

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: KATUREEBE; CJ. TUMWESIGYE; KISAAKYE; JJ.S.C;
ODOKI; TSEKOOKO; OKELLO & KITUMBA Ag. JJSC)

CONSTITUTIONAL APPEAL NO. 02 OF 2010

BETWEEN

MIFUMI (U) & 12 OTHERS APPELLANTS

AND

1. ATTORNEY GENERAL

2. KENNETH KAKURU RESPONDENTS

[An Appeal arising from the Judgment of the Court of Appeal (Byamugisha, Kavuma, Nshimye, JJ.A) dated 29th May, 2012 in Civil Appeal No. 71 of 2010.]

JUDGMENT OF DR. KISAAKYE, JSC.

The appellants challenged the constitutionality of the requirement of the customary practice of demanding for payment of bride price at the time of contracting a customary marriage and of its refund at the time of dissolution of a customary marriage as a condition precedent to a valid customary marriage or divorce, respectively. This appeal is against the decision of the Constitutional Court that dismissed their petition.

The background to this appeal is that the appellants filed Constitutional Petition No. 83 of 2006 in the Constitutional Court, in which they alleged that:

- a) *That the custom and practice of demand and payment of bride price as a condition sine qua non of a valid customary marriage practiced by several tribes in Uganda including but not limited to the Japadhola (found in Eastern Uganda), the Langi found in Northern Uganda, and Banyankole found in Western Uganda is unconstitutional;*
- b) *That the custom and practice of refund of bride price as a condition sine qua non of a valid dissolution of a customary marriage practiced by several tribes in Uganda, including but not limited to the Japadhola (found in Eastern Uganda), the Langi found*

in Northern Uganda, and Banyankole found in Western Uganda is unconstitutional because-

- i) The demand for bride price by parents of the bride from prospective sons-in-law as a condition precedent to a valid customary marriage is contrary to Article 31(3) of the Constitution that provides that marriage shall be entered into with the free consent of the man and a woman intending to marry, because the demand for bride price makes the consent of the persons who intend to marry contingent upon the demands of a third party;*
- ii) The payment of bride price by men for their wives as demanded by custom from several tribes in Uganda leads men to treat their women as near possessions from whom maximum obedience is extracted, thus perpetuating conditions of inequality between men and women, prohibited by article 21(1) & (2) of the Constitution of Uganda, which provides that all persons are equal before and under the law;*
- iii) The demand for refund of bride price as condition precedent to the dissolution of a customary marriage is contrary to the provisions of Article 31(1) of the Constitution of Uganda in as far as it interferes with the exercise of the free consent of the parties to a marriage;*
- iv) The demand for bride price by parents of the bride from prospective sons-in-law in as much as it portrays the woman as an article in a market for sale amounts to degrading treatment, prohibited by the Constitution of Uganda in Article 24, which guarantees that every person shall be treated with dignity.*

The Petitioners sought the following declarations from the Constitutional Court:

- a) The custom and practice of demand and payment of bride price as a condition sine qua non of a valid customary marriage practiced by several tribes in Uganda is unconstitutional;*
- b) The custom and practice of refund of bride price as a condition sine qua non of a valid dissolution of a customary marriage practiced by several tribes in Uganda, is unconstitutional;*
- c) Any other or further declaration that this Honourable Court may grant*
- d) No order is made to costs.*

The Constitutional Court, by a majority of 4 to 1, dismissed the petition holding that the practice of payment of bride price was not so notorious that the Court could take judicial notice of it. They held further that the demand and payment of bride price as condition precedent to the validity of a customary marriage and the demand for a refund of bride price as a condition precedent to the dissolution of a customary marriage were not barred by the Constitution. Lastly, the Constitutional Court also held that it was not essential for the Court to declare that the practice of demand for a refund of bride price on dissolution of marriage was

unconstitutional because the Constitution itself under Article 50 and others appropriate law could adequately take care of any grievances arising from the abuse of the bride price custom.

Being dissatisfied with that decision, the appellants filed this appeal based on the following 12 grounds of appeal.

1. *The Justices of the Constitutional Court erred when they failed to decide the issue whether the custom of payment of bride price as a condition precedent to a customary marriage and the demand for a refund of bride price as a condition precedent to a valid dissolution of a customary marriage is judicially noticed requiring no further proof.*
2. *The learned Justices of the Constitutional Court erred when they failed to decide the issue whether bride price means different things in the different cultures of Uganda such that Court cannot make a uniform interpretation of the custom.*
3. *The learned Justices of the Constitutional Court erred when they failed to decide the issue whether bride price is commonly practiced in Uganda by all cultures.*
4. *The learned Justices of the Constitutional Court erred when they found that the custom of bride price does not promote inequality in marriage contrary to Art 21(1) (2) & (3) of the Constitution.*
5. *The learned Justices of the Constitutional Court erred when they found that bride price does not fetter free consent of persons intending to marry in violation of Art 31(3) of the Constitution.*
6. *The learned Justices of the Constitutional Court erred when they found that bride price does not perpetuate conditions of inequality in marriage contrary to Art 31(3) (b) of the Constitution.*
7. *The learned Justices of the Constitutional Court erred when they found that the refund of bride price does not fetter the free will of a person intending to leave a marriage contrary to Art 31(3).*
8. *The learned Justices of the Constitutional Court erred when they found that bride price does not commodify a woman thus lowering her dignity contrary to Art 33(1) which guarantees a woman's dignity of the person.*
9. *The learned Justices of the Constitutional Court erred when they found that bride price does not cause domestic violence.*
10. *The learned Justices of the Constitutional Court erred when they found that persons intending to marry may opt not to marry under customary law and therefore avoid payment of bride price.*
11. *The learned Justices of the Constitutional Court erred when they found that a person opting to marry under customary law must have consented to be bound by the custom of payment of bride price.*

12. *The learned Justices of the Constitutional Court erred when they found that the unfavorable aspects of the custom of bride price may be remedied through redress under any other law and not through declarations.*

The appellants prayed that this Court finds that:

- a) *Bride price is a custom judicially noticed requiring no further proof.*
- b) *Bride price means the same thing for all the different cultures in Uganda*
- c) *Bride price is commonly practiced in Uganda by all cultures.*

The appellants further prayed that this Court allow the appeal and declare:

- a) *That the custom and practice of demand and payment of bride price as a condition sine qua non of a valid customary marriage as practiced by several tribes in Uganda is unconstitutional;*
- b) *That the custom and practice of demand for refund of bride price as a condition precedent to a valid dissolution of a customary marriage is unconstitutional;*
- c) *Any other or further declaration that this Honourable Court may grant.*

I have had the benefit of reading in draft the Judgment of my brother, Tumwesigye, JSC. I partially agree with his observations about the mischaracterization of the customary marriage as wife-purchase by the judges during the colonial days. Furthermore, I agree with his decision, declaring the custom of refund of bride price as a condition precedent to the dissolution of a customary marriage unconstitutional.

I am however unable to agree with him with respect to his decision to dismiss the remainder of the appeal. With due respect to the learned Justice, I would allow this appeal. My reasoning and findings appear in this judgment.

Consideration of this Appeal

As I commence the consideration of this appeal, I wish to point out that I have considered the submissions of both parties which were fully reflected in the lead judgment of Tumwesigye, JSC. I will not repeat them in this judgment but only reiterate those submissions and arguments where I find it necessary to do so.

Before I proceed to consider the merits of this appeal, it is important to point out and discuss the provisions of the law that are of critical importance to resolving the issues raised by this appeal.

I wish to state at the onset that I am fully aware that Article 37 of our Constitution grants Ugandan citizens the right to enjoy and practice their culture as follows:

“Every person has a right as applicable to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.”

On the other hand, Article 2 of the same Constitution entrenches the supremacy of the Constitution by providing as follows:

“(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

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

Similarly Article 33(6) prohibits cultures and customs that undermine the dignity of women in the following terms:

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

This is further reinforced by the obligation imposed on the State under Objective XXIV(a) which provides as follows:

“The State shall promote and preserve those cultural values and practices which enhance the dignity and well-being of Ugandans.”

Whether requiring payment of bride price as a condition precedent to a valid customary marriage is inconsistent with the Constitution

This was one of the major issues which were raised by the Petition and which the Constitutional Court was required to pronounce itself on.

I agree with the learned Justices of the Constitutional Court and my colleagues at this Court that the voluntary exchange of gifts at marriage between the groom to be and his wife’s parents or relatives and vice versa is not unconstitutional. In my view, this is permissible under Article 37 of the Uganda Constitution.

The aspirations of the people of Uganda as expressed in Articles 21, 31 and 33 of the Constitution are that Ugandan women would enjoy equal status in all spheres of life with their

male counterparts. Women will not be able to enjoy equal status at marriage and in marriage if they come into marriage with a price over their heads, which may be stated in the number of cows, goats, sheep or other forms of property or their money equivalent.

Several reasons were advanced by the respondents and were accepted by the Constitutional Court regarding the institution of bride price. For example, it was argued that payment of bride price is an essential rite for contracting a customary marriage and that it is this characteristic that distinguishes it from other forms of marriage recognized in Uganda.

Secondly, it was argued on behalf of the respondents and the majority Justices in the Constitutional Court agreed with them that bride price is paid as appreciation given by the groom to be to the bride's parents/guardians for the efforts they put in raising and grooming the bride to be.

There is no single constitutional provision which gives any right whatsoever to any parent to put a price (in form of bride price) on a daughter intending to marry either to recover or to demand to be "appreciated" by his prospective son in law or his future son in law's parents for raising, educating, feeding their daughter or for any other expenses incurred towards a daughter intending to be married. Appreciation, in my view, is a social concept which cannot be legally enforced. It is even worse where the party seeking to enforce it is a 3rd party to the marriage.

The claims that bride price is demanded by the girls' parents as an appreciation for raising her actually runs contrary to Article 31(4) of the Constitution of Uganda, which provide as follows:

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

Article 34(1) on the other hand provides as follows:

"Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up."

These articles place the constitutional obligation on parents to look after and take care of their children.

I agree that the bride price custom is still a strongly rooted customary practice and that many men and women may still cherish it and wish to continue with it, unregulated by the law.

Lastly, I also agree that domestic violence is not a preserve of customary marriages where bride price has been paid.

However, it is also important to note, based on the provisions I have already cited in this Judgment, that Article 37 does not, in my view, validate all customs and cultural practices practiced by the different tribes and ethnic groups in Uganda. Rather, it is only those customs and cultural practices that meet the Constitutional test that are preserved under this Article. The net effect of the provisions cited above, in my view, is that the only customs and cultural practices that were permitted under the Constitution of Uganda to be *enjoyed, practiced, professed, maintained and promoted under Article 37* are those cultural practices and customs that meet the constitutional standards laid out in the above provisions.

This is evidenced by various provisions of the Constitution. These include Objective XXIV of State Policy, which provides as follows:

“Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution may be developed and incorporated in aspects of Ugandan life.”

It should also be noted that Article 45 of the Constitution also provides that the rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms that are specifically mentioned in the Constitution shall not exclude those which were not specifically mentioned therein.

Apart from Article 45 of the Constitution, it should also be remembered that Uganda is a signatory to all the major human rights Conventions which require it to put in place laws and measures that prevent discrimination and perpetuate inequality.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides but one example of such Convention imposing obligations on Uganda to take action in line with the prayers made in this Petition. Under Article 2 (f) of this Convention, Uganda as a state party condemned discrimination against women in all its forms, and agreed to:

“pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”

Uganda also made specific undertakings under the CEDAW Convention to tackle discrimination occurring at the time of contracting the marriage under Article 16(1)(b), which provides as follows:

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women the same right freely to choose a spouse and to enter into marriage only with their free and full consent.”

Lastly, under Article 16 (1)(c) of the CEDAW Convention, Uganda is also obligated to ensure that women enjoy equal rights and responsibilities during marriage. It provides thus:

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women the same rights and responsibilities during marriage and at its dissolution.”

In my view, the learned majority Justices of the Constitutional Court erred in law and fact when they failed to consider the constitutional challenges to bride price as alleged by the Petitioners vis a vis the cited constitutional provisions. I find that the practice of voluntary exchange of gifts between the groom to be, the bride to be and their respective parents is not unconstitutional. However, I find that the practice of demanding for any “gifts” by the parents of the girl intending to marry and their payment, which “gifts” in essence form the bride price, and the making of the payment of these gifts a condition precedent to a valid customary marriage, unconstitutional.

In *Uganda Association of Women Lawyers & 5 Others v. Attorney General*, [Constitutional Petition No. 02 of 2003], Mpagi-Bahigeine, JA (as she then was) made the following spot on observations while striking down several discriminatory sections of the Divorce Act. She held as follows:

“These sections have the effect of negating the concept that equality is a core value of the Constitution. The preamble to the Constitution makes it clear that the framers intended to build a popular and desirable Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress.

...

It is in substance a colonial relic whereby the traditional patriarchal family elevated the husband as the head of the family and relegated the woman to a subservient role of being a mere appendage of the husband, without a separate legal existence. This concept of the family has been drastically altered in recent decades. Marriage is now viewed as an equal partnership between husband and wife. Still, the old ideas and patterns persist, as do their psychological and economic ramifications. That

notwithstanding, women are entitled to full equality in respect of the right to form a family, their position within the functioning family, and upon dissolution of the family so proclaims Article 33(1): Men and women of the age of eighteen years and above, have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution...

It is well to remember that the rights of women are inalienable, interdependent human rights which are essential in the development of any country and that the paramount purpose of human rights and fundamental freedoms is their enjoyment by all without discrimination. ...

The concept of equality in the 1995 Constitution is founded on the idea that it is generally wrong and unacceptable to discriminate against people on the basis of personal characteristics such as their race or gender. Legal rules, however, continue to be made gender neutral so much so that there are no more husbands or wives, only spouses. This step is in the right direction. It is further important to note and appreciate that the 1995 Constitution is the most liberal document in the area of women's rights than any other Constitution South of the Sahara... It is fully in consonance with the International and Regional Instruments relating to gender issues. (The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) which is the women's Bill of Rights and the Maputo Protocol on the Rights of Women in Africa [2003]). Be that as it may, its implementation has not matched its spirit. There is urgent need for Parliament to enact the operational laws and scrape all the inconsistent laws so that the right to equality ceases to be an illusion but translates into real substantial equality based on the reality of a woman's life, but where Parliament procrastinates, the courts of law being the bulwark of equity would not hesitate to fill the void when called upon to do so or whenever the occasion arises."

It is my view that Her Lordship's observations were not only true to the need to end discrimination occurring at divorce in marriages contracted under the Marriage Act, but are also applicable to the legal requirement that bride price must be paid before a valid customary marriage can be contracted and refund before it is dissolved, in those communities which require its refund.

Section 1(b) of the *Customary Marriages (Registration) Act, Cap 248 Laws of Uganda* defines a customary marriage as follows:

"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 III of this Act."

According to Wikipedia Free Encyclopedia, a rite is "an established, ceremonial, usually religious, act."

There is no doubt that for the majority of tribes in Uganda, payment of bride price is one of the preliminaries required to be fulfilled before the parties will be considered to be validly married under a customary marriage. It should however be noted that the marriage rites observed by each tribe in Uganda are not only restricted to the demand and payment of bride price but are as diverse. Some of these rites are performed in the preliminary stages of preparing for marriage, while some others are performed during the actual giving away of the girl to the groom. In other communities, there are yet more rites which are even performed after the giving away of the girl has taken place. The totality of these marriage rites together with other aspects of life that relate to food, dress, language, values, etc. is what constitutes culture. From the time Ugandans came into contact with other forms of civilizations introduced by Arabs, Europeans and Asians, among others, they have been adopting new ways of living, feeding, dressing up, mode of communication, etc.

I am therefore not persuaded that by this Court striking out the custom of a girl's parents demanding for bride price from her husband to –be, before allowing her to get married, will necessarily result in a denial of their rights to practice their culture enshrined in Article 37.

It should further be recalled that the appellants did not seek from the Constitutional Court an order to declare that customary marriages are unconstitutional. Rather, the appellants only challenged the aspect that makes the payment of the bride price as a condition precedent to the contracting of a valid customary marriage, as well as the aspect that makes the refund of bride price a condition precedent for dissolution of customary marriages among some tribes in Uganda.

Furthermore, it should also be noted Ugandans seeking to practice their culture would still be able to voluntarily exchange marriage gifts before, during or after the contracting of the customary marriage between the groom to be and his wife's or her parents or relatives and vice versa. Such a voluntary exchange of gifts is permissible under Art. 37 and therefore are not unconstitutional.

Whether payment of bride price fetters free consent to marry

I will now proceed to consider grounds 5, 7, 10 and 11 of appeal. All these grounds touch on the question whether payment of bride price fetters parties' consent to marry and to remain married.

The Constitutional Court rejected the appellant's submissions that among other things, the demand for payment of bride price by a woman's parents negatively impacts on the free consent of both the man and woman intended to marry.

With due respect to the learned Justices, I wish to respectfully differ. The issue of consent by the parties to the proposed marriage requires, in my view, a deeper analysis beyond its outward expression, than was given to it by the learned Justices of the Constitutional Court. Their Lordships argued that since there are many ways of contracting a marriage in Uganda which are permitted by law, parties can and do freely choose to contract a customary marriage in preference to other equally available options which do not require bride price payment. That having done so, they agree to be bound by the rites attendant to the contracting and dissolution of a customary marriage, of which demand for payment and refund of bride price before the contracting or dissolution of marriage is part and parcel.

With due respect to the learned Justices of the Constitutional Court, I respectfully wish to differ with their holding. It is common knowledge that the majority of Ugandans live in the countryside following their traditional ways of life, as passed down to them from their parents and grandparents. Unfortunately, most of these traditions are unwritten. For young men and women, they are socialized by their families to know that they are expected to get married. When they do grow up and identify a person to marry, the choice of where and how to marry is, to the best of my knowledge, influenced by several factors, which include their level of education, income, the extent to which they personally and/or their families subscribe to their religious faith, where they live and generally their exposure to other values other than their own traditional way of living. Whatever their individual or common views and/or preferences about where and how they may wish to get married, it is common practice for both the girl and the boy to inform their respective parents and/or other relatives such as the paternal auntie in Buganda, at a very early stage may be, that they have indeed found someone they would like to marry.

It is at this stage that the parental/relatives' demands and wishes set in and when bride price will be specified and later demanded before to formalize the union or to get their parents' blessing. Even though it is not a legal requirement for church or civil marriages, parents' blessing will be culturally and socially required, even where the couple have already expressed a preference to contract a church or civil marriage.

Given the above background, it would be wrong for courts, in my view, to construe a couple's decision to marry under customary law, as a decision to subscribe to all the rites and customs of their respective tribes, including even those that may not meet the constitutional test set for customs and other cultural practices.

In my view, it is also important for courts to recognize the subtle but very deeply felt influence and authority parents and close family members, especially in African families, can and usually wield over their children, even though such children may no longer be legal minors. This parental/family influence usually manifests itself in times of marriage and can have impact on the man and woman intending to contract a customary marriage or even a marriage proposed to be contracted under the Marriage Act. This subtle power can manifest itself in several ways.

The first way is through the girl's family (especially the father) collecting bride price in advance from the man's family even before the consent of either one or both parties to the marriage has been given. The consequence of this will be that the girl's family will exert pressure or influence on her to enter into that marriage just because bride price was already been paid, sometimes, in extreme cases even before she became of age! It is therefore not surprising that forced marriages, especially of girls who have not yet come of age in this country are not uncommon in rural areas where poverty levels are high and literacy levels are relatively much lower than in urban areas.

The second way is where the parties to the marriage have consented to it but the bride's father and/or other relatives/guardians object to the marriage and decline to give their blessing on grounds that the bride price demanded has not yet been paid. Despite the man and woman being agreeable to enter into the marriage without any conditionality, such a marriage may end up not taking place because the man intending to marry cannot afford to pay the high bride price set by the girl's father and/or her family.

The inevitable consequence of this is that both the man and the woman may either end up cohabiting and not getting legally married or they may choose to marry other persons, respectively. In the case of the man, he may marry another woman whose parents have either not demanded for any bride price to be paid or one whose parents have made modest demands for bride price which the man can afford to pay. In the case of the woman, she too may lose the opportunity to get married at all or she may end up marrying another man who can meet

her parent's/families' high bride price demands. Such a marriage may not necessarily be out of choice, but out of necessity and sometimes even out of frustration!

It is evident that in all the possible scenarios I have highlighted, the demand for bride price by the girls' family will have fettered the free consent of a man and a woman intending to marry, contrary to Article 31(3) of our Constitution, because their subsequent marriages will not be an exercise of their free consent to marry, contrary to Article 31(3) of the Constitution.

Therefore, with due respect to the learned Justices of Constitutional Court, I find that they erred when they held that the demand and payment of bride price before contracting a customary marriage does not fetter the free consent of the parties to the marriage. I wish to point out that not all tribes in Uganda have this custom of demanding refund of bride price at the end of a customary marriage. However, in my view, this should not have stopped the Constitutional Court from considering and determining whether the custom of refund of bride price is constitutional in those tribes that practice that culture.

I will now turn to consider the second issue arising under these grounds of appeal: that is whether the demand for a refund of bride price before the dissolution of a customary marriage does not fetter the free consent of the parties to remain in the marriage.

Apart from their pleadings, the appellants relied on affidavit evidence of men and women who had suffered dire consequences as a result of this customary practice of requiring refund of bride price by husbands. There was also affidavit evidence of women who feared to leave abusive marriages for fear that their husbands would go ahead and demand a refund of the bride price they paid from their parents. One of the affidavits also brought out a custom where, if bride price is not paid, the husband will lay a claim on the children his wife may give birth to with another man, after she has left her first marriage.

In my view, the appellants provided the Constitutional Court with adequate evidence to show the negative impact of this custom of refund of bride price on women's decision to remain in failed marriages. Given the dire consequences that a woman, her family and partner may face from a husband who is demanding refund of his bride price, it is not farfetched to envisage that the requirement to refund bride price may force women to remain in abusive/failed marriage against their will.

I agree that the customary practice of refunding bride price is not practiced by all tribes in Uganda. However, the affidavit evidence on record showed that it is indeed practiced by some tribes. It would therefore have been in order for the court to pronounce itself on the impact of the custom of seeking refund of bride price, for those communities that practice it.

Whether payment of bride price promotes inequality in marriage?

I will now proceed to consider grounds 4, 6, 8 and 9 of appeal. The issue that these four grounds of appeal raise is whether the demand and payment of bride price before contracting a customary marriage and the demand for a refund of bride price before the dissolution of a customary marriage promotes inequality and undermines the welfare and dignity of women in marriage?

Article 31(1)(b) of the Constitution guarantees equal rights for men and women “*at and in marriage, during marriage and at its dissolution.*”

Furthermore, the payment of bride price is also inconsistent with *inter alia* Article 21 of the Constitution because only one party to the marriage is obligated to pay bride price. It therefore discriminates between man and woman on the grounds of sex, yet under Article 21 of the Constitution, all persons are equal before and under the law and a person shall not be discriminated against on the ground of sex, among others.

Bride price also promotes inequality in marriage in as far as the customs only subjects men to paying bride price. This also runs contrary to clear provisions of Articles 21 and 31 which provides for men and women to have equal rights in marriage, during marriage and its dissolution; as well to Article 33 which provides for women to have full and equal dignity with men.

Lastly, I will briefly consider ground 12 of appeal. Under this ground, the appellants contended that the learned Justices of the Constitutional Court erred when they held that the unfavorable aspects of the custom of bride price may be remedied through redress under any other law and not through declarations.

Article 137 requires the Constitutional Court to make a declaration where it finds that an allegation made in a petition brought before it has been proven. This is because the Constitutional Court has a legal and mandatory duty to do so. The discretion granted to the Constitutional Court was reserved only in respect to the power to grant redress where it deems

it appropriate or to refer the matter to the High Court to investigate and determine the appropriate redress.

Conclusion

In conclusion, I find, for all the reasons given in this judgment, that the majority Justices of the Constitutional Court erred in law and fact when they dismissed the petition against the payment of bride price and its refund at the contracting and dissolution of marriage, respectively, as conditions precedent to the contracting of a valid customary marriage and the dissolution of customary marriage among various tribes in Uganda.

I find that the majority Justices of the Constitutional Court also erred in law and fact when they held that bride price means the same thing for all the different cultures in Uganda and failed to find that bride price is commonly practiced in Uganda by all cultures.

I also find that the majority Justices of the Constitutional Court erred when they found and held that they could not take judicial notice of the custom and practice of paying bride price.

I also find that the majority Justices of the Constitutional Court erred when they failed to find that the payment and refund of bride price promotes inequality in marriages and that it is one of the causes of domestic violence in customary marriages.

Lastly, I also find that the majority Justices of the Constitutional Court erred when declined to issue the declaration on the undesirable effects of bride price on the basis that these could be remedied by other laws and means, other than declarations.

I would accordingly allow this appeal and make the following declarations:

- a) The voluntary exchange of gifts at marriage or during marriage between the groom to be and his wife to be and/or her parents and relatives and vice versa is not unconstitutional.
- b) That the custom and practice of demand of bride price by a woman's parents or her relatives from her husband to be as a condition precedent to a valid customary marriage practiced by several tribes in Uganda is inconsistent with Articles 2, 21(1) & 2, 31(1)(b); 31(3), 32(2), 33(1), and 33(4) of the Constitution.

- c) The payment of bride price, as a condition precedent for the validity of a customary marriage is inconsistent with Articles 2, 21(1) & 2, 31(1)(b); 31(3), 32(2), 33(1), and 33(4) of the Constitution.
- d) That the custom and practice of demand for refund of bride price as a condition precedent to a valid dissolution of a customary marriage is inconsistent with Articles 2, 21(1) & 2, 31(1)(b); 31(3), 32(2), 33(1), and 33(4) of the Constitution.
- e) That the payment of bride price as a condition precedent to a valid customary marriage, and of its refund as a condition precedent to the dissolution of a customary marriage which has been demanded for by a woman's parents and/or relatives undermines the dignity & status of women and is therefore inconsistent with Article 32(2), 33(1) and (4), and 21(1) & (2) of the Constitution.

The appellants wisely prayed to the Constitutional Court not to make any order as to costs. This petition and appeal concerned matters of public interest. It is only befitting that each party should bear their respective costs. I would so order.

DATED this ...06... day ofAug..... 2015

HON. DR. ESTHER KISAAYE, JSC
JUSTICE OF THE SUPREME COURT.