IN THE HIGH COURT OF TANZANIA
AT MWANZA

(PC) MATR. CIVIL APPEAL NO. 19 OF 1981

(From the decision of the district court of Tarime at Nyamwaga in Civil Case No. 82 of 1981
BEFORE: E. O.ONGATI, ESQ., PRIMARY COURT MAGISTRATE)

BHOKE MESHACK ..... APPELLANT

versus

MESHACK CHEGU ..... RESPONDENT

SUBJECT: Divorce.

JUDGMENT

KATITI, J., - Bhoke Meshack, the appellant in this case, filed a petition for divorce, and echoed the contents of the same in evidence, by testifying supported by her mother, that, although, she married the respondent in 1965, and had seven children, with him, the said respondent had persistently wilfully neglected her i.e. denying her food and clothing. She claimed that finally he expelled her from the matrimonial home as from 1975, rendering her to totally depend on her parents. With the respondent denying the charges, and supported DW.1 and DW.2, insisting he had been properly maintaining her up to 1980, when she began truanting and denying him sex, the court unanimously came with the verdict, that, on the credible evidence available, the incidents, if there actually were, did not justify the dissolution of marriage.

The issues in this case are, as were appreciated by the lower court two, either of which may independently be evidence that marriage, has irreperably broken down - they are: (1) whether there was wilful neglect and/or (2) whether there was desertion of the petitioner. The lower court, found none of the above issues established, dismissed the petition and hence this appeal. In the face of the appeal, I have to visit the two issues as well.

I shall first get into the inquiry whether wilful neglect, was established by the complaining appellant. I think, the appellant, subject to proof of course of complaint, is entitled to base her petition, inter alia on wilful neglect to provide reasonable maintenance, as the husband is by law enjoined to maintain his wife by providing accommodation, clothing and food - see sect. 63 (a) of the Marriage Act 1971. The nature and quantum of maintenance should be measured, against the back ground of the general standard of life, normally enjoyed by the said husband. In this case, the petitioner told the court, that, since 1965, the respondent has not been providing her with food, nor clothing. And yet her mother brought the date nearer - saying the petitioner has not been maintained since 1975. Having considered the evidence adduced, like the lower court, I find the inconsistence of evidence between PW.1 and PW.2 negatively intriguing. Further, the petitioner having told, the court, that she has had seven children the youngest being five months, with the respondent, she did irresistably provide an inference, that, all this time, except for the period after 1980, she was cohabiting with the respondent, otherwise I cannot see, by what remote control he could have fathered the said children. If this was the case, and as did the lower court, I believe the same, the accusation that she was being denied food is not easy to sustain. As observed by the defence witnesses, she was being provided with food. As again, I cannot even speculate, that, the parents for all the years sending food to her matrimonial home, a proposition that was not even ventured. The charge of wilful neglect was not proved.

Having disposed of the above the other issue is whether there was wilful desertion by the respondent. As the

appellant charged that it was the respondent, who expelled her from the matrimonial home and actually charging him with deserting her, it is proper, that I here first discuss, what for the purposes of marriage, desertion means. Desertion as ordinarily understood, in the law of marriage, describes a situation when a party to a marriage, wilfully withdraws from cohabitation with the other, without reasonable cause. The spouse so departing and withdrawing from cohabitation is a deserter. However, the converse situation arises (i.e.) where the party wilfully withdrawing from cohabitation, has good cause - i.e. by reason of the other party's behaviour, she or he has been forced to withdraw from cohabitation, the party so being forced by circumstances created by the other party, is the deserted party... In this case, if the respondent was the deserter, as from 1975 as did impute the appellant, how could the respondent beget children aged 5, 3 years and 5 months, (i.e. at time of trial), unless the same was a visiting husband, which the evidence does not support. With such unanswered questions I tend to agree with the respondent's case, that marital problems, about which there was no articulation, started in 1981. Since it is not within my mandate to speculate on that, I remain to conclude as did the lower court, that the grounds staged as complaints were not proved. The appeal is dismissed.

E. W. KATITI
JUDGE

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18TH AUGUST, 1982