

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPEAL NO. 265 OF 2017
PAUL MAGU NYAHITI.....APPLICANT
VERSUS
PENDO SHOLE RESPONDENT

29/3/2018 & 29/5/2018

JUDGMENT

I.P.KITUSI,J.

Paulo Magu Nyaiti petitioned the District Court of Kilombero at Ifakara, for divorce, division of matrimonial assets and custody of the five issues of the marriage. Paulo Magu Nyaiti, hereafter the appellant, and Pendo d/o Shole, hereafter the respondent, were married in or about 1999 under customary arrangement and lived a happy life at Ihenga Mofu area at Ifakara in Kilombero District. In 2015 the petitioner was involved in a motor accident as a result of which he was hospitalized for some time.

The basis of the petition was that upon his return from the hospital he realized that the petitioner's behavior had changed in that she had turned to adultery and was cruel to him. She had also sold and used for herself the proceeds of 120 bags of paddy and a motorcycle without the appellant's prior consent.

In reply, the respondent disputed the allegations regarding adultery and alleged that it was the appellant who became cruel to

her when he returned from hospital. She said she sold 45 bags of paddy to cover for appellant's medical expenses and sold the motorcycle at his instructions to raise money for a traditional medicine man in Nzega where the appellant had gone to seek treatment.

The appellant invited the court to consider the foregoing facts in the orders for division of matrimonial assets and insisted that all the assets particularly a house and a ten acre farm were acquired through his efforts before marriage. The respondent's position was that the appellant had no property before the marriage to the extent that initially the couple had to survive on the assistance of appellant's brothers.

During the trial, the appellant was represented by Mr. Faraja Nakua learned advocate while the respondent stood in person. At the end of the trial the District Court issued a decree of divorce and ordered custody of the children above seven years to be under the appellant and those under seven years to be under the respondent. The court ordered equal division of the matrimonial assets.

The present appeal seeks to challenge the order as to division of matrimonial assets and custody of the children. The Petition of Appeal also raises an issue that was not covered during the trial, that is whether a Harmlet chairman to whom the parties had earlier submitted themselves had the jurisdiction to order divorce and division of matrimonial assets.

Before addressing the merits of the case I considered it necessary to draw the parties attention to Section 106(2) of the Law of Marriage Act, Cap 29 which provides;

" Every petition for a decree of divorce shall be accompanied by a certificate by a Board issued not more than six months before the filing of the petition in accordance with subsection 5 of section 104"

When I invited the parties to address this issue it became clear to me that the matter was not referred to the Board as required such that the filing of the petition was in violation of section 106(2) of the Law of Marriage Act. The proceedings before the District Court were, therefore, a nullity and I so declare. Those proceedings and the resultant orders are quashed and set aside.

If they wish, the parties may file a fresh petition after complying with all procedures. I make no orders as to costs.


I.P. KITUSI
JUDGE
29/5/2018

29/5/2018

Coram : Hon. I.P. KITUSI, J.

For the Appellant : Present

For the Respondent : Present

Cc: Masasi

Court : The judgment delivered on 29/05/2018 in presence of the parties.

A.A.MAGUTU

DR

29/5/2018

Right of appeal full explained

A.A.MAGUTU

DR

29/5/2018