

**REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASINDI**  
**CIVIL REVISION NO. HCT-12-FD-CR- 0003-2017**  
**BALYEBUGA YESSE ::::::::::::::::::::::::::::::::::: APPLICANT**  
**VERSUS**  
**NYANGOMA JENIFER ::::::::::::::::::::::::::::::::::: RESPONDENT**

**RULING BY GADENYA PAUL WOLIMBWA - JUDGE**

This matter came before me for revision of the decision of the Magistrate Grade I Hoima, permanently annulling the marriage of the parties. I conferred with counsel for both parties and reviewed the lower record and the decision of the Magistrate Grade I.

It was noted that the Magistrate Grade I mishandled the divorce petition and that his decision should not be allowed to stand.

Specifically; the trial Magistrate upon receiving the mediation report in which the parties had agreed to a three month's cooling off period, closed the case under Section 160 of the Magistrate Courts Act and later on reopened the matter which he had closed. For easy of reference, Section 160 of the Magistrates Court Act provides that:-

**“In criminal cases, a Magistrate’s Court may promote reconciliation, and encourage and facilitate the settlement in an amicable way, a proceedings for assault, or for any other offence of a personal or private nature, not amounting to a lelory and not aggravate in degree, in terms of payment of compensation or other terms approved by the court, and may, there upon order the proceedings to be stayed.”**

Clearly, Section 160 of Magistrate's Court Act is concerned with criminal Cases and not applicable to Civil Cases or indeed, the divorce petition which the trial Magistrate tried to resolve under the section. The decision by the trial Magistrate to close the Divorce Petition was therefore irregular.

Secondly, I observed from the record that the trial Magistrate after re-opening the Petition, never addressed the main issue of the petition. The trial Magistrate instead spent time attending to maintenance issues of the children instead of first establishing whether the petitioner had satisfied the grounds for divorce.

Furthermore, the trial Magistrate did not follow the law on handling divorce petition. If indeed, the trial Magistrate had found that the Petitioner had proved the grounds for divorce, he should have first issued a decree nisi and then, thereafter, made the decree absolute in accordance with Section 8 (1) and 37 (1) of the Divorce Act.

The failure by the trial Magistrate to comply with the mandatory provisions of the Divorce Act caused a miscarriage of justice and therefore vitiated all the proceedings.

For these reasons, I find that the trial Magistrate acted in the exercise of his jurisdiction with material irregularity and in accordance with Section 83 (1) of the Civil Procedure Act, I hereby nullify his decision in Divorce Cause No. 4 of 2016, Nyangoma Jenifer versus Balyebuga Yesse.

Accordingly, I direct the Chief Magistrate, Hoima, to hear the Divorce Petition expeditiously, in any case not more than two months from the date of this ruling. The Petitioner who has expressed interest in amending the petition is given up to 6/3/2020 to amend the petition. The Respondent, is given up to

13/3/2020 to file an appropriate response to the amendments, if he so desires.  
This being a family matter, each party will meet their own costs.

**Decision:**

In conclusion, I have made the following orders;

1. The decision of the trial Magistrate in Hoima Divorce Petition No. 4 of 2016, is hereby nullified.
2. The Petition is granted leave to amend the petition by 6/3/2020 and the Respondent will respond thereto by 13/3/2020;
3. The Chief Magistrate, Hoima, is directed to hear the Divorce Petition within two months with effect from 26/2/2020; and
4. Each party to will meet their own costs.

It is so ordered.



**GADENYA PAUL WOLIMBWA**  
**JUDGE**

**26/02/2020**

*Gadenya Paul Wolimbwa*  
*Judge*

**DATE: 26/2/2020**

**Court:**

Judgment read in read in the absence of the parties. Mr. Olinga Court Clerk was present



**GADENYA PAUL WOLIMBWA**  
**JUDGE**

**26/02/2020**

*Gadenya Paul Wolimbwa*  
*Judge*