

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

PC MATRIMONIAL APPEAL No. 01 OF 2010
*(Arising from Matrimonial Appeal No. 10 of 2016 of Meatu District of
Kahama Original Matrimonial case No. 9 of 2016 of Bukundi
Primary Court)*

MARY JACOBAPPLICANT

VERSUS

LEONARD JACOB.....RESPONDENT

JUDGMENT

Date of Last Order: 21th April, 2020

Date of Judgment: 22th May, 2020

MKWIZU, J.:

The Appellant Mary Jacob is appealing challenging the decision of the District Court of Meat which was delivered on 11th November, 2016.

A brief history of the matter at hand is that the Respondent Leonard Maiga filed a matrimonial proceedings in Bukundi Primary Court .After hearing the parties and their witnesses, the trial court found that the marriage between the parties has broken down beyond repair. The certificate of divorce was issued and matrimonial assets were subjected to division between the parties. Appellant in this appeal was not satisfied on how the assets were divided between them, she appealed to the District Court in

Matrimonial Appeal No. 10 of 2016. The District Court concluded that the division of the matrimonial assets was fair and just whereof the trial court decision was upheld. Dissatisfied, appellant has again filed this appeal on the following grounds:-

1. That, there was an apparent illegarities (sic) in the hearing and determination of Matrimonial Case No 9 /2016 at Bukundi primary Court because the case was instituted in the court without passing through the ward reconciliation board, and hence, all the proceedings and orders of the primary court are null and void.
2. That, the District Court failed to consider that, the Appellant and the Respondent from their efforts, jointly and together are acquired eight (8) houses in total, four (4) residential houses and four (4) commercial houses.
3. That the District Court awarded the appellant only three houses out of eight the division which is not fair.
4. That, the district court awarded the appellant residential houses only without awarded the appellant residential houses only without awarding even any commercial house.

5. That, the District Court erred in law and fact in failing to analyze and evaluate the evidence that the appellant is entitled to get or awarded 50% of the matrimonial properties because the Appellant is a civil servant and she was received loan and she was contributed much enough.

When the appeal was called for hearing, appellant appeared in person while the Respondent appeared under the services of Mr. Mbatina Advocate.

Before the hearing of the grounds of appeal, Mr. Mbatina informed the court that the matrimonial proceedings were initiated at the Primary Court without first being referred to the Marriage Conciliatory Board contrary to section 101 of the Law of Marriage Act. Mr. Mbatina went on telling the court that because there is no certificate of the Marriage Conciliatory Board the proceedings of the trial court was a nullity. He cited the case of **HASSAN ALLY SANDALI VS ASHA ALLY Civil Appeal No. 246 of 2019 CAT** (Unreported), praying this court to quash all the proceedings of all lower courts and each part be ordered to bear owns costs.

When the court called to respond to what Mr. Mbatina submitted, appellant said, she is not conversant with the procedure and that after all

it was the respondent who petitioned for divorce so she left to the court decide.

I have carefully considered the submission of both parties and the record of both lower courts, the point for my determination is whether the matrimonial dispute was filed without first complying with a mandatory provisions of **section 101 of the Law of Marriage Act Cap 29 R:E 2002** which provides:-

"...No person shall petition for divorce unless he or she has first referred the matrimonial dispute or matter to a Board and the Board has certified that it has failed to reconcile the parties."

The law under section 101 above requires marriage disputes be referred to Marriage Conciliatory Boards prior to petitioning for divorce. However, there are exceptions provided thereat. The exceptions include where it is to the satisfaction of the Court that there are impracticable circumstances making reference of the dispute to the Marriage Conciliatory Board.

The records of the proceedings of the two courts below are silent on whether there was such reference or not. In his petition of divorce filed at the trial Pprimary Ccourt, there was nothing said in connection with

refereeing the matter to the Marriage Conciliatory Board. And no such document is appended to the petition. Apart from that, the trial court records are silent as to whether the matter falls under any of the exceptional circumstances listed in paragraphs (a) to (f) of section 101 of the Law of Marriage Act.

It is therefore without doubt that the Petition for Divorce was filed without the prerequisite certificate from a Marriage Conciliatory Board. This is contrary to section 101 of the Law of Marriage Act Cap. 29. It is my finding that, in the absence of a certificate from the Marriage Conciliatory Board and the case not falling under any of the exceptions listed in section 101 (a) to (f) of the Law of Marriage Act, Cap.29, the Petition was prematurely filed. I underscore the principle stated in the Case of **HASSAN ALLY SANDALI VS ASHA ALLY (Supra)** I quote wording of the court at page 10 paragraph 3 that;

"The Primary court dissolved the marriage between the appellant and the respondent on the basis of section 107(3) of the Act. However, the granting of divorce under section 107(3) of the Act was not an end in itself. It was subject to compliance with section 101 of the Act. That section prohibits the institution of petition for

divorce unless a matrimonial dispute has been referred to the Board and such Board certifying that it has failed to reconcile the parties.”

The omission to obtain the certificate from the Marriage conciliatory Board is a fatal irregularity that renders the purported appeal before me incompetent and all the lower courts proceedings a nullity.

Accordingly, I invoke the powers of this court under Section 30 (1) (ii) of the Magistrate Courts Act and quash the proceedings of the District court as well as that of the trial primary court for being a nullity, I hereby set aside the resultant judgment and orders. Parties are free to file a fresh petition by following the relevant procedures explained in the Law of Marriage Act. Each party to bear own costs.

DATED at **Shinyanga** this **22th** day of **May**, 2020.



E.Y. Mkwizu
E.Y. MKWIZU
JUDGE
22/05/2020

COURT: Right of appeal explained.



E.Y. Mkwizu
E.Y. MKWIZU
JUDGE
22/05/2020