

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

(PC) MATRIMONIAL/CIVIL APPEAL NO. 11 OF 1980

(From the decision of the Court of Shungubweni - Kisarawe District
at Mkuranga in Civil Case No. 1 of 1980)

DONA ABDALLAH Appellant

versus

KULWA ABDURAHAMAN Respondent

JUDGEMENT

MNZAVAS, J.K.

The parties were married in 1971 under Islamic law. They lived happily up to 1975 when signs of matrimonial friction started. Their misunderstandings forced the respondent to get married to a second wife in 1975.

According to the evidence of the respondent/petitioner the appellant/respondent drove her out of the matrimonial home soon after he had married a second wife and that she has been living with her parents ever since. It was also her testimony before this Court that from the time the appellant forced her out of the matrimonial home he has not maintained her and their child of the marriage. It was on these facts that the respondent petitioned for a divorce on the ground of desertion - cum - cruelty.

The appellant/respondent on the other hand argued that it was the respondent/petitioner who deserted him without cause and went to live with her parents. On the question of maintenance he admitted that he has not maintained his wife and their child for a period of 5 years. He however told the lower court that he decided not to maintain her because he suspected that she had lovers while living with her parents. The respondent's evidence that it was the appellant who had forced her out of the matrimonial home was apparently supported by her brother, Kassim Abdulrahman, (PW.2).

After assessment of the evidence from both sides the Primary Court was of the view that the appellant/respondent was the one to blame for the break down of the marriage. The court also found it as a fact that the union between the parties had broken down beyond repair; and accordingly dissolved the marriage.

Dissatisfied with the decision of the Primary Court the appellant has appealed to this Court. From the proceedings in the lower court it is not clear what was the real cause of their matrimonial friction

before the appellant decided to get married to a second wife. But whatever the cause may have been the respondent/petitioner was still lawfully married to the appellant/respondent when she was living with her parents and consequently she and the child of the marriage were entitled to maintenance from the appellant.

Respondent's evidence that she was forced out of the matrimonial home was accepted by the trial court as credible. It was a finding of the fact by a court which had the benefit of hearing and observing the witnesses as they testified. I see no good reason to differ from that finding of fact by the lower court.

As to the question whether the marriage between the parties had irretrievably broken down so as to entitle the lower court to grant a decree of divorce, the answer is clearly in the affirmative. For five years the appellant has neither visited nor maintained the respondent and the child of the marriage. Their acrimonious exchanges before this Court was clear testimony that the parties can no longer live under one roof as husband and wife.

Since the dissolution of their marriage the respondent has apparently already remarried. This Court sees no good reason to interfere with her present status. As I have already mentioned above the decision of the Primary Court to dissolve the union was compatible with the evidence. The appeal is accordingly dismissed.

As for custody of the child of the marriage which is now aged 4 years, the respondent^{is} to have custody up to the time the child is of school age - (8 years old), when custody would revert to the father. The father to respondent^{is} to the mother monthly as maintenance of the child.

I make no order as to costs.

DAR ES SALAAM
16.1.81


N. S. MNZAVAS,
JAJI KIONGOZI