Human Rights
8. Case law

WHO IS A PERSON WITH MENTAL ILLNESS?

Section 2 of the Mental Health Act 2018 defines a “Person with Mental illness” as a person who is proven, at a particular time by a mental health practitioner to have mental illness at that particular time and includes a patient. The person must be proven to have a mental illness by a medical practitioner – Refer to *Re: Rbona Kibuka Musoke (A Person of Unsound Mind)* And In *Re: An Application For The Administration Of Her Estate By Norah Lwanga And 2 Ors (HCT-00-FD-MC 1 OF 2009)*

The same section defines “mental illness” to mean a diagnosis of a mental health condition in terms of accepted diagnostic criteria made by a mental health practitioner or medical practitioner authorized to make such diagnosis, mental health conditions include but are not limited to depression, bipolar, anxiety disorders, schizophrenia and addictive behavior due to alcohol/substance abuse among others.

OBJECTION MY LORD

It is important to note that the Mental Health Act under **section 77** repealed the **Mental Treatment Act Cap 279** and the **Administration of Estates of Persons of Unsound Mind Act cap 155**.

Black's Law Dictionary 8th Edition defines an "Insane" to mean; Mentally deranged; suffering from one or more delusions or false beliefs that (1) have no foundation in reason or reality, (2) are not credible to any reasonable person of sound mind, and (3) cannot be overcome in a sufferer's mind by any amount of evidence or argument. Refer to - *Ssebuliba Kiwanuka V Musisi Kiwanuka (Miscellaneous Cause 249 Of 2019)*

Section 2 of the Mental Health Act 2018 defines a "Mental Health Practitioner" to mean a Psychiatrist, a registered psychiatry nurse, psychiatry clinical officer, a mental health social worker and a clinical psychologist.

Section 55(1) of the Mental Health Act 2018 provides that a determination of the mental health status of a person shall be carried out, where it is required for proceedings before a court of law or for any other official purpose.

Therefore, the determination of who is of unsound mind shall only be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner as envisaged in **Section 55(2)** of the Mental Health Act 2018.

It has to be noted that the determination shall be based on only the factors which are exclusively relevant to the mental health status of the patient and not any social, economic, cultural religious or other factors as **Section 55(3)** of the Mental Health Act 2018 stipulates.

In the case of *Abiria Emmanuel v. Afema Richard (High Court Miscellaneous Application 0053 of 2015)*. Mubiru J opined

"A person is deemed to be of unsound mind for purposes of these proceedings if he or she is afflicted by a total or partial defect of reason or the perturbation thereof, to such a degree that he or she is incapable of managing himself or herself or his or her affairs"

This is the standard suggested in *Whysall v Whysall [1960] P.52* where Phillimore J, expressed the following opinion as to the degree of insanity which had to be found;

"if a practical test of the degree is required, I think it is to be found in the phrase....'incapable of managing himself and his affairs'....and that the test of ability to manage affairs is to be required of the reasonable man. The elderly gentleman who is no longer capable of dealing with the problems of a "take-over bid" is not, in my judgment, to be condemned on that account as 'of unsound mind'".

Conclusively therefore under **Section 55** of the Mental Health Act 2018 and the decision of Justice Mubiru in *Aseru Joyce Ajju vs Anjoyo Agnes HCMA 001 of 2016*, an application of this kind ought to be supported by some medical evidence in the nature of a certificate of some doctor, who has had a reasonable opportunity of seeing the condition of the alleged to be of unsound mind.

WHO CAN ADMINISTER THE ESTATE OF A PERSON OF UNSOUND MIND?

Principle No. 3 of the **UN General Assembly, Principles for the Protection of Persons With Mental Illness and the Improvement of Mental Health Care, 17 December 1991, A/RES/46/119**, provides that all persons with mental illness have a right to be protected from economic, sexual and other exploitation whether physical or other abuse and degrading treatment.

Section **51 (2)** of the Mental health Act, 2018 provides for performance of duties and rights against a person of Unsound mind to be in the best interest of the patient.

Section 61(3) of the mental Health Act, 2019 provides that a person who can be appointed a manager of the estate of a person of unsound mind shall be a relative, a concerned person, a mental health practitioner or a lawyer.

The person must first be adjudged to be a person of unsound mind by a magistrate court or must be a person detained under **section 113 and 177 of the Magistrate court** before the high court can determine the suitability of the applicant to manage the estate of such a person, the high court would rely on such findings of the Magistrate before appointing a suitable person to manage the estate of such a person.

Section 60(3) (b) of the mental health act 2018 provides that a person with mental illness may be stopped from managing his or her affairs by court on application by a relative or a concerned person determines that the person is not able to manage his or her affairs.

Section 2 of the act defines a relative to mean a spouse, parent, guardian of a person with mental illness whether by marriage or relationship established by law.

Section 62 of the Mental Health Act 2018 provides that where a person with mental illness is not capable of managing his or her court shall appoint a personal representative to manage the estate of the person with mental illness to act in the best interest of the person with mental illness

A. What are the remedies available to a person seeking to administer the estate of another of unsound mind?

After establishing that a person is of unsound mind, a relative or any other person permitted under the Act may have the following remedies;

INTERIM REMEDY

CAVEAT BY THE SPOUSE / CAVEAT BY THE REGISTRAR OF TITLES

As an interim remedy, the person for instance a spouse intending to manage the estate may begin by lodging a Caveat on the registered properties of the unsound person so as to forbid the latter from disposing them carelessly. The caveat may be lodged under **Section 139 RTA** or move the Registrar of Titles to lodge the Caveat under **Section 170 (a) RTA**:

Section.139 (1) of the Registration of Titles Act 230 states that;

- (1) Any person claiming any estate or interest in land under the operation of this Act by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.

In other instances, the personal representative may obtain an **injunction** under **O. 41 r 1** (*by chamber summons*) and may also seek an interim order forbidding the selling off of property by the unsound person, depending on the circumstances. The interim order is sought by way of a Notice of Motion accompanied by an affidavit in support.

B) TREATMENT OF THE PERSON.

Section 20 provides for Treatment and care of out-patients at primary health centers

A primary health center shall provide treatment for mental illness to all patients taken to the health facility for treatment or care. Treatment for mental illness at a primary health centre shall only be administered on a person with mental illness after that person gives informed consent to the treatment. (3) A patient who is willing to receive treatment and care under this part but is not in position to give informed consent by him or herself, shall be entitled to assisted care and treatment in accordance with this Act. In this case, the patient can give informed consent to the representative so that he/she be treated in accordance with this section.

Section 22 provides for the Emergency admission and treatment. A person qualifies for emergency admission and treatment where that person has mental illness and as a result of which he or she is likely to inflict serious harm on himself or herself or on another person or has behavior which may lead to a serious financial loss to himself or herself, a lasting or irreparable harm to an important personal relationship held with another person as a result of damage to the reputation of the person, serious damage to the reputation of the person or damage to property. A person who qualifies for emergency admission and treatment shall be given immediate care and treatment at a health unit or a mental health unit.

A person who qualifies for emergency admission shall be received by the medical practitioner or mental health practitioner on duty at the health unit or mental health unit where the person is taken. Where no medical practitioner or mental health practitioner is available at a health unit or mental health unit where one is taken for emergency admission, the person shall be received for admission by a health worker on duty at the health unit or mental health unit. A person who is admitted shall be assessed within twelve hours and the emergency treatment shall be for a period of not more than three days after assessment.

Where a patient needs emergency treatment beyond the period of 3 days or where the patient cannot after the stipulated period be treated as a voluntary, assisted or involuntary patient, the emergency treatment shall be continued for a period of not more than five days.

Section 46 provides for the use of special treatment options. Special treatment options such as electroconvulsive therapy, seclusion, psychosurgery and bodily restraint shall be provided only after exhaustion of all other treatment options. These procedures shall be applied under the authorization and supervision of a psychiatrist.

LONG TERM REMEDY

Section 60 (1) of the Mental Health Act, 2018 provides that persons with mental illness have the right to enjoy the capacity on equal basis with others in all aspects of life. This includes the right to manage their property. The general rule on management of the property is provided for under

Section 60 (2) of the Mental Health Act that provides that a person with a mental illness has the right to manage his or her affairs. However, in this case, Modesta therefore has two options

1. BEING APPOINTED AS THE PERSONAL REPRESENTATIVE OF THE MENTAL ILLNESS PATIENT.

A personal representative is defined under Section 2 of the Mental Health Act, 2018 to mean a person appointed in writing by a person with mental illness to act on his or her behalf or a person appointed by court to act on behalf of a person with mental illness, where the person with mental illness has the capacity to execute a particular task.

Under Section 61(1), the person with mental illness is insulated with the right to appoint a personal representative for the purpose of managing his estate. Under Subsection 3, the person may be a relative, a concerned person, mental health practitioner or a lawyer appointed through advance directive when the person with mental illness is capable to make the appointment. Under Subsection 2, this person is required to make decisions taking into account the best interests of the person with the mental illness

OBJECTION MY LORD

Where the unsound person is incapable of exercising their decision to appoint a personal representative, the intending relative may do the following;

2. APPOINTMENT OF PERSONAL REPRESENTATIVE BY COURT.

This option stems from the exception to the general rule under Section 60(2). Under Section 60(3) of the Mental Health Act, a person with mental illness may be stopped from managing his affairs where;

a. Court on the application of a relative or concerned person determines that the person is not able to manage his or her affairs. In *Aseru Joyce Aju vs Anjoyo Agnes HCMA 001 of 2016*, Justice Mubiru noted that the test of ability to manage affairs is to be required of the reasonable man. Therefore, a man that cannot manage his affairs is a person of unsound mind.

Under **section 62(1)** of the Mental Health Act, where the court has declared that the person with a mental illness is unable to manage their estate, they have not appointed a personal representative, it shall appoint a suitable relative to be his or her personal representative. Under subsection 2, the personal representative shall manage the estate of the person with mental illness or be the guardian of the person with mental illness Under Section 63(1) of the Mental Health Act, the court shall grant the personal representative general or specific powers, to manage the state of the person with mental illness. In *The Matter of Khalid Latiff (Person of Unsound Mind) (Civil Miscellaneous Application No.026 Of 2017)*, the applicant for example sought that the respondent be adjudged mentally ill so that she is appointed the manager to his estate with powers to dispose of the property of his estate only for purposes of paying debts due to crane bank and DFCU bank. Therefore, one may be appointed as a manager with powers to deal with these properties.

3. APPOINTMENT OF PERSONAL REPRESENTATIVE BY THE BOARD.

A person with mental illness may be stopped from managing his or her affairs where- (a) the Uganda Mental Health Advisory Board established under Sections 4 and 5 of the Mental Health Act, 2028, orders that the person with mental illness is not able to manage his or her affairs after it is established by two mental health practitioners, appointed by the Board.

Section 60(7) of the Mental Health Act provides that where an order that a person with mental illness is not capable of managing his affairs has been pronounced, this decision shall be reviewed by the board in the next meeting until the order is revoked.

WHAT IS THE PROCEDURE, FORUM AND DOCUMENTS NECESSARY?

A spouse or any other person mentioned in the Act may initiate the process of being granted the powers by Court to administer the property of her mentally ill person. This can be started by making an application to the Board to make a report and determine the mental status of the respondent.

Section 55 of the Mental Health Act 2018 provides for such determination to be carried out where it is required for proceedings before court of law and for any other official purpose.

Section 55 (2) of the Mental Health Act provides that such determination shall only be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner.

In the case decision in **Re Cath Cart (1892)1 CL 466 @ PG 471 Lord Lindley LJ** stated that the test is whether the person's insanity is so marked and of such nature that he or she is unable to manage him or herself and their affairs.

With the report from the board, then an applicant may go to court making an application to be granted the powers to administer the property of such person with a mental illness.

In the case of **Aseru Joyce Aju V Anjoyo Agness Miscellaneous Application No. 01 of 2016** it was stated that **Rule 3(2) of the repealed Act** provides that such applications have to be accompanied with the following supporting documents: an affidavit of Kindred and Fortune in Form A in the first schedule to the rules , a certificate in Form B in the First schedule to the rules by the superintendent of the medical Hospital were the person of unsound mind is a patient, an affidavit by a medical practitioner stating that he or she personally examined the person and that person is of unsound mind.

Court has the duty to ascertain that for the applicant to be found to be a suitable manager of the patient's estate, they should satisfy court that they are capable of preventing the potential abuse, neglect and exploitation of the respondent. They should be capable of taking control over the respondent's estate, his personal welfare and make decisions in the best interest of the respondent and their dependents.

Further the other guiding criteria is that the applicant should be an adult of sound mind and their interests should not be averse to those of the respondent in the estate for which he or she proposes to act as manager.

In the case of **The Estate of Kiggundu James (Person of Unsound mind) H.C.M.C 18 of 2015** Court was that the person must first be adjudged to be person of unsound mind by a Magistrate's Court Under **section 4 of the Mental Treatment Act** now repealed or the person detained under **section 113 & 117 of the Magistrate's Court Act** before the High Court can determine the suitability of the applicant to manage the estate of such persons.

The procedure is by a *notice of motion* Supported by an affidavit from the applicant as per **O.52 r 1** of the civil procedure rules. The hearing shall be as for applications under the same Act.

OBJECTION MY LORD

Section 62 of the Mental Health Act provides for the appointment of a personal representative of person with mental illness.

Section 62(2) of the Act provides that a personal representative shall:

- (a) Manage the estate of the person with mental illness and
- (b) Be a guardian of the person with mental illness and of the dependents of that person.

Section 63 of the Act provides for the responsibilities of personal representative appointed by court'

(1) Court shall grant a personal representative general or specific power, to manage the estate of the person with mental illness'

(2) Notwithstanding subsection (1), a personal representative shall not, without the special permission of the court-

- (a) Mortgage, charge or transfer, by sale, gift, surrender 'exchange, or by any other means, mortgage, charge or transfer any movable or immovable property of the person with mental illness;
- (b) Lease any property of the person with mental illness for a term exceeding five years; or
- (c) Invest funds of the person with mental illness in any security except a security authorized by law'.

A personal representative shall not invest any funds belonging to the person with mental illness in any company or undertaking in which the personal representative has an interest in or purchase immovable property for the person with mental illness without the authority of court.

ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

MISCELLANEOUS CAUSE NO.....OF 2022

IN THE MATTER OF THEOPHILUS WATMON (A PERSON WITH MENTAL ILLNESS)

AND

**IN THE MATTER OF APPOINTMENT OF A PERSONAL REPRESENTATIVE TO MANAGE
THE ESTATE OF THEOPHILUS WATMON**

MODESTA WATMON.....APPLICANT

VERSUS

THEOPHILUS WATMON (A PERSON WITH MENTAL ILLNESS).....RESPONDENT

NOTICE OF MOTION

(Under Section 98 of the CPA, 0.52 R1, 2 & 3 of the CPR, Section 60(3)(b) Sec 62(1),(2), (5) Sec 63 of the Mental Health Act,2018)

TAKE NOTE that this Honorable Court will be moved on the..... Day of 20..... at o'clock in the fore/afternoon or soon thereafter as counsel for the applicant shall be heard on an application seeking for the following:

1. An order that the respondent be mentally assessed.
2. A declaration that the respondent is a person with mental illness.
3. A declaration that the respondent is incapable of managing his own affairs.
4. An order authorizing the applicant to manage the estate of the respondent.

OBJECTION MY LORD

TAKE FURTHER NOTICE that the grounds upon which this application is based are contained in the affidavit of Modesta Watmon, which shall be read and relied upon at the hearing but briefly the grounds are;

- a) That the applicant is the wife to Theophilus Watmon, who is suffering from a mental illness and the respondent in this application.
- b) That the applicant and the defendant are blessed with six children namely: Matthew Watmon aged 28, Myles Watmon aged 25, Martin Watmon aged 22, Michelle aged 18, Molly Watmon aged 16 and Morgan Watmon aged 12.
- c) That the defendant has a number of properties including business savings in a Business group totaling to about 60,000,000 (Uganda shillings sixty million Shillings), a plot of land in Wakiso District Kyadondo Block 543 Plot 335) valued at 15,000,000 (Uganda Shillings Fifteen Million Uganda Shillings, and a motor vehicle from Japan at the cost of 30,000,000/= (Uganda Shillings Thirty million Only) which has not yet been cleared.
- d) That the defendant has started to sell off some of his property very cheaply to his close business associates.
- e) That the applicant would like to secure all this property and ensure that it is safe and protected, ensure that the children continue with education and to recover all money that is overdue to him from his debtors.
- f) That the defendant has been un able to run his affairs owing to his illness but together with the son Mathew Watmon are opposed to the fact of the defendant's deteriorating mental health and medication.
- g) That the applicant is qualified to perform the duties should she be appointed as a manager of defendant's estate.
- h) That it is necessary that the applicant be appointed as a personal representative to manage the estate of his husband.
- i) That it is in the interest of justice that this application is granted.

DATED at Mbarara this 22nd day of August 2022

.....firm g7&Co advocates.....

(COUNSEL FOR THE APPLICANT)

Given under my hand and seal of this honorable court this 22nd day of August 2022
.....

REGISTRAR

Drawn and filed by:

M/s Sui Generis & Company Advocates

Mbarara City

Mbarara



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

MISCELLANEOUS CAUSE NO.....OF 2022

IN THE MATTER OF THEOPHILUS WATMON (A PERSON WITH MENTAL ILLNESS)

AND

**IN THE MATTER OF APPOINTMENT OF A PERSONAL REPRESENTATIVE TO MANAGE
THE ESTATE OF FRANCIS THEOPHILUS WATMON**

MODESTA WATMON.....APPLICANT

VERSUS

THEOPHILUS WATMON (A PERSON WITH MENTAL ILLNESS)...RESPONDENT

OBJECTION MY LORD

MELANIE MALINGA.....APPLICANT

VERSUS

FRANCIS XAVIER MALINGA (PERSON WITH MENTAL ILLNESS)....RESPONDENT

AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION

I, **MODESTA WATMON** of M/s Sui Generis & Company Advocates P.O BOX 111, Mbarara City, do solemnly make oath and state as follows;

1. That I am a female adult Ugandan of sound mind, a resident of Kakiika in Mbarara District and the wife to the defendant and the applicant in this matter, and swear this affidavit in that capacity.
2. That my husband Theophilus Watmon has been sick since June 2018, and I noticed this illness from changes in his behaviour.
3. That he has suffered from serious insomnia, to which the doctor prescribed sedatives, frequent hallucinations, many times he responds to voices and speaks to invisible people, and is now hot tempered and hates some of the family members.
4. That I sought medical advice and he has received some medical treatment and care from specialists in Mulago.
5. That my husband Theophilus and I are blessed with six children namely: Matthew Watmon aged 28, Myles Watmon aged 25, Martin Watmon aged 22, Michelle aged 18, Molly Watmon aged 16 and Morgan Watmon aged 12.
6. That my husband has a number of properties including business savings in a Business group totaling to about 60,000,000 (Uganda shillings sixty million Shillings), a plot of land in Wakiso District Kyadondo Block 543 Plot 335) valued at 15,000,000 (Uganda Shillings Fifteen Million Uganda Shillings, and a motor vehicle from Japan at the cost of 30,000,000/= (Uganda Shillings Thirty million Only) which has not yet been cleared.
7. That he has started to sell off some of his property very cheaply to his close business associates.
8. That I would like to secure all this property and ensure that it is safe and protected, ensure that the children continue with education and to recover all money that is overdue to him from his debtors.

ISAAC CHRISTOPHER LUBOGO

9. That my husband is however fond of my son Matthew in whom he used to confide and both of them are opposed to the fact of my husband's deteriorating mental health and medication.
10. That it is in the best interest of justice that I am authorized to manage the estate of the respondent.
11. That all that I have stated herein is true and correct to the best of my knowledge and belief.

SWORN at Mbarara this 22nd day of August 2022

.....Modesta Watmon.....

MODESTA WATMON

DEPONENT

BEFORE ME

.....
COMMISSIONER FOR OATHS

Drawn and filed by;

Sui Generis & Company Advocates

P.O BOX 111

Mbarara City

WHAT ETHICAL ISSUES MAY ARISE IN THE COURSE OF EXECUTING THE REMEDIES?

- **Lack of due diligence and incompetent service**

As advocates we have a duty to perform our services diligently and competently. *Regulation 12 of the Advocates (Professional Conduct) Regulations* is to the effect that every advocate must advise his clients in their best interest, and no advocate should knowingly or recklessly encourage a client to enter into, oppose or continue any transaction in respect of which a reasonable advocate would advise that to do so would not be in the best interest of the client or would be an abuse of court process. Competent advice is therefore crucial as an ethical consideration in such circumstances.

- **Lack of accountability**

Regulation 29 of the Advocates (Professional Conduct) Regulations requires that every advocate shall account to his or her clients promptly and correctly for all monies held in respect of clients and in accordance with the Advocates Accounts Rules set out in the First Schedule to the Act.

In the case of *Lumweno & Co. Advocates V Trans-Africa Assurance Company Ltd Civil Appeal-2004/95* [2014] UGCA 99, it was provided that the professional fees of an advocate are paid pro-ratable in line with the work done by an advocate for his or her client. That the fees go on rising in respect to the stage of the pleadings and J Kakuru JA held that an advocate is not required to refund instruction fees where a client withdraws instructions from the advocate who acted upon such instructions.

- **Exploitation the client's ignorance.**

This is an unethical practice because in most instances the clients have little knowledge about how some of these proceedings are conducted and some clients are illiterate and they will believe whatever the lawyer says. Lawyers sometimes take advantage of this ignorance to exploit the client which is contrary to Regulation 11 of the Advocates (Professional Conduct) Regulations an advocate shall not exploit the inexperience, illiteracy or other personal shortcomings of a client for his or her personal benefit.

- **Being negligent with the client's work.**

Regulation 6 of the Advocates (Professional Conduct) Regulations provides that an advocate shall be personally responsible for the client's work. This entails a duty not to delegate the work without supervision. Also, Regulation 2(2) provides that an advocate shall not unreasonably delay to carry out the clients instructions.

- **Lack of confidentiality towards the client's case and documents.**

Regulation 20 of the Advocates (Professional Conduct) Regulations prohibits advocates from making announcements or comments to newspapers or media concerning on-going litigation.

Regulation 7 of the same regulations also prohibits advocates from disclosing information obtained from clients while carrying out instructions.

- **Advocate's failure to appear in court**

Regulation 5 (1) of the Advocates (Professional Conduct) Regulations provides that every advocate shall, in all contentious matters, either appear in court personally or brief a partner or a professional assistant employed by his or her firm to appear on behalf of his or her client.

- **Untimely work**

Regulation 2(2) of the Advocates (Professional Conduct) Regulations is to the effect that an advocate shall not unreasonably delay carrying out of instructions received from his or her clients. Failure to meet deadlines can be fatal in a legal case. Therefore, the advocate will ensure that he or she carries out Melanie's instructions within the set time.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2022

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

PETITION FOR DIVORCE.

This is the humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX, KAMPALA and it shows

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality, Wakiso District and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe Municipality, Wakiso district.
3. THAT your humble petitioner professes the Anglican religion.
4. THAT your petitioner was in the month of May 2015, was lawfully married to the respondent in a customary marriage under the Karamojong customs at the home of the parents of the petitioner in Moroto district,
5. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at All saint's church at Nakasero in the district of Kampala, and that
 - a) The marriage was solemnized under the provisions of the Marriage Act cap251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe Municipality and there is one issue of the marriage to wit Lubogo Juniorborn on the 1st September 2016.
6. THAT your petitioner's husband, LUBOGO HENRY, in or about the months of AUGUST 2017, SEPTEMBER 2017, FEBRUARY 2018, MARCH 2018 AND OCTOBER 2022 at their matrimonial home in Entebbe Municipality, Wakiso district violently assaulted your petitioner by striking her in the

ISAAC CHRISTOPHER LUBOGO

face, abdomen area, back and on the head with his enhanced fists, using a but on some occasions and his shoes at times.

7. THAT your petitioner's husband, LUBOGO HENRY, in or about the months of AUGUST 2017 TO OCTOBER 2022 at their matrimonial home in Entebbe municipality, Wakiso district insulted your petitioner by blaming her for all his problems, for being Karamojong and calling her good for nothing. This has caused your petitioner mental and emotional anguish.
8. THAT all avenues ,forums and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results.(attached as Annexure 'A' is a copy of the minutes from one of the mediation meetings called by our relatives)
9. THAT due to the continued cruelty of the respondent to the petitioner, the marriage between the two of them has irretrievably broken down.
10. THAT the matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
11. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceeding nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) The marriage of your petitioner with the respondent be dissolved and a decree nisi be granted
- b) That the petitioner may have the custody of the issue of the marriage
- c) That the respondent be ordered to pay alimony of UGX.1,000,000 per month to the petitioner and pay UGX.1,000,000 per month to the petitioner for maintaince of the issue of the marriage.
- d) That the respondent pay the costs of and incidental to the petition
- e) That your petitioner may have such further and other relief as the court may deem fit.

DATED at KAMPALA, this 26th day of October 2022.

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Drawn and filed by;

OBJECTION MY LORD

before me

_____ SUI GENERIS AND CO. ADVOCATES,

P.O BOX 7117, KAMPALA

_____ COMMISSIONER FOR OATHS



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2022

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

SUMMARY OF EVIDENCE

The petitioner shall adduce evidence to the effect that the respondent, LUBOGO HENRY, has been cruel to her thereby causing her emotional and psychological torture.

LIST OF DOCUMENTS

The petitioner will adduce the following documents in support of the petition.

1. The marriage certificate
2. Minutes from the previous mediation meetings
3. Any other with the leave of court.

LIST OF WITNESSES.

The petitioner shall testify and call the following witnesses.

1. Akoromwiguru Grace
2. Any other with leave of court

LIST OF AUTHORITIES

1. The Divorce Act
2. Any other authority with leave of court.

Dated at Kampala on this 27th day of October 2022.

OBJECTION MY LORD

PETITIONER.

Drawn and filed by

SUI GENERIS AND CO ADVOCATES

P.O BOX 7117, KAMPALA.



ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2022.

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

SUMMONS TO FILE AN ANSWER TO THE PETITION.

TO: LUGAMBO HENRY

WHEREAS, the above-named petitioner has instituted a suit against you upon the claim, the particulars of which are set out in the copy of the petition attached here to.

YOU ARE HEREBY required to file a response in the said suit within 15 days from the date of service of summons on you in the manner prescribed under O.9 r 1 of the civil procedure rules S.1 71-1 (as amended)

SHOULD YOU FAIL to file an answer on or before the date mentioned, the petitioner may proceed with the said suit and judgement given in your absence.

GIVEN UNDER my hand and seal of the court on this 25th day of October 2022 at Entebbe.

MAGISTRATE.

OBJECTION MY LORD

Caveat (S.13 of MA, S.27 OF CMRA)

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE MARRIAGE ACT

CAP. 251

AND

**IN THE MATTER OF A CAVEAT FORBIDDING THE
SOLEMNISATION OF A MARRIAGE.**

**TO: THE REGISTRAR OF
MARRIAGES AT KAMPALA.**

CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE.

TAKE NOTICE that I, LUGAMBO HENRY, being the lawful husband of GRACE AKOROMWIGURU who intends to contract another marriage at Christ the king church, hereby forbid the same for the following reasons.

1. That grace is already married to me having solemnized a marriage on 29th December 2015 at all saint's church Nakasero.

My address for purposes of service under this caveat is SUI GENERIS and co advocates, P.O BOX 7117 KLA.

Dated at Kampala this 25th day of October 2022.

SIGNED by the said

LUGAMBO HENRY
(CAVEATOR.)

Before me

ISAAC CHRISTOPHER LUBOGO

COMMISSIONER FOR OATHS.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBEE

AT ENTEBEE.

MATRIMONIAL CAUSE NO. 002 OF 2022.

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

PETITION FOR RESTITUTION OF CONJUGAL RIGHTS AND
PROVISION OF MAINTENANCE.

(Under S.20 (1) and (2) of the D.A and O.22 rule 29 of civil procedure rules)

This is the humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO.ADVOCATES, P.O BOX 7117, KAMPALA and these are as follows:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates under take to effect service on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and is a resident of Entebbe municipality, Wakiso district
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015 ;lawfully married to the respondent at Christ the king church in the district of Kampala and that:
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe municipality and there are two issues of the marriage to with LUGAMBO JUNIOR AGED 20 YEARS AND AKIROMO JUNIOR AGED 3 YEARS.
5. THAT, the respondent, LUGAMBO HENRY has not from the month of AUGUST 2017, to date not provided maintenance to the petitioner nor to the children.
6. THAT the respondent, LUBOBA HENRY has since the 14th day of AUGUST 2015 refused and still refuses to render her conjugal rights albeit living in the same house and sleeping in the same bed.

- 7. THAT the petitioner has taken all necessary steps to have the respondent, LUBOGO HENRY restore her conjugal rights but with no success in sight.
- 8. THAT the matter arose in Entebbe municipality, Wakiso district which is with in this court’s jurisdiction.

Your petitioner therefore humbly prays for a decree that;

- a) The respondent be ordered to provide maintenance for the wife and the children at a rate of UGX. 1,000,000 per month.
- b) The respondent be ordered to render the petitioner her conjugal rights
- c) The respondent pays the costs of and incidental to this petition.

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Drawn and filed by;

SUI GENERIS AND CO. ADVOCATES

P.O BOX 7117, KAMPALA

before me

.....

COMMISSIONER FOR OATHS.

Attach

- 1. Summary of evidence
- 2. Summons to file a reply
- 3. Mediation summary.

SEPARATION AGREEMENT.

**THE REPUBLIC OF UGANDA
IN THE MATTER OF THE DIVORCE ACT, CAP 249
AND IN THE MATTER OF THE CONTRACTS ACT, 2010
SEPARATION AGREEMENT.**

THIS AGREEMENT IS MADE THIS 27th day of October 2022.

BETWEEN

GRACE AKOROMWIGURU aged 24 years whose address for purposes of this agreement shall be SUI GENERIS COMPANY ADVOCATES, PILKINGTON ROAD, KAMPALA. (Hereinafter referred to as the wife)

AND

LUBOGO HENRY aged 35 years, resident of lubowa, Entebbe, Wakiso district (Hereinafter referred to as the husband)

WHEREAS the husband and wife lawfully contracted a marriage on the 15th day of October 2015 at All saint's cathedral Nakasero in Kampala.

AND WHEREAS they have since lived and cohabited together at their matrimonial home in Entebbe municipality and have two issues from the marriage to wit, Lubogo Junior aged 3 years and Lubogo Grace aged one year (Hereinafter referred to as the children)

AND WHEREAS the relationship between the two has broken down and thus they are desirous of separating and agree to live separately as agreed in this agreement.

THIS AGREEMENT IS THEREFORE WITNESSETH AS FOLLOWS:

1. NON MOLESTATTION.

1.1 The parties mutually agree that there shall be no molestation of one by the other during the continuance of this agreement.

1.2 In the event that any of the parties violates the provision of clause 1.1 above, the party in breach shall pay damages of UGX 5,000,000 to the other innocent party.

2. MAINTENANCE OF WIFE AND CHILDREN.

- 2.1 The husband shall provide for the maintenance of children and the wife at a rate UGX.2,000,000 per month
- 2.2 The maintenance in clause 2.1 above shall be paid on every 28th day of the month and shall be deposited on the above account provided by the wife from time to time.
- 2.3 Failure to comply with clause 2.2 above, the sum in clause 2.1 shall attract an interest of 10% for each day after the 28th day to the day when the full sum due that month shall be paid.

3. LIVE A PART.

The parties agree that they shall continue to live separately in consideration for having each other's consortium.

4. DUM CASTA CLAUSE

Name of the parties to this agreement shall be at liberty to have sex with another person during the subsistence of this agreement.

5. MATRIMONIAL PROPERTY

- 5.1 each party shall be entitled to take property constituting wearing apparel and personal effects
- 5.2 the wife shall be entitled to retain the matrimonial home during the subsistence of this agreement
- 5.3 all other properties constituting matrimonial property at the time of execution of this agreement shall continue to be held jointly and for the benefit of both parties
- 5.4 the party deriving any income from any of the properties mentioned in clause 5.3 shall have to account to the other party for all revenues earned from the properties and shall relinquish half of the income earned to the other party as their share in the income earned to the other party as their share in the income earned from the property.
- 5.5 All properties acquired by the parties during the subsistence of this agreement shall not be construed as constituting matrimonial property during the subsistence of this agreement or thereafter.

6. DURATION

OBJECTION MY LORD

6.1 This agreement shall unless otherwise expressly agreed upon by the parties in writing run for a period of two years from the date of execution.

6.2 Notwithstanding clause 6.1, the parties may by mutual consent terminate this agreement at any time during its subsistence.

7. CUSTODY OF THE CHILDREN.

7.1 The parties agree that the wife shall have custody of the children while the husband shall have visitation rights at all times

7.2 In exercise of his visitation rights in clause 7.1 above, the husband shall ensure that he gives at least a days' notice to the wife and shall ensure the visits are in a reasonable time

7.3 For avoidance of doubt, reasonable time shall be construed to be between 9:00am and 7:00pm.

8. AMENDMENT.

No provision in this agreement shall be varied or deemed to be varied except where there is an express agreement to that effect in writing signed by the parties.

9. DISPUTE RESOLUTION.

9.1 All disputes arising under this agreement shall be referred to a mediator within 10 working days from the date when the dispute arose.

9.2 The mediator referred to in clause 9.1, shall be a mediator appointed by CADER upon application by either party,

9.3 The mediation referred to clause 9.1, shall not exceed 30 days from the first day when the mediation is commenced.

9.4 Where the parties fail to reach a settlement in respect of the dispute, they shall refer the matter to court of competent jurisdiction for resolution of the dispute.

10. LAW APPLICABLE.

This agreement shall be governed by the laws of the republic of Uganda.

ISAAC CHRISTOPHER LUBOGO

IN WITNESS WHEREOF, the parties have appended their signatures hereto on the date and year first mentioned above.

SIGNED BY:

AKORIMO GRACE
(WIFE)

In the presence of

KIZITO DERRICK
ADVOCATE

Drawn by

SUI GENERIS AND CO ADVOCATES

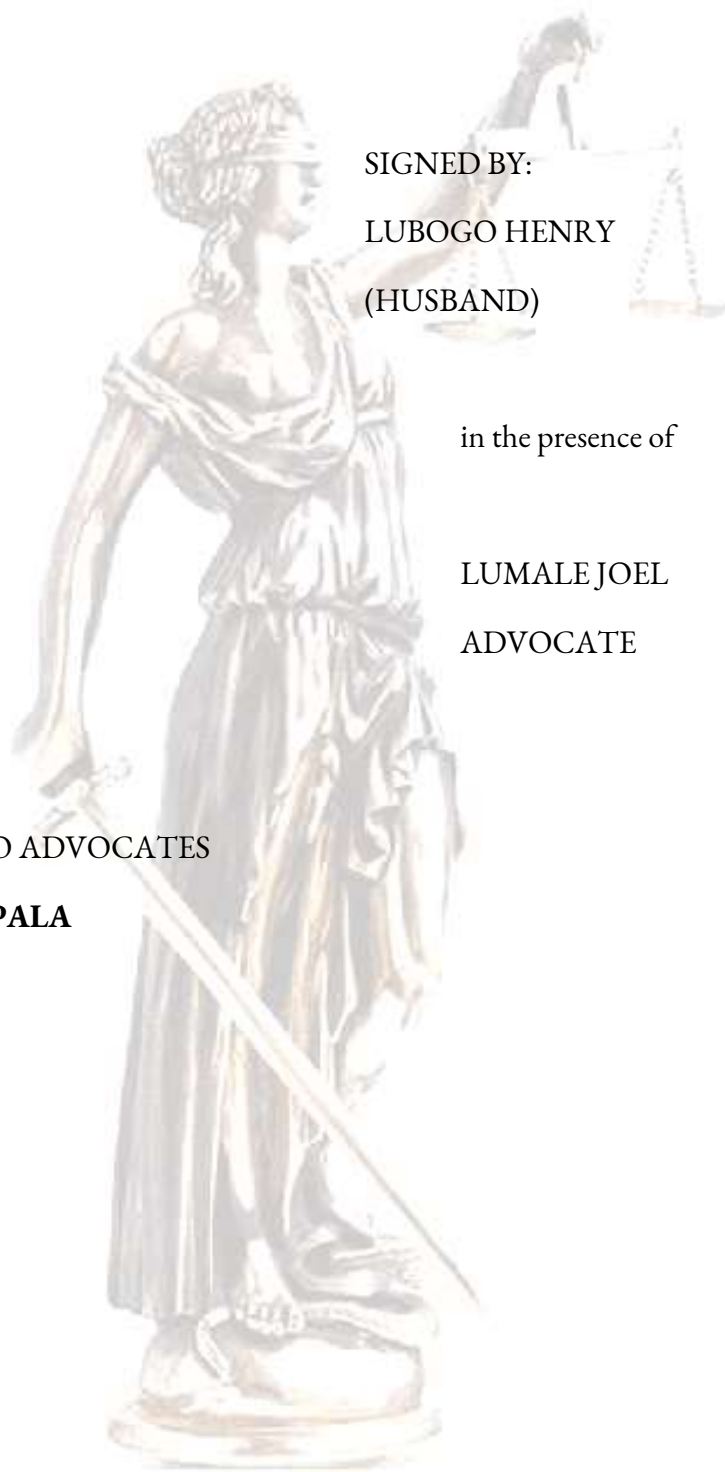
**P.O BOX 7117, KAMPALA
UGANDA.**

SIGNED BY:

LUBOGO HENRY
(HUSBAND)

in the presence of

LUMALE JOEL
ADVOCATE



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE
AT ENTEBBE

MATRIMONIAL CAUSE NO 003 OF 2022

AKIROMO GRACEPETITIONER

VERSUS

LUBOGO HENRYRESPONDENT

PETITION FOR SEPARATION.

(Under section 14 of the divorce act cap 249 and rule 4 of the divorce rules)

This is the humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX 7117, KAMPALA and it show:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe municipality, Wakiso district.
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at all saint's cathedral at Nakasero in the district of Kampala and that
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251
 - b) After the marriage, your petitioner hired and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe municipality and there is one issue of the marriage to will LUBOGO JUNIOR born on the 1st September 2016.
5. THAT your petitioner's husband, LUBOGO HENRY, in or about the month of AUGUST 2017, SEPTEMBER 2022, at their matrimonial home in Entebbe municipality, Wakiso district, violently

ISAAC CHRISTOPHER LUBOGO

assaulted your petitioner by striking her in the face ,abdomen areas, back and her head with calendared fits and his belt.

6. THAT all avenues and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results (Attach evidence if any)
7. THAT due to the respondent's cruelty to the petitioner, the marriage between the two has broken down.
8. THAT this matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
9. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceedings nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) Your petitioner be judicially separated from LUBOGO HENRY, the respondent
- b) The petitioner be granted custody of the issue of the marriage
- c) The respondent be ordered to pay a monthly maintenance for the child at a rate of UGX 1,000,000 per month.
- d) The respondent be ordered to pay alimony to the petitioner at a rate of UGX1,000,000 per month
- e) That the respondent pay the costs of and any other costs incidental to this petition.
- f) Any further remedies as the court may deem fit.

PETITIONER

I, AKIROMO GRACE, certify that the statements above are true to the best of my knowledge, information and belief.

PETITIONER

Drawn and filed by:

before me

SUI GENERIS & CO ADVOCATES,

P.O BOX 7117, KAMPALA,

COMMISSIONER FOR OATHS.UGANDA.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF NAKAWA AT NAKAWA

ADOPTION PETITION NO. 299 OF 2011

AND

IN THE MATTER OF THE CHILDREN ACT, CAP. 59

AND

IN THE MATTER OF ADOPTION OF, KAMPALA DISTRICT

AND

IN THE MATTER OF A PETITION BY

ADOPTION ORDER

THIS ADOPTION PETITION coming up for hearing this 7th day of March, 2013 before **HER WORSHIP JOY KABAGYE BAHINGUZA, CHIEF MAGISTRATE** in the presence of Counsel for the Petitioner/Applicant and upon perusal of the pleadings and hearing of Counsel, **IT IS ORDERED that:-**

Ruth Among is hereby appointed the adoptive parent of

DATED at Kampala this 7th day of March, 2013.

GIVEN under my Hand and the Seal of this Honourable Court this day of2013.

CHIEF MAGISTRATE

EXTRACTED BY:

Sui Generis & Co- Advocates

Plot 10 Clement Hill Road



OBJECTION MY LORD

EXAMPLE

BRIEF FACTS

Matovu Bosco and Monica Akiiki got married on 22nd December 2015 at the CAO's office at Fort Portal at 6.00pm without any witnesses and having not informed Monica's parents. After the marriage, Bosco who was 25 years discovered that Monica who had informed him that she was 19 years old was actually on 5th May 1999. In September 2016 after Monica gave birth to twins, Bosco went to visit the twins, but Monica's parents insisted that he marries her customarily. Bosco agreed and in March 2017, together with his parents, Bosco visited the home of Monica's parents. The family of Monica demanded for a cow and bull as bride price. Bosco paid shillings 2,000,000 being the cost of the cow. He had no money to pay for the price of the bull. However, the parents of Monica allowed her to go stay with Bosco, her husband.

Soon after, in August 2017, Bosco lost his job, resorted to spending all his days and nights at church and stopped providing for Monica and the twins. He stopped having sexual intercourse with her claiming that he wants to remain "clean" awaiting the return of the Lord. In the meantime, in August 2018, while washing

Bosco's trousers, Monica found in the pockets a box of Wild Life Condoms. When Monica asked Bosco about the condoms, he gave her a big slap and asked her to mind her own business. Monica is frustrated and wants to leave the home.

Bosco too wants the money he paid to Monica's parents refunded to him. He has identified one of the born-again girls called Bulandina and wants to ask her hand in marriage.

ISSUES;

What is the status of Bosco's marriage?

Whether Bosco has any remedy?

What documents are needed for the above remedy?

What advice should be given to Monica who still wants to remain married to Bosco?

What documents are necessary for court proceedings?

What is the remedy for stopping the marriage between Monica and Peter

What is the procedure of obtaining the remedy?

LAW APPLICABLE

The Constitution of the Republic of Uganda 1995

The Marriage Act, Cap 251

The Divorce Act, Cap 249

The Customary Marriages(Registration) Act, Cap 248

The Uganda Registration Services Bureau Act Cap 210

The Judicature Act Cap 13

The Divorce Rules SI 249-1

RESOLUTION;

1. ADVICE TO BOSCO MATOVU ON THE STATUS OF HIS MARRIAGES AND REMEDIES IF ANY.

Marriage was defined by Lord Peasance in the case of **HYDE VS HYDE (1866) LRPD**

131 as a voluntary union for life of one man and one woman to the exclusion of the others.

Article 31(3) of the Constitution of the Republic of Uganda as amended provides that marriage shall be entered into with the consent of the man and woman intending to get married.

Uganda's legal pluralistic system recognizes multiple types of marriage, including civil, customary and religious (Christian, Islamic and Hindu) marriages. While customary and Islamic marriages are potentially polygynous, Christian, Hindu and civil marriages are monogamous and follow the Common Law requirements laid out in the 1866 English case of *Hyde v. Hyde*

The 2015 civil marriage

Civil marriages include marriage under the Marriage Act Cap 251 which can be solemnised in a church or by a Chief Administrative officer/ Registrar of marriages.

OBJECTION MY LORD

In order to contract a valid marriage, the parties must possess the legal capacity to marry and must comply with certain formalities: a failure in either respect renders the marriage void.

The requirements of a civil marriage are laid out in Section 10 of the Marriage Act as;

Residence.; One of the parties must have resided in the district where the marriage is to be celebrated for at least fifteen days.

Age.

Each of the parties must be above 21 years of age and if below , consent of the parents must be sought. This should however be reconciled with the Constitution of Uganda 1995 which provides for 18 years as the age of consent.

Parties should not be within the prohibited degrees of marriage.

None of the intended parties to the marriage should be in a subsisting marriage whether customary or under the Marriage Act.

Notice.

Under section 6, one party must give notice to the registrar or the person in charge of a church.

The notice must be posted for public knowledge for at least 21 days according to section 9.

According to section 10 the registrar issues a certificate authorising this marriage.

If marriage is not done within three months of the notice a fresh notice is needed according to section 11.

The same notice is applicable to church marriage where banns will be announced for three consecutive Sundays usually in the church where the marriage will take place.

Under S. 34(2)(c) A marriage shall be null and void if both parties knowingly and willfully acquiesce in its celebration without the registrar's certificate of notice duly issued.

There are procedural requirements the marriage is celebrated must be licensed i.e., place of worship or the office of the registrar. Sections, 4, 5 and 22 of the Marriage Act.

Marriage should be celebrated with open doors between 8:00am and 6:00pm in case of church marriage under S. 20(2) and in case of Civil Marriage, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, under S. 26 of the Act. witnesses apart from the minister celebrating and there after filling of certificate. Section 20(2) and 26.

In the current facts, the marriage that took place in 2015 is void ab initio because the major requirement of age was not met. Monica was only 16 years and therefore a minor who is not eligible for marriage. Further the marriage was celebrated secretly at 6;pm at the office of the CAO. The facts do not show that Sections 6, 9 and 10 were complied with. The marriage was therefore a nullity for want of registrar's certificate of notice as per S. 34(2)(c) of the Marriage Act.

Possible remedy

Given that there was misrepresentation of the fact of age by Monica, Bosco can petition for nullification of the marriage.

The 2016 customary marriage

Section 1(b) of the Customary Marriages Registration Act Cap 252 defines a customary marriage as a marriage celebrated according to the rites of an African community and one of the parties to which is a member of that community or any marriage celebrated under Part 3 of the Act. This definition was further emphasized in the case of **Uganda V Kato & Others [1976] HCB 204**.

In **Uganda v Peter Kato and 3 others [1976] HCB 204**, Ssekandi J as he was then, held that the test of determining what a marriage is, under customary law, is whether the union is treated as a marriage by the laws or customs of the nation, race or sect to which the parties belong. **Section 4(2) of the Customary Marriage (Registration) Act** provides that customary marriages are polygamous in nature.

In **John Tom Kintu v Myllious Gafabusa Kintu High Court Divorce Appeal No. 135 of 1995** it was stated by Justice S.B. Bossa as she was then that, “...*if a person married under customary law continues to marry more wives under the same type of marriage, he doesn't commit adultery thereby [the marriage is polygamous]. I think however, that the situation is different where the other person involved is not legally married to that person under customary law. There the association must be clearly adulterous.*”

OBJECTION MY LORD

Article 37 of the 1995 Constitution provides that every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.

The Judicature Act Cap under S. 15 provides that customs or traditions will be applicable in so far as they are not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law. This was further emphasized in the case of **Kimani V Gikanga (1965) EA 735** Court held that customs that are repugnant to public policy or natural justice, equity and good conscience would not be enforced.

The custom being relied on by a party in court must be established by them to the satisfaction of court so that the Court may take judicial notice of it. In **Ernest Kinyanjui Kimani v Muiru Gikanga and another [1965] 1 EA 735**, it was held that where African customary law is neither notorious nor documented it must be established for the court's guidance by the party intending to rely on it and that as a matter of practice and convenience in civil cases the relevant customary law, if it is incapable of being judicially noticed, should be proved by evidence or expert opinions adduced by the parties. (Also refer to **Halsbury's Laws of England, 3 rd Edition, Vol. 15** – *“Judicial notice is taken of facts which are familiar to any judicial tribunal by virtue of their universal notoriety or regular occurrence in the ordinary course of nature or business. As judges must bring to the consideration of the questions, they have to decide their knowledge of the common affairs of life, it is not necessary on the trial of any action to give formal evidence of matters with which men of ordinary intelligence are acquainted whether in general or to natural phenomenon.”* And also, **Mifumi (U) Ltd & another vs Attorney General & Another Constitutional appeal No. 2 of 2014** where the Court observed that, *“It is not necessary to require that the custom should be formally proved in court in order for the court to know it exists...”*

Section 11 of the Customary Marriages Registration Act provides for the requirements of a customary marriage as;

The female party has to be of or above 16 years of age (To be read together with the constitution).

The male party should have attained 18 years of age

They should be of sound mind

The parties should not be within the prohibited degrees of kinship as laid out in the second schedule.

In **Uganda V Kato & Others (supra)**, Court observed that the test for determining whether there is a customary marriage, the union is regarded as such by the customs of the tribe to which the parties belong and that the parties must satisfy all the requirements of marriage under the customary laws of that community.

Bride price is also an essential element of customary marriage since it is a custom of different tribes and it therefore validates a marriage. In **Uganda v Eduku (1975) HCB 359** court held that since bride price had not been paid in full, there was no subsisting marriage.

In **Nemezio Ayiia Pet vs. Sabina Onzia Ayiia** HCCS No. 8/1973 it was held that dowry is essential in marriage in Uganda that it can be paid in instalments, but that until the last instalment is paid, no valid customary marriage exists. It was emphasized that, a man and a woman cohabiting can be regarded as husband and wife but marriage is not valid until ALL the dowry is paid.

In **Mifumi (U) Ltd & another vs Attorney General & Another Constitutional appeal No. 2 of 2014** Although the Supreme Court abolished the **traditional practice of refunding dowry under customary divorce**, the institution of bride wealth was left intact as an essential element of customary marriages

Dowry therefore is an essential ingredient of a valid customary marriage.

The customary marriage can thus be nullified on two grounds; one is failure to complete bride price and secondly Monica was still below 18 years having been born in May 1999 yet the ceremony was in March 2017.

It should be further noted that the law does not allow conversion of civil marriage to customary marriage.

S. 36 of the Marriage Act provides **that** any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of that marriage, of contracting a valid marriage under any customary law.

Therefore, in any case where the first civil marriage is found valid, the second customary marriage would still be invalid.

However, Bosco cannot demand for a refund of the bride price.

This was clearly discussed in the case of **Mifumi (U) & 12 Others V Attorney General and Kenneth Kakuru**, the Supreme Court held that the custom and practise of demand and refund of bride price as a condition precedent to a valid dissolution of a customary marriage is inconsistent with Articles 2, 21(1) and 2, 31(1)(b); 31(3), 32(2), 33(1) and 33(4) of the constitution because it undermines the dignity and status of women.

OBJECTION MY LORD

Remedy.

The available remedy for Bosco is to petition court for nullification of the above marriages.

Both marriages were void for violating procedural requirements. In the first civil marriage, Monica had no requisite age of 18 which is a violation of Article 31 of the Constitution, and as a result, such marriage is void under Art 2 of the Constitution. The same marriage is void for want of registrar's certificate of notice which should be issued before celebration of the marriage. S. 34(2)(c) declares such marriage as void.

The second customary marriage was invalid for failure to pay full bride price in accordance with Toro customs. Also, Monica still lacked the requisite age since she was 17 years and 10 months old. This is a violation of the Constitution.

There is a difference between a void and voidable marriage.

The distinction between void and voidable marriages is well brought out in the case of **De Reneville v De Reneville [1948] 1 ALLER 56, 60 CA**. Lord Greene considered the essential distinction between void and voidable marriage:

“The substance [of the distinction] may be expressed thus. A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any decree annulling it. A voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction.”

Technically, a void marriage is void even if it has never been declared to be so by a court, whereas a voidable marriage is valid from the date of the marriage until the court makes an order. That said, a party who believes his or her marriage to be void would normally seek a court order to confirm this to be so. This avoids any doubts over the validity of the marriage and also permits the parties to apply for court orders relating to their financial affairs.

Re Roberts (deceased) [1978] 3 All ER 225

Walton J; if one can show that a ceremony is void, that does not need the pronouncement of the court to establish that fact. It may be highly desirable that the court should so pronounce and, indeed, one would be very slow, as a practical matter, normally in relying on such a position without the decree of the court. But if something is void, void it is: the court is then doing no more than pronounce a blinding glimpse of the obvious at the end of the day.

Since the above marriages are void, Bosco should petition Court for a decree of nullity. It is after that decree, that Bosco can now legally marry Bulandina.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
FAMILY DIVISION
MATRIMONIAL CAUSE NO. 1 OF 2018
MATOVU BOSCO.....PETITIONER
VERSUS
AKIIKI MONICA.....RESPONDENT

PETITION FOR NULLITY

(Under The Marriage Act Cap 251)

The petitioner is an adult male Ugandan of sound mind and the petitioner's address for purposes of this petition is Kiketo and Company Advocates P.O BOX 2112 Kampala.

The respondent is a female adult Ugandan of sound mind resident at

Nyakasura, Fortportal and the petitioner's advocates undertake to effect court process on him/her.

The petitioner and the respondent are domiciled in Uganda.

That on 22nd December 2015 the petitioner contracted a civil marriage with the respondent at the office of the CAO at Fort Portal.(attached is a marriage certificate marked Annexure A)

That the respondent lacked capacity to enter such a marriage as she was 16 years which is below the age of consent.

That no registrar's certificate of notice was issued nor prior consent of the parents sought before the marriage as envisaged by the Marriage Act

That the marriage was contracted between the petitioner and respondent without any person to witness the marriage centrally to the Marriage Act.

That the civil marriage was conducted after the hour of 4'Oclock contrary to the Marriage Act.

That the said civil marriage was therefore null and void for contravening the Constitution and the Marriage Act.

That in March 2017 the petitioner contracted a customary marriage with the respondent in accordance with Toro customs.

That the Customary Marriage conducted in March 2017 is invalid as the petitioner did not pay the full bride price requested.

That the customary marriages is invalid since the respondent had not yet attained the age of consent having been born in May 1999.

That this matter arises within the jurisdiction of this honorable court.

WHEREFORE the petitioner prays for;

That the said marriages between the petitioner and the respondent be nullified.

That the parties pay their own costs

Dated at Kampala this 27th day of October 2018

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

Petitioner

Before me commissioner for oath

.....

Drawn and filed by;

SUI GENERIS & CO. Advocates

PO.BOX 2112 KAMPALA.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

FAMILY DIVISION

SUMMARY OF EVIDENCE

The petitioner will adduce evidence to show that the alleged civil and customary marriages are not valid reason of below age or no capacity to contract, no notice was given, no witnesses and also bride price was not completed.

LIST OF WITNESSES

Matovu Bosco

Other witnesses with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

LIST OF DOCUMENTS

The Marriage Certificate

Other documents with leave of court

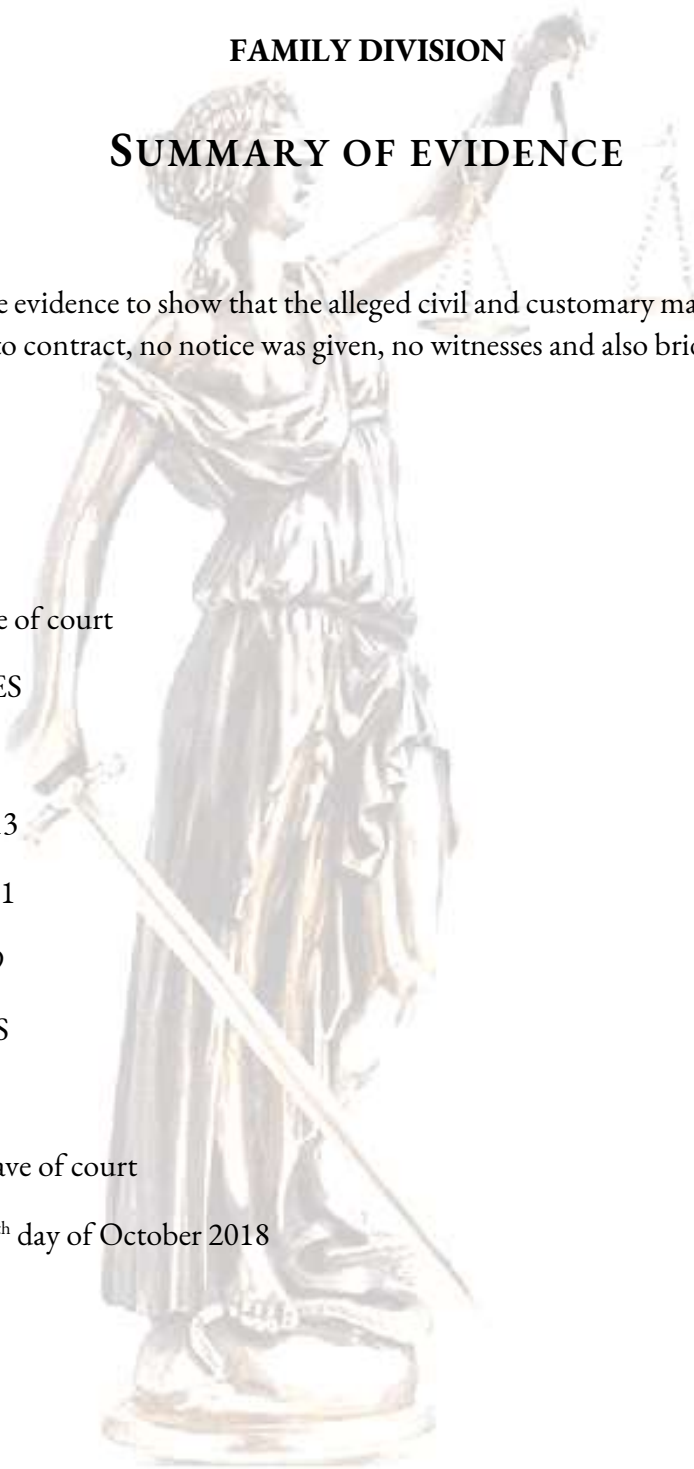
Dated at Kampala this 27th day of October 2018

.....

Counsel for Petitioner

Drawn and filed by;

SUI GENERIS and Co Advocates

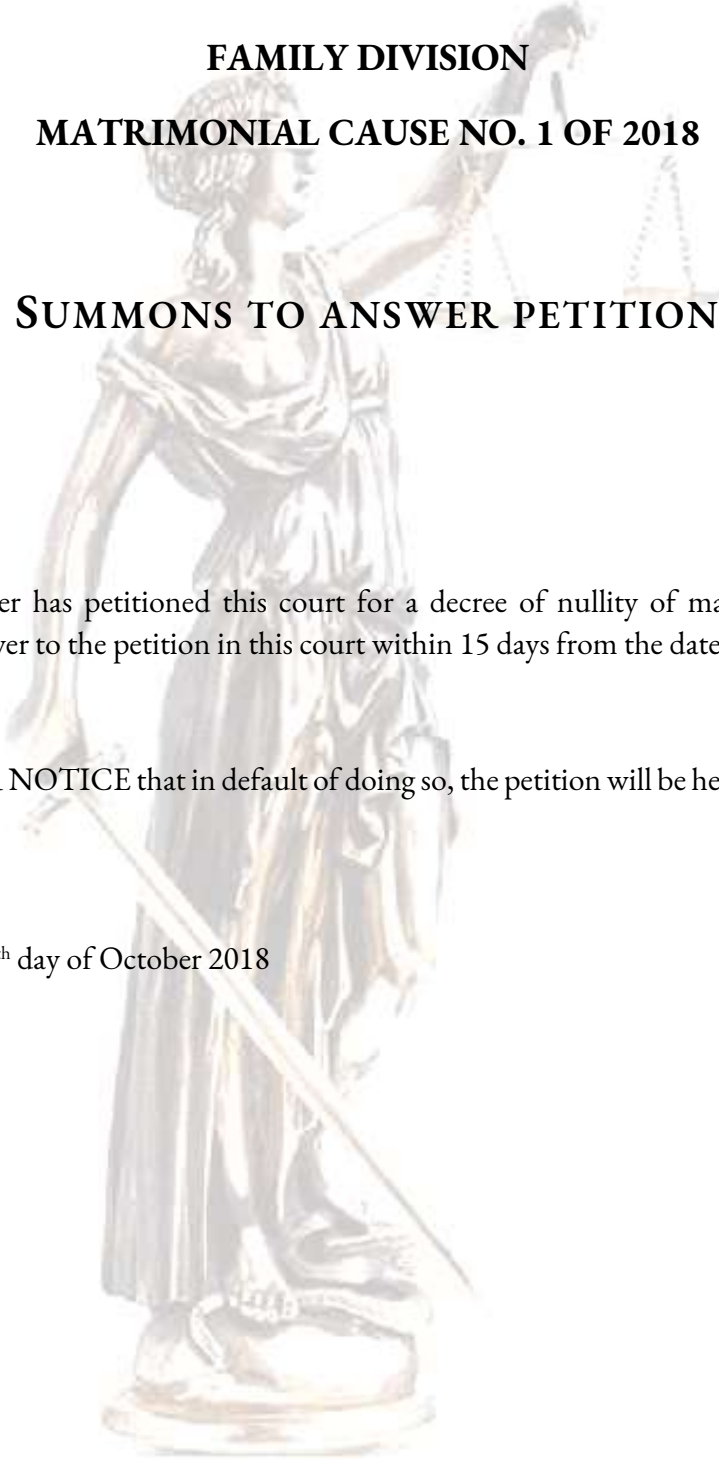


PO.BOX 2112 KAMPALA.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
FAMILY DIVISION
MATRIMONIAL CAUSE NO. 1 OF 2018
SUMMONS TO ANSWER PETITION



To: **Akiiki Monica**

WHEREAS the petitioner has petitioned this court for a decree of nullity of marriage; YOU ARE hereby summoned to file an answer to the petition in this court within 15 days from the date of service of summons.

AND TAKE FURTHER NOTICE that in default of doing so, the petition will be heard and determined in your absence.

Dated at Kampala this 27th day of October 2018

.....

REGISTRAR

Task (C)(I)

Assume that instead of the customary marriage, Bosco and Monica underwent a Church marriage at All Saints Cathedral, Viirika after following all the necessary procedures. That despite all the problems Monica still wants to remain married to Bosco. She wants him to resume looking after the home and having sexual intercourse with him.

What advice would you give her?

I would advise her to try mediation with the husband. Mediation is an alternative method of dispute resolution other than instituting a suit. It involves a third party called the mediator intervening to help the two conflicting parties reach an agreement. In marriage proceedings, mediation is encouraged before parties proceed to court in order to give parties a chance to resolve the matter amicably and preserve the sanctity of marriage as an institution. Under Rule 5 of the Judicature(mediation) rules, mediation is compulsory before intending litigants proceed to trial.

Restitution of conjugal rights.

Where mediation has failed, I would advise Monica petition court for the restitution of conjugal rights under Section 20(1) and (2) of the Divorce Act Cap 249. Under this provision court has the power to decree that a husband or wife who has unreasonably withdrawn from intercourse with the spouse to be ordered to resume the same.

In **Aremezi vs Rideway** [1949] ALL ER 664 it was stated by **Hilburg J.** that;

“I am quite sure that no young woman when she accepts a proposal of marriage and a contract is formed could be satisfied if she were told that all the Youngman is undertaking by promise is to go through a form of ceremony with her. What the parties intend is an exchange of mutual promises to become another’s spouse that is husband and wife and all that it should entail”

The withdrawal of conjugal rights must be unreasonable and the other party must have no defence.

However, it is important to note that a court cannot order specific performance apparently because you can’t supervise people having sex or coerce them into the same.

OBJECTION MY LORD

Each partner has a right to **reasonable sexual intercourse with the other**: this does not entitle a husband (or a wife) to have intercourse by force, but unreasonable refusal (or demands unreasonable in their frequency or nature) could well be grounds for annulment or divorce.

However, the successful party is not entitled to use extra judicial means to enforce his /her rights. In **R vs Jackson, (1896) 1 QR 671**, where a husband obtained the decree nisi for restitution of conjugal rights and his wife refused to comply. He then abducted her and confined her in a house. Court held that notwithstanding her refusal to live in the same house with him, the husband was not entitled to keep her in confinement for the purpose of enforcing the decree for restitution by her of his conjugal rights. Court granted her an order for habeas corpus to secure her release.

In the present case, Bosco stopped having sexual intercourse with Monica claiming that he wants to remain “clean” awaiting the return of the Lord.

Such withdrawal is unreasonable. Monica can therefore seek restitution of conjugal rights.

Maintenance rights.

There is no statutory provision relating to the duty and a right to maintenance of spouses, however, under common law the husband has to duty to maintain his wife. However, S. 76 of the Children Act provides for maintenance order given by court to one of the parties

In **Edith Nakiyingi Vs Meleki Zadeki** (1978) HCB 107, court recognized that the right to maintenance in marriage includes the duty of the husband to maintain his wife.

However, the right to maintain a wife in particular is founded in common law and is limited to necessities. This was observed in the case of **Carlott v Harsh**.

The wife has a right to occupy the matrimonial home and be provided with necessities of life and where this isn't done, the wife can exercise what under common law is called the **Deserted wife's Equity**, which means that the wife may insist on remaining in the matrimonial home if she has been deserted by the husband.

In Uganda statutory law does not create a right of a wife to seek maintenance order where the marriage is still ongoing. However, Article 139 of the constitution, Judicature Act Cap 13 section 14, Civil Procedure Act Cap 71 section 98 and Magistrate Courts Act Cap 16 section 10 provides courts with jurisdiction to use its inherent powers and grant a suitable remedy. Courts may apply doctrines of common law and equity in ensuring there is maintenance between the husband and the wife.

Monica should therefore petition the court for an order of maintenance.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT AT FORT PORTAL

AKIIKI MONICA PETITIONER VERSUS

MATOVU BOSCO RESPONDENT

SUMMONS TO FILE A RESPONSE

WHEREAS the above-named Petitioner has instituted a suit against you upon the claim, the particulars of which are set out in the copy of the Petition attached hereto.

YOU ARE HEREBY required to file a response in the said suit within 15days from the date of service of summons on you in the manner prescribed under Order 9 rule 1 of the Civil Procedure Rules S.I 71-1. (As described overleaf)

SHOULD YOU FAIL to file a response on or before the date mentioned, the Petitioner may proceed with the said suit and judgement may be given in your absence.

GIVEN UNDER my hand and the seal of the Court this 29th day of **October 2018** at
Kampala.

(REGISTRAR)

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT AT FORT PORTAL
MATRIMONIAL CAUSE NO.....OF 20.....
AKIIKI MONICAPETITIONER
VERSUS
MATOVU BOSCORESPONDENT

**PETITION FOR MAITENENCE ORDER AND
RESTITUTION OF CONJUGAL RIGHTS**

(Under S.20 Divorce Act, Cap 249)

The petitioner is a female of sound mind residing at Nyakasura, Fort Portal and the petitioner's address for purposes of this petition is c/o SUI GENERIS Company Advocates, P.O. Box 7117, Kampala.

The respondent is male Ugandan believed to be of sound mind and the petitioner's advocates undertake to effect court process on him.

The petitioner and the respondent are both Africans domiciled in Uganda.

That on theday of20.....went through a valid church marriage ceremony within accordance the Marriage Act.

That during the subsistence of the said marriage the respondent stopped looking after the home and having sexual intercourse with the petitioner.

That this cause of action arose at Nyakasura, Fort portal within the jurisdiction of this honorable court.

Wherefore the petitioner prays for orders: (a) For the resumption of looking after the home; (b) For restitution of conjugal rights.

DATED at Fort Portal thisday
of.....20.....

OBJECTION MY LORD

PETITIONER

BEFORE ME:

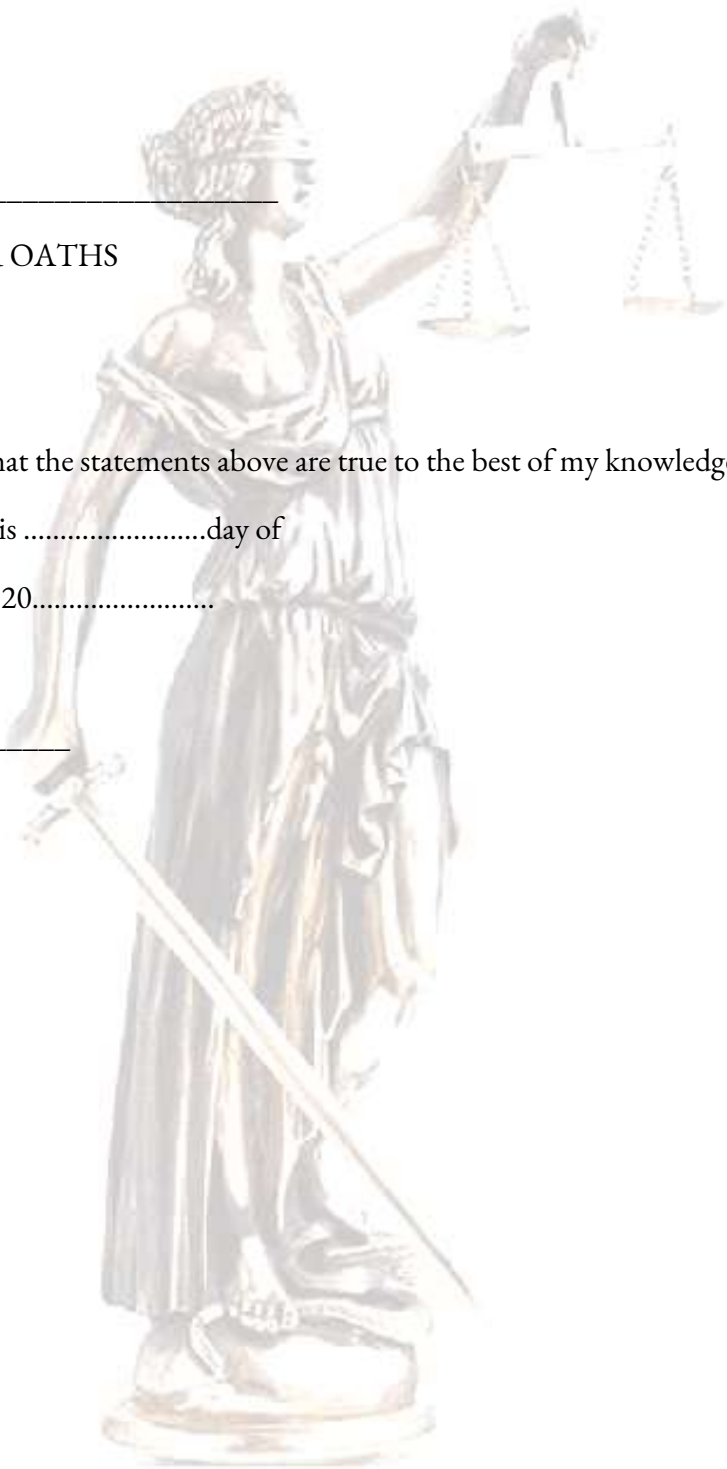
COMMISSIONER FOR OATHS

VERIFICATION

I, Akiiki Monica certify that the statements above are true to the best of my knowledge and belief.

DATED at Fort Portal thisday of
.....20.....

PETITIONER



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT AT FORT PORTAL
MATRIMONIAL CAUSE NO.....OF 20.....
AKIIKI MONICA..... PETITIONER
VERSUS
MATOVU BOSCORESPONDENT

SUMMARY OF EVIDENCE

The petitioner shall adduce evidence to show that the petitioner is legally married to the respondent and that as a result of the said marriage they have two children. That on various occasions, the respondent has committed desertion and treated the petitioner with cruelty thus putting her under mental distress.

LIST OF WITNESSES:

- Parents of the petitioner
- Priest who officiated the marriage
- Local Council 1 Chairman

LIST OF DOCUMENTS:

- Constitution of the Republic of Uganda 1995
- The Marriage Act, Cap 251
- Divorce Act, 249
- Marriage Certificate

DATED this.....day of.....20.....

OBJECTION MY LORD

PETITIONER



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**AKIIKI MONICAAPPLICANT
VERSUS
MATOVU BOSCO.....RESPONDENT**

MAINTENANCE SUMMONS

WHEREAS AN APPLICATION has been made by the above-named applicant residing in **Nyakasura, Fort Portal** for the issue of a summons seeking a maintenance order against against you on grounds **THAT YOU**, the above-named respondent residing in **Nyakasura, Fort Portal**, being the spouse of the said applicant, **HAVE FAILED TO PROVIDE MAINTENANCE** as is proper in the circumstances of the said applicant and the defendant children of the family, namely;

- 1• BABIRYE MATOVU** born in **September 2016**
- 2• NAKATO MATOVU** born in **September 2016** under the age of **18 years**.

THIS IS TO COMMAND YOU the respondent to appear at the sitting of **The High Court** circuit in **Fort Portal, Kabarole District** to be held on the **..... day of2018** at..... **a.m./ p.m.** on the hearing of the said application for a maintenance order.

Dated this **..... day of 2018**

Signed : _____

(District Court Clerk)

To : **MATOVU BOSCO**

OBJECTION MY LORD

Of : **Nyakasura, Fort Portal**

(Respondent)

a) Supposing that Bosco pays the full bride price, however his demands for sexual intercourse become to frequent and Monica cannot take it any longer. She is always uncomfortable to go back home because she knows that as soon as she gets home, Bosco immediately demands for sexual intercourse. As a result of this frustration, Monica confides in Peter Seko, her workmate and good friend. Peter, who secretly admired Monica, advised her that she should leave Bosco and instead marry him. Indeed, she ran away from Bosco and started living with Peter. They started wedding plans and the first church banns have been read. Bosco has learnt of this development and needs advice. Moreso, he has learnt that Monica and Peter are first cousins.

(i) Advise Bosco on any remedy that he has.

Bosco's remedy is to lodge a caveat against the intended marriage.

Under **S.13** of the Act, if a person has an objection to the marriage, he or she may enter a caveat against the issue of the Registrar's certificate by writing at any time before the issue, the word "Forbidden" opposite the entry of the Notice in the Marriage Notice Book. The caveat should indicate particulars of the person objecting to the marriage and the grounds.

When a caveat has been lodged a registrar forwards a matter to court for reviewing. Under Section 14 of the Marriage Act Cap 251, it is High Court to make a ruling, which should be final. Under Section 15 of the Marriage Act Cap 251, if there are no valid grounds for caveat, a Courts Orders cancellation of a caveat and also award compensation for damages and costs under section 16 of the Marriage Act Cap 251.

The caveator must have reasons for stopping the marriage.

In the Matter of the marriage of Alfred Nderi & Charity Kamweru; A man gave notice of his intention to marry a lady and a caveat was then placed by the Respondent claiming that the man was already married to the Respondent and therefore had no capacity to contract the intended marriage. It was held that the common knowledge that Nderi had in fact been married to both women under Kikuyu Customary Law while one of the marriages had been dissolved the other one had not. It was held that the registrar should therefore not issue the certificate of marriage because Nderi did not have capacity to marry under statutory law.

In the present case, Bosco having paid the full bride price, means there is a valid subsisting customary marriage between him and Monica.

The law prohibits parties from contracting a civil or church marriage where one of the parties is customarily married to another person. S. 10(1) (d) prohibits the registrar from issuing a certificate until he or she has been satisfied by affidavit that neither of the parties to the intended marriage is married by customary law to any person other than the person with whom such marriage is proposed to be contracted.

S. 34(1) of the Marriage Act invalidates a marriage where either of the parties to it at the time of the celebration of the marriage is married by customary law to any person other than the person with whom the marriage is had.

Since Bosco is validly customarily married to Monica, she can't contract a subsequent marriage with Peter. This is a ground for lodging a caveat.

The facts show that Monica and Peter are first cousins. The law prohibits marriage between persons who are closely related.

S. 10(1)(c) prohibits the registrar from issuing a certificate where there is an impediment of kindred or affinity. S. 34(1) declares a marriage void on grounds of kindred or affinity. Further S. 12(1)(b) of the Divorce Act provides for nullification of marriage where the parties are within the prohibited degrees of consanguinity, whether natural or legal, or affinity.

Under the Second Schedule of the Customary Marriage Registration Act, first cousins are within the prohibited degrees of consanguinity.

Sottomayer, otherwise De Barros v De Barros No. 2 (1879) 5 PD 94

The petitioner and the respondent were domiciled in Portugal and first cousins to each other. They contracted a marriage in England but returned to Portugal, their domicile. By law of Portugal a marriage between first cousins was illegal as being incestuous, but maybe celebrated under papal dispensation,

Held; the parties being by the law of the country of their domicile under a personal disability to contract marriage, their marriage was null and void. Though such marriage was valid in England.

Therefore, since the marriage between first cousins is prohibited by law, Bosco can also lodge a caveat.

The intended marriage is a church marriage which falls under the Marriage Cat Cap 251. A caveat should be lodged under S. 13 of the Act.

Sometimes the role of the registrar is played by a church minister in case of a church marriage. The caveat should be lodged in the marriage register book where the bans of marriage are read.

ii) Outline the procedure to fulfil the remedy in (i) above.

OBJECTION MY LORD

Write to the registrar of marriages forbidding the marriage./church minister

(lodging a caveat)

The word “Forbidden” is written opposite to the entry of the notice in the Marriage Notice Book./marriage register book where the church bans are read.

Append to the word, name and place of abode, and the grounds of forbidding issue of certificate.

The registrar refers the matter to the High Court

The caveator and the Parties to the intended marriage are summoned

The case is heard and determined in a summary way.

The decision of the High Court shall be final.



ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE MARRIAGE ACT, CAP 251 AND
IN THE MATTER OF A CAVEAT FORBIDDING SOLEMNISATION OF A
MARRIAGE

CAVEAT FORBIDDING MARRIAGE

TO: THE REGISTRAR OF MARRIAGES
AT FORT PORTAL

TAKE NOTICE THAT I, **Bosco** being the husband to **Monica** who intends to get married at All Saints Cathedral, Viirika on do hereby forbid the marriage (solemnisation) on grounds that:

That Monica is already married to me Customarily.

That Monica and Peter are within the prohibited degrees of consanguinity as first cousins.

My address for service for purposes of this caveat is **Suigeneris and Co. Advocates Po.**

Box 7117, Kampala

DATED at Kampala this 28th day of October 2018.

SIGNED by the said _____

CAVEATOR

OBJECTION MY LORD

BEFORE ME

COMMISSIONER FOR OATHS



STATUTORY DECLARATION

(Pursuant to S. 13 of the Marriage Act Cap 251)

I **Bosco** do hereby solemnly declare and state on oath that the above is true and correct information of the best of my knowledge.

And I make this solemn declaration consciously believing the same to be true in accordance with the Statutory Declaration Act Cap 22.

Dated at Kampala this 28th day of October, 2018

Signature of declarant

Declared on this 28th day of October, 2018 at Kampala

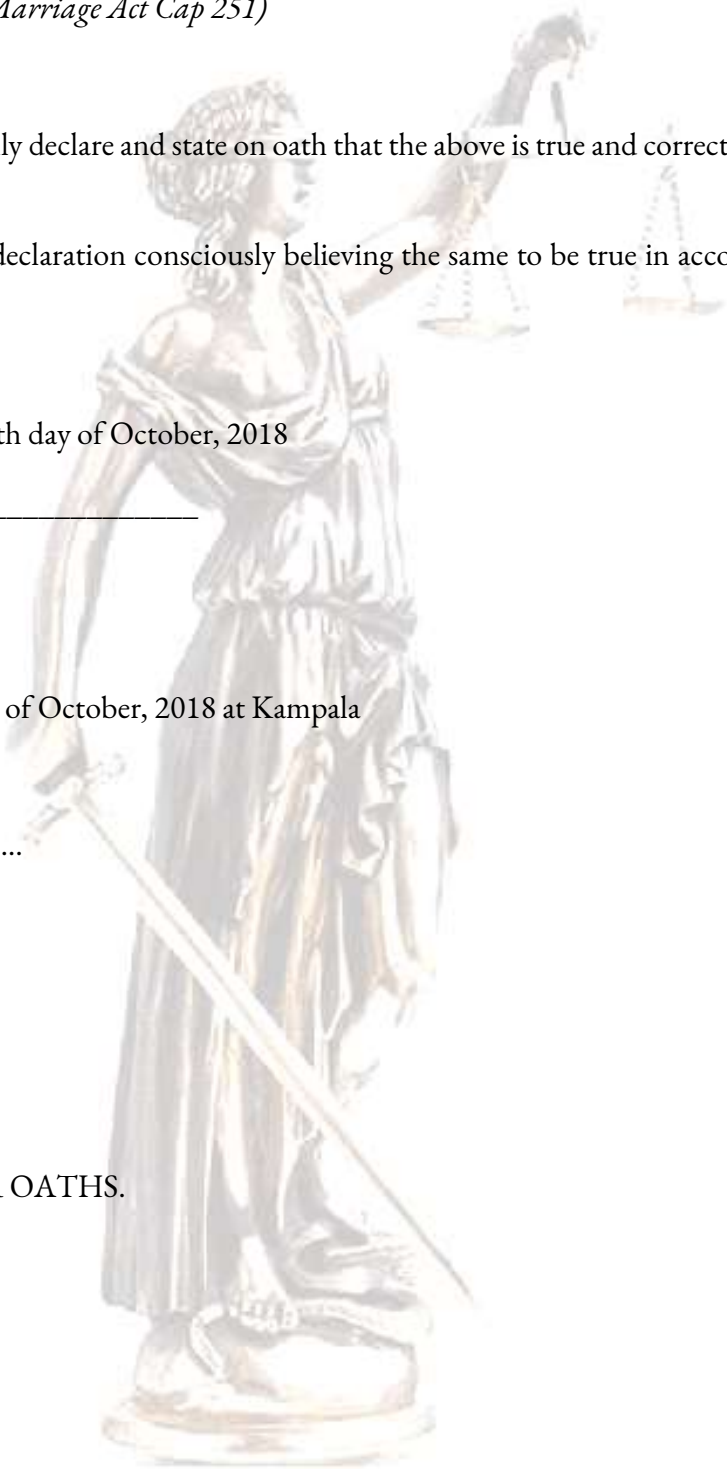
.....

DEPONENT

BEFORE ME;

.....

COMMISSIONER FOR OATHS.



OBJECTION MY LORD





ABOUT THE BOOK

"Objection My Lord" is a phrase often used in court. This book covers all the nitty-gritty for one to practice law in the best and legal way possible within limits of good conduct and professionalism. Charles Dickens in "The Old Curiosity Shop" has spoken this of lawyers, "If there were no bad people, there would be no good lawyers." I have already listed how the good lawyers conduct themselves in my former book, "Professional Malpractice In Uganda;" this book will thence equip the reader with the practical tools of the legal profession, making them grasp these basic skills in addition to mastering legal professionalism.

This is a package to my Learned Friends, to know the must know and learn to practice within the legal limits and more so, discover the legal exceptions and present such in a legal manner; to distinguish precedents tactically and persuade intellectually where no such exist. It is a summary of legal principles requisite for one to properly establish their case before court. This book is a one stop masterpiece for a reader to grasp the other more practical duties of a lawyer apart from litigation and drawing deeds. By training consistency yet with honest dealings, this book navigates along the professional to the moral and most practical situations encountered by a lawyer while furnishing one with the gist and nothing less. It is a training for every "officer of court" to make use of their greatest tool "the tongue" to not only persuade but also assist court and the state in ensuring justice.

Be blessed to find all you seek and be gifted a package, so much more than you expect in this book.

ISBN 978-9970-445-77-6



9 789970 445776