

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MWANZA
AT MWANZA

[PC] CIVIL APPEAL No. 40 2009

Arising From Tarime District Court Civil Appeal No 16 of 2008

(Original Tarime Urban Primary Court Civil Case No 48 of 2007)

CHACHA MWITA.....APPELLANT

VERSUS

NYASANDA WAMBURA.....RESPONDENT

JUDGMENT

MRUMA, J.

The appellant Chacha Mwita successfully sued the Respondent in Tarime Urban Primary Court for refund of bride price. The Primary Court had ordered that the appellant be paid 6 herds of cattle. The respondent was aggrieved and he appealed to the District Court. In its judgment the District Court reversed the decision of the primary court. It held that since the

marriage between the parties had subsisted for a considerable long time the appellant could not get refund of bride price.

The appellant is aggrieved and has appealed to this court.

At the trial the appellant told the court that he had paid 8 herds of cattle, one goat and cash T.shs 15,000/=. The Respondent didn't challenge this evidence. He only requested the court to reduce the amount refundable should be reduced since the couple had children.

In think on the facts available the trial court should have been confronted by only one question and that is whether the appellant was entitled to a refund of the whole or any part of bride price. Under paragraph 52A and B of the Declaration of Customary Law (Law of persons) GN 279/1963, if there are any children to the marriage and the marriage has subsisted for long time, no bride price is refundable [**See also *Andrea Chilena Vs Keni Masaka (1992) TLR 436***].

In the case under consideration there is undisputable evidence that the parties married in 1989 and they are blessed with two children Mkami who was 18 years in 2008 and Mwikwabe (14 years old). One of these children is married.

From 1989 when the parties got married to 2007 when they divorced is 18 years. This is a considerable long period of time. This is not disputed. Equally undisputed is the fact that the marriage was blessed with children. Thus, in terms of the provision of paragraph 52 A and B of the Declaration of Customary Law (Law of Persons)GN 279/1963 the appellant is not entitled to refund to any part of the bride price.

In the event I dismiss the appeal with Costs.



At Mwanza

18th September, 2012

A handwritten signature in black ink, which appears to read 'A. R. Muma'.

JUDGE

Date : 21st August, 2012

Coram: Hon. A.R. Mruma, J.

For Appellant: Present in person

For Respondent: Mr. Corenelous Henry Van (Owner and

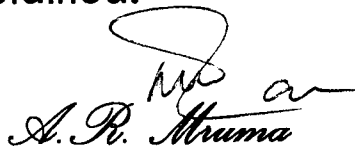
Director of the Respondent's Coy.

B/C : Rose

Court:-

Judgment delivered this 21st day of August, 2012.

Right of Appeal Explained.

A handwritten signature in black ink, appearing to read 'A.R. Mruma', with a stylized flourish above the name.

JUDGE

At Mwanza

14th August, 2012