

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

PC. MATRIMONIAL APPEAL NO. 1 OF 2020

(Arising from Matrimonial Appeal No.9 of 2017 of the District Court of Kahama at Kahama)

ATHUMAN SAID.....APPELLANT

Versus

MARIAM ATHMAN.....RESPONDENT

Date of Last Order: 28/02/2020

Date of Ruling: 28/05/2020

RULING

C. P. MKEHA, J

The present appeal traces its origin from Kahama Urban Primary Court. Before the said trial court, the respondent petitioned for divorce and division of matrimonial assets. The trial court held that, there was no existing marriage between the parties. However, the court invoked the provisions of section 160(2) of the Law of Marriage Act and proceeded to order division of matrimonial properties. The respondent was awarded 30% of the value of matrimonial properties. The appellant's first attempt to challenge the said decision before the first appellate court was unsuccessful. The first appellate

court upheld the trial court's findings and orders. The appellant has now approached this court in his endeavour to overturn decisions of the two courts below.

On 7th May, 2020 I heard the parties on the present appeal. However, before composing judgment, upon re-reading the record in question, I entertained doubts as to whether actually, the parties had approached the Marriage Reconciliation Board for reconciliation, before referring the matter to Kahama Urban Primary Court. I decided to postpone the exercise of composing judgment. I instead, invited the parties to address me on that important issue. The following was the parties' response:

Appellant: There was no mediation at Nyihogo Ward Offices.

Respondent: It is true. There was no mediation.

The parties' response hereinabove confirms that, indeed there was non-compliance with the mandatory provisions of the law under section 101 of the Law of Marriage Act.

A letter dated 04/08/2017 from Nyihogo Ward Executive Officer is what prompted the Honourable Primary Court Magistrate Incharge to authorize the filing of Matrimonial Petition resulting into the present appeal. The said

letter does not indicate if at all there was any attempt to reconcile the parties.

Rule 9(2) of GN 240 of 1971 provides:

"Where the dispute is between a husband and his wife, and relates to the breakdown of the marriage or an anticipated breakdown of the marriage, and the Board fails to reconcile the parties, the Board shall issue a certificate in the prescribed form."

The form referred to in the above cited provision is obtainable under the schedule to GN. No.240 of 1971 as Form No.3. The contents of the Board's certification should in substance be similar to what is prescribed under Form No.3.

In the most current decision of the Court of Appeal on an issue similar to the present one, the Court held that it is possible to rely on a letter from BAKWATA (Marriage Conciliatory Board) instead of a formal Certificate from it provided that the contents reflect the fact that the Board has failed to reconcile the parties with findings as close as possible to the relevant form.


See: HASSANI ALLY SANDALI VS ASHA ALLY, CIVIL APPEAL NO.246 OF 2019, CAT, AT MTWARA.

I am mindful that the trial court held that there was no existing marriage between the parties. Prior to that holding, what had been referred before the trial court was a petition for divorce and division of matrimonial assets to which section 101 of the Law of Marriage Act applies. There is nothing to indicate that the dispute between the parties is one of the exempted disputes listed under the proviso to section 101 of the Law of Marriage Act.

The parties to the present appeal have been honest that, there was not even a slightest attempt to reconcile them at Nyihogo Ward Executive Offices from which a letter that authorized the filing of the Matrimonial Petition originated.

For the foregoing reasons, the proceedings of both, the trial court and first appellate court are quashed for being a nullity. The resultant judgment, decree and orders are set aside. It shall be upon the willing party to start afresh.

Dated at **SHINYANGA** this **28th May, 2020**.


C. P. MKEHA
JUDGE
28/05/2020

Court: Ruling is delivered in the presence of the parties.

