

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

(PC) CIVIL APPEAL NO. 7 OF 2002

(From BABATI District Court Matrimonial Civil Appeal No. 12/2000)

(Original ENDASAK Primary Court Matrimonial Case No. 86/99)

ANTONY CIPRIAN ... .. APPELLANT

Versus

FIRMINA MICHAEL ... .. RESPONDENT

J U D G M E N T

MSOFFE, J.

In the Primary Court at Endasak, Hanang, the respondent petitioned for divorce, custody of children and division of matrimonial assets. After a full trial a decree of divorce was granted; custody of children given to her; and on matrimonial property there was an order for the respondent to receive rent for two rooms of the said matrimonial house, and five bags of maize. The appellant unsuccessfully appealed to the District Court at Babati. In a ten line typed judgment the said Court decided as follows:-

"JUDGMENT"

BEFORE H. H. M. TUWA - DM

The Respondent FIRMINA MICHAEL successfully sued the Appellant ANTONY CIPRIAN for a divorce decree and the division of their matrimonial assets. The Appellant being the aggrieved party lodged his appeal to this Court.

Having gone through the evidence on record this Court is of the view that there is cogent evidence to convince any cautious, reasonable and prudent tribunal to find that the marriage between the parties is irreparably broken down.

The appeal is lodged without good cause and it deserves to be dismissed with costs. It's so Ordered.

Sgd. H. H. M. Tuwa

DM

12/2/2001"

In the petition of appeal to this Court there are several grounds. Of particular interest, however, will be ground no.5 in which the complaint is that the appellate District Court did not evaluate the evidence.

In my view, the above ground has merit. It is clear from the above so called judgment that no analysis of the evidence was done by the District Court. Indeed, the so called judgment was not a judgment in the strict sense of the word for want of full compliance with the provisions of Rule 16 of GN 312/64 i.e. The Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1964. In fact, by the above so called judgment, the said Court did not consider the petition of appeal dated 27/7/2002 which was filed before it, and in which there were complaints regarding the decree of divorce, custody, maintenance and the matrimonial house.

Since there was no judgment which could be affirmed or reversed by this Court, it will follow that there will be nothing by this Court to decide on the merits or otherwise of the appellant's complaints. Henceforth, the so called judgment is quashed and set aside. Since, there is now a full time District Magistrate stationed at Hanang, the appellant's appeal shall be opened afresh at that Court and determined on merit. That should be done without payment of any fresh fees. If either party will still be dissatisfied there will always be room for an appeal to this Court.




J. H. MSOFFE

JUDGE

1/4/2003

Delivered this 1st day of April, 2003 in the presence of both parties.



J. H. MSOFFE

JUDGE

1/4/2003

JHM/jn.