

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 124 OF 2019**

*(Originating from Civil Case No. 32 of 2018, Temeke District Court)*

**ALLY MSHAM CHUBI.....APPELLANT**

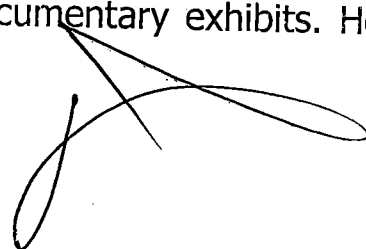
***VERSUS***

**BISURA ALLY GUGA.....1<sup>ST</sup> RESPONDENT**  
**ALLY GUGA.....2<sup>ND</sup> RESPONDENT**  
**SUBIRA ALLY GUGA.....3<sup>RD</sup> RESPONDENT**  
**SABRINA ALLY HASSANI.....4<sup>TH</sup> RESPONDENT**  
**SELEMANI BOMBA.....5<sup>TH</sup> RESPONDENT**  
**SIRAJI MUSSA SALIM.....6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

The appellant above mentioned is appealing against the decision of the trial court which dismissed the appellant's claim for compensation a sum of Tsh 60,000,000/= pleaded as special damages against the second, third, fourth, fifth and sixth respondents for inducing the first respondent (appellant's wife) to desert matrimonial home and proceeded to cohabit with the sixth respondent as paramour.

In the amended memorandum of appeal, the appellant who was unrepresented raised eight grounds of appeal. Arguing for the first ground of appeal, the appellant submitted that he tendered a watertight evidence supported by his witnesses including documentary exhibits. He submitted



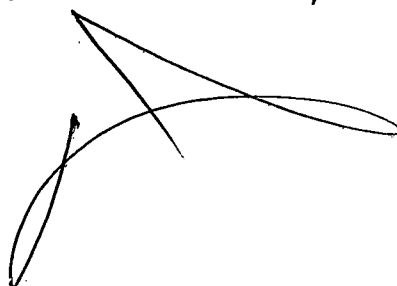
that he was claiming damages arising from tortious liability and not from matrimonial issues as observed by the trial court. In response, Ms. Cypriana Emmanuel William learned Advocate for first, fourth and fifth respondents submitted that the trial court had considered the evidence adduced by the appellant and his witnesses and decided on failure of the appellant's evidence to satisfy the court on how he suffered damages.

Essentially the trial court is faulted for nothing. There was no scintilla evidence to prove that the second, third, fourth, fifth and sixth respondents induced the first respondent (appellant's wife) to desert matrimonial home or else facilitated the first respondent to proceed to cohabit with the sixth as paramour, as alleged. A mere fact that the fourth and fifth respondent had harbored the first respondent, on itself cannot be said is a proof that they lured the first respondent to desert matrimonial home. An argument that the second respondent was not cooperative regarding the whereabouts of the first respondent, cannot be taken to amount to inducing someone to desert matrimonial home. The testimony adduced by plaintiff's witnesses was of little assistance. For instance, PW2 only stated that sometimes in 2014 the appellant complained that his wife had started to misbehave for having another man outside their marriage. PW3 (neighbour and ten cell leader) stated that in 2016 the appellant reported

that his wife had disappeared and that he was misbehaving. PW4 (appellant's young brother) stated that the first respondent had deserted the plaintiff. That on one occasion when a mobile phone for the first respondent was on charging, someone dialed call where PW4 received that call, only to hear that person who made a call introducing as husband of the first respondent.

PW3 who is a ten cell leader, did not say if at all the appellant had lodged a complaint against the second, third, fourth and fifth respondents for inducing his wife to desert matrimonial home.

In view of recap of testimony of appellant evidence along with that of his three witnesses, its vivid that a claim for inducement was not proved at all. The alleged documentary evidence tendered by the appellant at the trial, to wit a certificate of marriage exhibit P1; a birth certificate for Amani Ally Chubi exhibit P2; RB exhibits P3, P5 and P8; notice of the cell leader regarding disappearance of the first respondent exhibit P4; court proceedings for Madai ya Talaka No. 23/2017 exhibit P6; court summons exhibit P7; notice in Tanzania Daima news paper exhibit P9; proceedings in respect of Matrimonial Cause No. 23/2017 exhibit P10; a report of Social

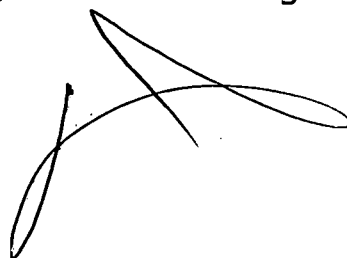
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Welfare Officer exhibit P11 and decision of Bakwata exhibit P12 all these documentary evidence had nothing to do with a claim for enticement.

Therefore, the trial court was justified to rule that the appellant had failed to prove his claim for reason that, the first respondent was not induced by any person.

Regarding the second ground that the trial court referred case No. 313/2017 before Mbagala Primary Court as matrimonial cause while it was normal civil case. According to the annexure to the first and third defendant's written statement of defence, reveal that in Misc. Civil Application No. 8/2018 that case was cited as Matrimonial No. 313 of 2017. As such an argument of the appellant is baseless. Equally an argument by the appellant that the said case No. 313 of 2017 was not part of evidence or proceedings, is unmerited. As depicted above, copy of proceedings of Misc. Civil Application No. 8/2018 where case No. 313/2017 was cited, was an annexure in the first and third defendant's written statement of defence, which formed part of the trial court record.

Regarding an argument that the appellant had proved to have suffered damages as a result of physical and mental losses he sustained after being told by the first respondent that he (appellant) is not the biological father

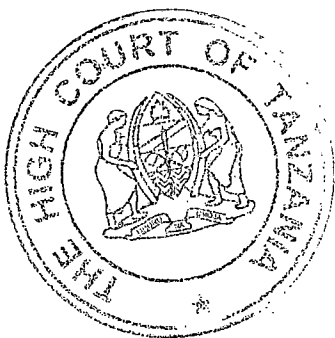


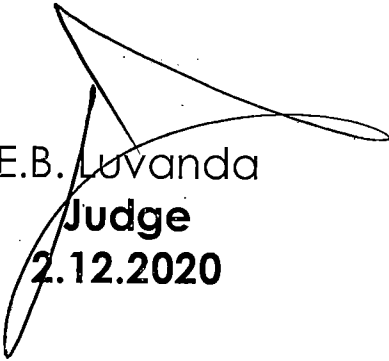
of their child born in wedlock. The same is too remote to a claim of inducement. Again the appellant had pleaded special damages a sum of Tsh 60,000,000/=, but there was no proof whatsoever on how he sustained such an amount of cash money. The two bus tickets to and from Tanga for a fare of Tsh 13,000 and 32,000 respectively forming part of exhibit P2, are far-fetched and almost implausible to a pleaded sum of Tsh 60,000,000.

I therefore nod with the learned resident magistrate that the appellant had utterly failed to prove his claim against the six respondents or any of them.

The appeal is devoid of merit and is accordingly dismissed.

This being a matter of matrimonial nature, there will be no order for costs in respect of this appeal and proceedings at the trial court.



  
E.B. Luvanda  
**Judge**  
**2.12.2020**

