

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC MATRIMONIAL APPEAL NO. 02 OF 2020

(Arising from the decision of District Court of Sengerema at Sengerema in Matrimonial Appeal No. 08 of 2015 before Hon. N.A. Salehe, RM dated 12/08/2020 original Sengerema Urban primary court at Sengerema in Matrimonial cause No. 61/2014)

STEPHEN S/O NYANGILI..... APPELLANT

VERSUS

FIBE S/O THOBAS RESPONDENT

JUDGMENT

11th & 26th February, 2021

RUMANYIKA, J.:

It all began as Matrimonial Cause No. 61 of 2014 of Sengerema Urban Primary Court, where on 24/04/2015 as against Fibe Thobias (the respondent) Stephen Nyangili (the appellant) got a judgment and decree of divorce, then, as usual, but in this case half – half the matrimonial asset was divided between them save for the alleged self-acquired property at Nyamililo by the appellant. Not satisfied, the respondent appealed successfully such that the District Court Sengerema declared all property matrimonial therefore by the court order subjected to half-half distribution. The appellant is not happy hence the instant 3 ground appeal which essentially may revolve around the issue of evaluation of the evidence

namely **whether in terms of origin all the property was jointly acquired by the parties.**

Like the appellant, the respondent appeared in person.

Additional to the memorandum of appeal, very briefly the appellant submitted that as a family they acquired some wealth but the property just like that it perished and the respondent was responsible. That is all.

The respondent simply blamed the appellant for having been irresponsible head of the family. That is all.

From the record it is evident clear as follows:-

The appellant, and his two witnesses stated that before the respondent married him he owned a house on 2 acres plot, one acre and a house at Nyamililo, some heads of cattle and a plot at Igogo area Sengerema with some building gathered therefor then after they erected a house in dispute for no reasons at all the respondent denied him conjugal rights, she deserted him and remarried another man away at Geita that, it appears in order to free herself she instituted proceedings seeking for decree of divorce but later on abandoned the case therefore the appellant sued her hence the present appeal.


On her part, the respondent and 3 witnesses essentially, were on record having testified that they contracted a christian marriage in 1992 and blessed with two issues that she never ever deserted him only that being cloth vendor she had been always away busy that during their marriage life jointly they acquired a 3 room house at Igogo area, Sengerema, 3 acres of shamba at Tabaruka area Sengerema , a number of home appliances, and house on a four acre plot. That is all.

The issue is no longer whether the judgment and decree of divorce it was improperly issued but rather whether the matrimonial property was truly and fairly divided between the parties.

However sour or difficulty the marriage it might be, at least it had never been disputed that the ex-couples had lasted for 22 good years. The appellant, if at all he may have self-acquired and accumulated some property including some building material for the Igogo – Sengerema house yes, but he did not, in his evidence tell say what exactly were the building materials: some bags of cement, some pieces of iron sheets, some nails, or pieces of timber leave alone the quantity and value much as no copies of the respective cash sale receipts were tendered in court.

Moreover, now that the court was not told if the respondent she counted 2nd or even 3rd wife to the appellant such that the possibilities of one having had inherited or otherwise self-acquired the property before, the respondent's claims were not sufficiently altered down. I think where matrimonial asset was at issue it will not be enough, with plain statements to allege self-acquisition of the same. In the absence of tangible evidence the doubts shall always be cleared in favour of the other spouse. After all it wasn't in evidence established what was the appellant's source of income. The respondent may have had, so long fled the matrimonial home yes, but rightly so in my considered opinion, the district court distinguished it from desertion of the husband. Like the court held, it amounted to voluntary separation which constituted a good ground for divorce (Sections 110 (1) (a) and 107 of the Law of Marriage Act Cap 29 R.E. 2019).

In the final analysis, the appeal is dismissed. Decision and Order(s) of the 1st appeal court are upheld. Each party shall bear their costs. It is so ordered. Right of appeal explained.


S. M. RUMANYIKA
JUDGE
14/02/2021

The judgment is delivered under my hand and seal of the court in chambers this 26/02/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

26/02/2021