

**Uganda Association of Women Lawyers and 5 Others vs. The Attorney General
Const. Pet. No. 2 of 2002 3/10/2004
(Uganda, Constitutional Court)**

Summary of Facts

The Petitioners filed a petition with the Constitutional Court, asking for the declaration that Sections 4(1) &(2), 5, 21-24 and 26 of the *Divorce Act* were unconstitutional and null and void. These sections provided that adultery was an adequate reason for a man to divorce his wife, and would place him favorably in matters related to divorce (e.g. in relation to compensation for adultery, alimony, and property settlement). However, a woman, in addition to proving adultery, had to show that her husband committed desertion, rape, bigamy, or sodomy in order to divorce her husband and enjoy the related benefits. The Petitioners argued that as these sections of the *Divorce Act* established different grounds of divorce for men and women, they were discriminatory on grounds of gender.

The Respondent, on the other hand, argued that these sections were not unconstitutional, as Section 273(1) of the Constitution granted the Court power to make the necessary modification, adaptations, qualifications, and exceptions to bring the laws in conformity with the Constitution. The Respondent insisted that the Court could modify the sections of the *Divorce Act*, including declaring them null and void, if they were inconsistent with the Constitution.

Issue

Whether Sections 4(1) &(2), 5, 21-24 and 26 of the *Divorce Act* were constitutional, when viewed in light of Section 273(1) of the Constitution.

Summary of the Court's Analysis

The evidence of the case showed that Sections 4(1) &(2), 5, 21-24 and 26 of the *Divorce Act* were discriminatory on grounds of gender. These Sections provided different grounds of divorce for men and women. Such gender discrimination violated articles 21(1) & (2), 31(1), 33(1), & (6) of the Constitution that guaranteed gender equality. The Court decided therefore, that the grounds for divorce as set out under the *Divorce Act*, should equally apply to both sexes. Women, like men, should have the right to divorce their husbands for the sole reason of adultery. The compensation for adultery, alimony and settlement related with the divorce should also equally apply to both sexes.

Conclusion

Sections 4(1) &(2), 5, 21-24 and 26 of the *Divorce Act* were inconsistent with the Constitution, and they should apply equally to both sexes.

Commentary

The sections of the *Divorce Act* reflected the subordination of women in a patriarchal society. When the Act was drafted in 1904, enforcing women's subordination might have been the core objective of the law. The relationship between men and women and their respective roles in society changed significantly during the past century. The law should reflect such reality. After all, the very fact that the Act made an unjustifiable distinction between men and women was disastrous.

By Kibrom Isaak-Teklehaimanot