

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TEMEKE DISTRICT SUB-REGISTRY)

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MATRIMONIAL CAUSE NO. 6 OF 2022

JULIET KALIKWENDWA KABAGIRE APPELLANT

VERSUS

MSAFIRI JUMA MSWA RESPONDENT

JUDGMENT

10/06/2022 & 16/06/2022

I.C. MUGETA, J

When the respondent was served with the petition, he appeared in court without filing an answer to the petition. He said he do not contest the petition. The court resolving the Matrimonial dispute in the case of **Joseph Warioba Butiku V. Perucy Muganda Butiku** [1987] T.L.R 1 held:

'Where the parties have agreed on sufficient issues of fact and law raised in their pleadings, the court may pronounce judgment and order accordingly'.

Upon report by the respondent that he does not contest the petition, I thought I could pass a judgment as in the above case. On reflection, I refrained from that course because the respondent did not file any

pleadings. Consequently, I decide to hear the parties to determine whether the marriage between them was void *ab initio* as the only issue for my determination.

The petitioner prays for annulment of their marriage contracted on 11/03/2018 because when it was contracted the respondent was still married to another woman. Before the trial commenced, the parties also reported that they have entered into a settlement regarding maintenance, custody of the children and division of the assets. This is the reason the issue for determination is one as above stated.

The petitioner is represented by Tibiita Muganga, advocate, while the respondent is in person. None of them called another witness to support his/her case. The petitioner testified as PW1 and the respondent as DW1.

From the evidence of the parties, it is undisputed that they married a Christian marriage at Roman Catholic Church on 07/04/2018. The marriage certificate was tendered by the petitioner as exhibit P1. She also tendered a copy of the marriage certificate between the respondent and Peniel Godwin Mndashi which was contracted on 29/07/2009 at the office of the District Commissioner as exhibit P2. The petitioner testified and the respondent partly admitted that the church tried to reconcile them and found that their marriage was void as it was preceded by another marriage

which was still subsisting. A copy of the letter to that effect was tendered by her as exhibit P3. Finally, the petitioner tendered the agreement on custody of the children, maintenance and division of the properties as exhibit P4.

The respondent did not contest the petitioner's evidence. However, he testified, without documentary proof, that when she married the petitioner, she had divorced the other woman. He admitted participation but complained that he was not fully involved during conciliation at the church level.

According to Section 15 (2) of the Law of Marriage Act [Cap. 29 R.E. 2019] no man, while married by a polygamous or potentially polygamous marriage, shall contract a marriage in a monogamous form with any other person. The respondent being a Muslim, his first marriage was potentially polygamous. Therefore, he was barred by law to contract a monogamous marriage with the petitioner unless he proved dissolution of that marriage.

The respondent testified that he had divorced the first woman and there is a court decree from the Primary Court of Morogoro District at Morogoro.

In terms of section 100 of the Evidence Act [Cap. 6 R.E 2019], the respondent was supposed to prove the dissolution of his marriage by tendering the divorce decree. As he did not do that, I hold that when he

contracted the monogamous marriage with the petitioner his first polygamous or potentially polygamous marriage was subsisting. The second marriage, therefore, was void. I hereby annul it. The issue framed is determined in the positive.

The parties' agreement as to the division of the assets, custody of the children and maintenance was admitted as exhibit P4. According to exhibit P4, the parties acquired jointly four properties. These are:

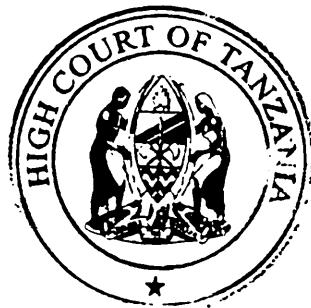
- i) Parcel of land measuring 22 x 44 metres at Pangawe Village, Mkambarani, Morogoro.
- ii) Land measuring 70 x 70 metres at Sofu, Kibaha - Pwani.
- iii) Land measuring 167 x 65 metres at Kweiseke hamlet, Kwendikwazu Village - Korogwe; and
- iv) Land measuring 120 x 100 metres at Tu-chang'ombe hamlet, Mwachalimo Village.

According to exhibit P4, out of these properties the petitioner is given the land at Sofu – Kibaha. The rest goes to the respondent. Further, exhibit P4 provides that custody and maintenance of the two issues are given to the petitioner with the respondent's right of visitation which is subject to giving adequate notice to the petitioner. The elder child, Ian can visit the

respondent and sleep over but not the younger one, Hilary. These terms of the agreement are adopted as part of this judgment.

In conclusion, the marriage between the parties is annulled. The land at Pangawe Village, Kweiseke hamlet and Tu - chang'ombe are given to the respondent. The petitioner gets the land at Sofu, Kibaha. The petitioner is given custody of the children. She shall also maintain them. The respondent can visit them subject to giving notice in good time to the petitioner. The elder child has a right of sleep over if he visits the respondent. This is not the case with the youngest son.

Consequently, the petition is hereby granted without orders as to costs.



I.C. Mugeta
I.C. MUGETA

JUDGE

16/06/2022

Court: - Judgement delivered in chambers by video conference in the presence of the petitioner and her advocate, Tibiita Muganga who are in Dar es Salaam and the respondent who is in Kibondo – Kigoma.

Sgd: I.C. MUGETA

JUDGE

16/06/2022