

5 THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
DIVORCE CAUSE NO. 02 OF 2024

10 NATUKUNDA HILDER :::::::::::::::::::::::::: PETITIONER

VERSUS

15 KABAGAMBE ELIAB :::::::::::::::::::::::::: RESPONDENT

JUDGMENT OF HON. JUSTICE KAROLI LWANGA SSEMOGERERE

Background:

20 This is an action for divorce by Hilda Natukunda ("Petitioner") filed against Kabagambe Eliab ("Respondent") before this honourable court on April 5, 2024. Parties with the assistance of court have resolved the major questions to determine the divorce action. These were in a partial consent filed before this Honorable Court on April 10th, 2025. These are:

- 25 (1) Dissolution of marriage; and a decree of nisi accordingly entered on May 5, 2025;
- (2) Sale of the matrimonial home located in Katoojo Cell, Kijuguta Ward, Northern Division, Kabale Municipality by the parties after their last born Ainemigisha Miriam Tasha, 12 years old has attained majority age (18 years); upon which the parties will share the
- 30 proceeds from the sale equally;

Prior to entering the decree nisi, they also agreed to the following settlement of the custody of the minor children; they have agreed to joint custody of the children with visitation and access rights to either party not in physical custody in the hours of 8.00 a.m. to 5.00. p.m. They have also agreed to share custody

35 of the children; in the school holidays and alternate staying with the children

5 during the long Christmas days. One parent has the children in one year; and the other parent has the children has the children of the second year.

Petitioner also agreed to relinquish claim to 4 pieces of land at Kagorogoro Cell, Katenga Parish, Ruharo Sub-County, Kabale District.

10 In arriving at this mutual resolution of the marital issues, court has been greatly assisted by the (2) Probation and Social Welfare Officers in the districts where the three children (of minor age) attend school; Taremwa Jim Collins age 16, who attends St. Henry's College Kitovu, in Masaka; and Ayebare Ritah, age 14, who attends Kigezi High School and Ainemigisha Miriam Tasha, age 11 years old, who attends Kabale Universal Nursery and Primary School both in
15 Kabale district.

The parties also complied with a number of orders, with the assistance of both counsel, namely conduct of an inventory of household property, conduct of a medical examination of the petitioner who alleges physical injuries inflicted upon her by the respondent. They have also submitted some financial
20 information as well to court, that can be relied upon by court to reach a final resolution of all issues in the petition.

Representation:

At the hearing and disposal of this petition, Petitioner was represented by M/S
25 Elgon & Co. Advocates, while Respondent was represented by M/S Bikangiso & Co. Advocates.

Other interested persons:

I will also mention for the record the two reports prepared by Ms. Monica
30 Muhummuza, Senior Probation and Social Welfare Officer, Kabale District; and Ms. Nakijoba Justine Irene, who for the Principal Probation and Social Welfare Officer, Masaka district. Court is grateful for the assistance provided by the parties, counsel and the social and welfare officers. These reports were under orders issued by court at the commencement of the hearing and were
35 fully complied with.

5 Court also notes with great appreciation the participation of the two older children Taremwa Jim Collins and Ainemigisha Rita in assisting court. Their testimony agreed with the professionally prepared reports submitted to court. I find that they have discharged their duties ably under Section 66 of the Children Act, Cap 62, (the "Children Act").

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Discussion and Analysis:

Two issues remain unresolved by the parties and were referred to me for adjudication. These are:

- 15 (a) General damages in connection with allegations of assault allegedly committed by the respondent against the petitioner;
(b) Maintenance orders in respect of the three minor children.

20 In order to keep the graphic details of the alleged injuries, away from becoming further fodder for the public, and to respect the privacy of the parties, court notes the following. Pursuant to direction by court, a physical exam was conducted by the Regional Police Surgeon on May 4th, 2025 which confirmed the injuries alleged by the Petitioner. At the oral hearings conducted in the special improvised court in camera, respondent admitted to assaulting the petitioner. These injuries were displayed by the petitioner in court on April 9, 2025. No further reference will be made to them in my
25 judgment.

(a) Award of general damages.

30 In respect to general damages, court framed one issue, whether the petitioner was entitled to general damages. No specific submissions were made on maintenance of the children. The respondent opposed the award of general damages but noted that their award was at the discretion of court. In terms of quantum, petitioner prayed for UGX 5,000,000 (Five million shillings), while the respondent prayed for UGX 1,000,00 (One million shillings) only.

35 The general guidelines on the award of general damages in Uganda are in a legal position paper entitled, **Principles governing award of General Damages in Civil Cases**, by Katureebe Bart, J.S.C., as he then was, delivered at a seminar

5 for induction of new Judges in 2008, where he stated in paragraph 2 as follows:

“In all civil cases, your Lordships shall be called upon to approximate a sum of money for the plaintiff’s loss or inconvenience arising out of a violation of a legally enforceable right or interest. This sum of money
10 is called “damages” and the plaintiff’s loss of convenience a “damage.” The law recognizes various kinds of damages.”

He then added in Section B of his paper, another authoritative passage, which I reproduce below:

“Damages in their fundamental character are compensatory, not ,
15 punishment, whether the matter complained of is a breach of contract or tort, the primary function of damages is to place the plaintiff in a good position, so far as money can do it, as if the matter complained of had not occurred, but the central idea remains compensation.”

20 Counsel for the petitioner emphasized the loss of use, chronic conditions and possible co-morbidities to emphasize the defence of their claim.

Counsel for the respondent stated that the petitioner did not plead for general damages in her petition as there were no particulars for general damages. I find it hard to support this position, based on the contents of paragraph 6 of the petition, and the contents of paragraphs (i) to (ix) in support of the ground
25 of cruelty.

Counsel for the respondent’s argument is also watered down by the submission acknowledging medical bills in the following amounts, PEX 4, 200,000/=; PEX 5 112,000/=, PEX 6, 50,000/= and PEX 7, 50,000/=. This statement is helpful in showing there is an acknowledgment that petitioner
30 incurred medical bills. Second, the respondent on his own admission in court on May 5, 2025, admitted to assaulting the petitioner.

General damages will be awarded on proof of injury as a matter of law. General damages are not special damages, which are specifically pleaded and proved by way of evidence. It is not clear, why Counsel for the petitioner did
35 not ask court for special damages in addition to general damages.

5 I will use the following guiding principles in making the award of general damages in the context of marital actions. In the context of marital strife, this award is used to compensate physically abused spouses for the following:

- 10 (a) Physical violence; that results in injury to any part of the body; resulting in some form of permanent injury, i.e. loss of use, maiming, scarring. Aggravating factors may include use of a dangerous weapon in which case, further orders from court are necessary including imprisonment.
- (b) Harassment that in turn causes anxiety;
- 15 (c) Financial loss arising from the harassment, loss of income due to inability to work; whether this inability is temporary or permanent;
- (d) Mental anguish, putting abused spouses in the fear of violence; in which case, court must consider restraining orders.

20 In arriving at this award, I must also take into account, the interests of the children which I will consider in the second part of my judgment. Marital strife is as common and prevalent as the institution of marriage itself. The laws on marital separation and divorce are cognizant of this reality. So are the laws that protect the interests of once happy spouses, like the Succession Act in respect of separated spouses, the Land Act's protection of family land and requirement of spousal consent, etc.

25 I propose a modest award for purposes of promoting reconciliation. The awards for the tort of assault and battery vary, and are imprecise. Assault and battery are intentional torts. The presence or absence of a criminal complaint as is the case in the instant case, does not influence the award overall. In *Nyanjura Marion and another v Emmanuel Gitta and others, HCCS 0026 of*
30 *2017*, an award of UGX 10,900,000 was made for assault and battery. In *Andrew Lwanga v Attorney General HCCS 50 of 2016*, an award of UGX 250 million in general damages was made for assault and battery on a journalist in the course of duty. These two fairly recent decisions are distinguishable for the fact, that former was entirely between private parties, and the second
35 involved assault and battery by a senior police officer.

5 I award the respondent, a sum of UGX 10,000,000 (Ten million shillings only) in general damages taking into account the overall circumstances of the case. I make a specific finding that the petitioner's rights were violated by the respondent in contravention of Article 24 of the Constitution, which provides as follows:

10 " No person shall be subject to any form of torture or cruel, inhuman or degrading treatment or punishment."

Marital strife should never be used as an excuse or licence to mete physical violence by one spouse against another, on moral but also constitutional grounds.

15 The Respondent will be given ample opportunity to settle this amount on terms supervised to by court to bring this matter to a close.

(b)Maintenance orders in respect of each of the children.

20 This issue wasn't well developed in the arguments before me. However, the there is sufficient uncontroverted evidence to arrive at a resolution.

Fortunately, both Petitioner and Respondent are in gainful employment in the service of Isingiro District Local Government/Education Service Commission where petitioner is a teacher making approximately net of taxes UGX 717,000.00 a month; and Kabale District Local Government where the
25 respondent is employed as a Senior Accounts assistant with a net salary of UGX 517,175.00 a month. This income is a baseline; as the parties have the ability to supplement this income. In court, the testimony of the petitioner was to the effect she was making cakes as a second business, and something to do with bridal wear was established by the court inventory of the
30 household property.



- 5 The established income is computed on an annual basis in Table 1 below as follows:

Table 1: Baseline annual income of Petitioner and Respondent.

Petitioner	8,604,000
Respondent	6,206,100
Total annual income	UGX 14,810,100

- 10 This income in my view is a baseline income, it does not take into account, other income the petitioner and respondent may earn from other activities, of which the opportunities are many in both Isingiro and Kabale districts.

The biggest expense in relation to the children was in the form of school fees, but these don't negate the normal requirements for the welfare of children,
15 namely, food, shelter, clothing, provision of healthcare, and other basic amenities commensurate with the standard of **living they are used to. The duty of maintenance of a child is provided for in Section 5 of the Children Act, Cap 62, (the "Children Act").** Section 5(1) provides as follows:

- 20 "It shall be the duty of a parent, guardian, or any other person having custody of a child to maintain that child and in particular, that gives a child the right to:

- (a) Education and guidance;
(b) Immunization;
(c) Adequate diet;
25 (d) Clothing;
(e) Shelter; and
(f) Medical attention.

In court, there was a vibrant discussion with the 2 children who testified; and were advised by court to get used to the individual circumstances of each
30 parent.

I will therefore not make an order of maintenance due from one parent to another, in respect of the obligations under **Section 5(1)(c), (d), (e), and (f)** of

5 **the Children Act**, as this will disturb the partial consent they have already entered before this honourable court. I also in my discretion decline to make further elaboration to the parents under Section 6(1) of the Act on the already known and appreciated duties of parental responsibility, each of the parties owe their children.

10 I will now turn to education and **Section 5(1)(a) of the Children Act**, as this poses real difficulty and court must resolve.

I will not disturb the following school expenses filed in this court. These are reproduced below in Table 2:

15 Table 2: Annual school fees obligation of the 3 children of the Petitioner and Respondent.

Name of infant child	Education Institution	School Fees per annum
Tayebwa Jim Collins	St. Henry's College Kitovu	UGX 7,488,000
Ayebare Ritah	Kigezi High School	UGX 2,972,400
Ainemugisha Tasha	Kigezi Universal Nursery and Primary School	UGX 2,976,000
Total fees		UGX 13,436,000

20 There is an additional adult child, age 23 years, Tayebwa Ian at Makerere University who is in his second year at Makerere University with an annual tuition bill of UGX 4,915,748/=. However, at the onset of the hearings conducted over the following days, April 9, 2025, May 2, 2025, May 5, 2025 and May 20, 2025, court guided he was not a child for purposes of determining maintenance due from each parent. **Section 2 of the Children Act**, defines a child as:

“A child is a person below the age of eighteen years.”

25 In **Birungi V Kakyoo, Civil Appeal No. 32 of 2022**, Wagona J., held that:

“Any action for care and maintenance for someone above the age of 18 years cannot be entertained under the provisions of the Children

5 Act in its' current form as doing so would amount to extending the definition of the child which has been accepted globally."

He also added that a maintenance order under **Section 76 of the Children Act** can only apply to a child meeting the definition of a child under **Section 2 of the Children Act**. He revoked a maintenance order in respect of a 19-year-old
10 person. I agree entirely that this is the correct statement of the law.

My findings and conclusions below are guided by Section 3(1) of the same Act, which provides as follows:

15 "The welfare of the child shall be of paramount consideration whenever the State, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of property of a child or the application of any income arising from that administration." [Emphasis mine].

This is one of the situations where the written law provides sufficient guidance to court on how to resolve such disputes.

20 I make a finding of fact that the school fees burden the petitioner and respondent are not atypical of any family in Uganda with children of school going age. They speak to the premium Ugandans in the 21st century place on education of their children, as a means of advancement. In this, I commend both parties as having been a success story, setting their children on a path of
25 career success and success in life generally by investing in their education.

Article 31(4) of the Constitution states:

"It is the right and duty of parents to care for and bring up their children."

30 Article 34(2) of the Constitution speaks to the obligation of the parents to afford their children basic education; it provides as follows:

"A child is entitled to basic education which shall be the responsibility of the State and the parents of the child."

35 It is a finding of this court, that the state is already providing grants in aid to the three schools mentioned. The state meets payroll expenses, designs and

5 implements a national curriculum at all levels, primary, secondary and post-
secondary or tertiary education where applicable. This state support makes
Uganda's hybrid model of education which keeps parental involvement, a
pride of the region in which we live, East Africa. The pride of parents in
10 Uganda is obvious as they travel with their children all over Uganda on the
first day of school, participate in school activities, visit their children for those
in boarding school on visitation day or any other day possible and pick them
up on the last day of the term. The children from their testimony, don't want
this duty of both parents disturbed by court.

15 I make the following finding. **Section 5(1)(a) of the Children Act** places the
duty to educate the children on both parties. In accordance with the partial
consent entered before this court on May 5th, 2025, in which I reproduce,
paragraph 1; as follows:

20 "The joint custody of the children to wit, Taremwa Jim Collins, (16
years), Ayebare Rita (14 years) and Ainemigisha Miriam Tasha (12 years)
is hereby granted to both the Petitioner and the Respondent" [Emphasis
mine].

I accordingly order that each of the parties will contribute a net of 50% of
the education expenses to the education of each of the children.

25 I order the Probation and Welfare Officer of Kabale District to identify other
sources within the means of both parties, and government to support the
education of the children.

I also make an advisory order to Makerere University to find means to
support the adult child of the couple to complete their education through
paid employment in the holidays and partial tuition.

30 **Comment:**

This is a decision where court has used innovative means to defuse a volatile
situation, of extreme marital discord without prejudicing the rights of any of
the parties; and of the children. The end of a marriage should not mean
35 economic destruction of the parties involved, and children should not be

5 victims of the break up as they too, have individual rights under the Constitution and Laws of Uganda.

Our African culture is rich in tradition and norms that promote reconciliation, life after marriage and other situations for the sake of peace and harmony in society. The family is the natural and basic unit of society and is entitled to
10 protection by society and the state. Wholesale adoption of western practices in the interpretation of the law is disruptive to protection of the family under Article XIX, Protection of the Family in the National Objectives and Directive Principles of State Policy in our constitution.

Courts should also use the professional services of the Probation and Social
15 Welfare Officers who are at each district and are better equipped to study and advise on the best interests of the children. Lastly, in decisions involving children, the provisions of the Children Act are controlling.

Findings and Conclusions:

20 Petitioner is awarded UGX 10,000,000 (Ten million) in general damages, and half the taxed costs.

Interest is awarded at the court rate from the date of judgment till payment in full.

Each of the parties, petitioner and respondent is responsible for 50% net of
25 educational expenses of each of the 3 infant children; reproduced in Table 2 of this judgment.

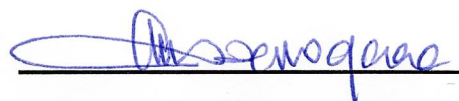
All prior consents entered before this court, are affirmed.

This court file with the exception of the judgment and orders is ordered
30 sealed, with access to its contents by any person only availed under an order of this court.

The recovery of general damages from the petitioner is remanded to the learned Registrar for disposal with due regard to the aforementioned orders.

5 I SO ORDER,

10 DATED AT KABALE, THIS 11th.....DAY OF JUNE, 2025.



SSEMOGERERE, KAROLI LWANGA,

JUDGE.

This decision is delivered in camera to protect the privacy of the minor children.

