IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
(PC) MATT CIVIL APPEAL NO. 25 OF 1980

(From the decision of the Primary Court of Mono at
BAGAMOYO CIVIL CASE NO.75 OF 1979

ABDALLAH s/o MELLI .....APPELLANT

Versus

MKEGANI d/o RAJABU.....RESPONDENT

JUDGMENT

BAHATI, J.J.—This is an appeal by Abdalla Meli the appellant in this case against the judgment of the Primary Court which granted divorce to the respondent Mkegani Rajabu who was the petitioner in the trial court.

The facts are that the appellant and respondent were married according to Islamic rites. The respondent sought to divorce the appellant on the grounds that the appellant had deserted her and was not maintaining her and her children. The appellant appeared to answer the petition in Miono Primary Court. In the Miono Primary Court it was disclosed that there had been earlier matrimonial proceedings in Ruvu Primary Court in which the court decided to dissolve the marriage on the grounds that the respondent pays shs.600/= to appellant. The respondent had failed to pay the money and so the marriage was not dissolved hence these matrimonial proceedings again in Miono Primary Court.

The Primary Court decided that the marriage had irreparably broken down and that the respondent should pay shs.600/= to appellant, this amount being apparently refund of dowry. The Miono Primary Court held further that the appellant should pay shs.1300/= to respondent being maintenance for the children of the marriage for all that period that the appellant had not provided for the children. That meant that the appellant was the only one indebted to the sum of shs.700/= to the respondent (1300-600-700) and that the appellant should pay shs.700/= to the respondent and the respondent had no debt to pay. The marriage was then dissolved and divorce granted.

Against this order, the appellant has appealed to this court. In his memorandum of appeal, the appellant repeats the fact that there had been a civil case No. 3 of 1978 at Ruvu Kisarawe. He was surprised how the Miono Primary Court had decided that the appellant had deserted the respondent when it was the other way round.

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The Law of Marriage Act 1971 has been a subject of many misinterpretations. There is still lurking in the minds of the Primary Court Magistrates and assessors that an Islamic marriage cannot be dissolved unless the wife pays back the doury to the husband, and that it is the husband who has the power to grant the talak to the wife and that it is only this talak by the husband to the wife which disolves an Islamic marriage. The above exposition was the law before the Law of Marriage Act came into effect. After coming into effect of the Law of Marriage Act, the position is that only the court can dissolve a marriage (any marriage under any rites). The refund of doury by the wife has nothing to do with the divorce in a matrimonial proceeding. The doury can be considered as a debt to be paid by the wife but this debt cannot stop the dissolution of the marriage.

Having said that, I will now deal with the appeal at hand. The trial court was satisfied that this marriage has broken down irreparably. I see no reason to hold otherwise. Indeed even the appellant does not dispute this finding. His complaint appears to be that he was not paid back the doury which acts like a redemption of the respondent from the bonds of matrimony. The appellant in the trial court had no problem with the respondent if only he was paid his shs.600/= by the respondent. But, as I have shown above if the appellant like in this case admits that he owes shs.1300/= to the r respondent as maintenance and that the respondent owes him shs.600/= as doury, then simple mathematics shows that instead of respondent paying shs.600/= and then the appellant paying her shs.1300/=, the same result can be arrived at by the appellant paying her shs.700/= only. This is what the trial court decided, and I am in complete agreement with this decision.

I see no merits in this appeal and I dismiss it with costs.

A. BAHATI
AG. JUDGE
23/6/83

ORDER : Judgment delivered in Court in presence of parties on 23/6/83.

A. BAHATI
AG. JUDGE
23/6/83