

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 226 OF 2020

(Originating from Matrimonial Cause No. 13 of 2019)

HASSAN MMBAGA APPELLANT

VERSUS

SUZANE KAMOTE RESPONDENT

Date of last Order: 24/11/2020

Date of the Judgment: 12/05/2021

J U D G E M E N T

MGONYA, J.

Before this Honorable Court is a cross appeal by the parties named above. The parties each filed one ground of appeal which appears to be one and the same as hereunder:

- 1. That, the trial Magistrate erred in law and fact by not considering the evidence adduced by the Appellant which show that the marriage has been broken down irreparably.***

The Appeal was heard by way of written submissions whereby the parties herein filed the same in time, hence this decision by this Court.

The Appellant in her submission has stated that the trial Court erred in deciding that the marriage between the parties has not broken down beyond repair.

The Appellant stated that the reasons for intending to dissolve the marriage was the reason that the Husband started sexual relations with other Women and even had pictures of Women in his phone, beatings by the Husband and being forced to leave.

It was the Appellant's submission that the above averments clearly show that the marriage was encumbered by cruelty and adultery of which these led to the irreparability of the marriage between the them. However, these facts were ignored by the trial Magistrate.

Further the Appellant states that she had travelled to Dodoma and upon return she was denied access to her matrimonial home because Respondent was already living with other Women in the said house. This action proves willful neglect of the Respondent as per the provisions of **section 107(2) (d) of the Law of Marriage Act Cap. 29 [R.E 2019]**. It was also reiterated that the marriage problems were also stated in the Reconciliation Board and the Board also acknowledged that they have failed to reconcile the parties.

On the other hand, the Respondent in his submission submitted that, the Court grossly erred in law in holding that the marriage has not broken down irreparably, and that evidence in records as per the Appellant and **DW2** and **DW3**

all testified that there is no dispute that the marriage between the parties has broken irreparably.

It was the Respondent's contention that the Appellant had travelled to Dodoma without the permission of the Husband the Respondent herein; and the Appellant in the Cross Appeal. And the Appellant stayed in Dodoma for or about 9 months which was enough to prove that the marriage was irreparably broken down.

Moreover, the Appellant further states that the Appellant herein who is the Respondent in the cross appeal has testified that there is no dispute that the Respondent was married to Mariam Adam in 1993 and that the Appellant is currently living with the said Wife hence this is enough reason to prove that the marriage is irreparably broken down.

It is in the Respondent's submission that the marriage has been broken down irreparably beyond repair as per the evidence adduced by the parties and the witnesses summoned to testify in Court. Hence, for the Court declaring the marriage has not broken down beyond repair is the same as forcing the parties to live together which is contrary to law.

Having ventured the filed written submissions in support of the appeal by the parties in the instant cross appeal, it appears that in this appeal there was no reply to the Appellant's submission in both cross appeals. This shows that

both of the parties are pleading to the fact that their marriage has been broken down irreparably and that both desire for an order for divorce.

It is from the record of the lower Court that the parties in these cross appeals are eager in securing for an order for divorce. **The law of Marriage Act Cap. 29 [R.E. 2019]**, is one that governs for marriages contracted in the land. The provisions of **section 107 of the Law of Marriage Act (supra)** provides for the evidence that proves that a marriage has irreparably broken down beyond repair.

Moreover, the provisions of **section 9** of the Law of Marriage Act states that:

'Marriage means the voluntary union of a man and a woman, intended to last for their joint lives.'

Having gone through the evidence in the trial Court and the submission of the parties the situation of the marriage of the parties herein do not suggest that the parties have an intention of living together for their whole life neither is the union between the two voluntary anymore.

Marriage as a union is far off from what can just be observed between spouses. From the outside it is an institution that is made up of two persons so called spouses. This institution is bound by love and affection. It is therefore an institution that requires peace and enjoyment of each other.

Therefore, when this institution is flooded by lack of love and affection, then peace elopes from such an institution and becomes no longer voluntarily especially when one or the other decides that they cannot live with each other as of the circumstances of this case where evidence shows that the Respondent is living with his former wife and both the parties require for an order for divorce.

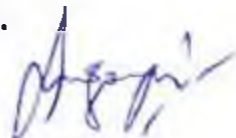
It is from the above, this Court is satisfied that the marriage between the parties in the instant cross appeal has broken down irreparably for the reasons stated above. **Therefore, Appeals before this Honorable Court are found to have merits.**

From my findings, I proceed to invoke my revisionary powers and proceed **to declare the marriage between the parties herein is dissolved. A party interested in orders of division of Matrimonial properties is to file for the same in a Court with competent jurisdiction.**

Since the matter is a Matrimonial Cause, each party to bear own costs.

It is so ordered.

Right of Appeal Explained.



**L. E. MGONYA
JUDGE
12/05/2021**

Court: Judgment delivered in chamber in the presence of both parties in person and Ms. Msuya RMA this 12th day of May, 2021.



L. E. MGONYA
JUDGE
12/05/2021