

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE HIGH COURT SUB- REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

(ORIGINAL JURISDICTION)

MATRIMONIAL CAUSE NO. 9 OF 2021

MERGITU EBBA..... PETITIONER

VERSUS

JULIUS MUHUMUZA.....RESPONDENT

JUDGMENT

26/1/2022 & 28/1/2022

I.C. MUGETA, J.

The petitioner and the respondent are Canada and Uganda nationals respectively. After they married in Canada in 2010, they relocated to Tanzania and have been living in Tanzania since November, 2010. Their marriage has been blessed with two issues, namely, Kakiza and Ejersa aged 10 and 7 years respectively. The petitioner seeks, among other orders, a divorce decree, custody and maintenance of the two children and division of the matrimonial assets which are structures in a shamba at

Mbozi, a bakery and a bar at Mbeya. The reasons for the reliefs sought per the petition includes adultery, violence, desertion and neglect. Service of the petition to the respondent proved futile resulting into order of service by publication which was effected through Nipashe and the Guardian newspapers of 25/1/2022. The respondent never responded to the publication so the case was heard in his absence.

The issues for my determination are three: -

- i. Whether the parties' marriage has irreparably broken down.*
- ii. If the first issue is answered in the positive, who should have the custody of the children.*
- iii. How should the children be maintained and the matrimonial properties divided?*

The evidence by the petitioner is that both of them worked for Henry Jackson Foundation in Mbeya and Dar es Salaam. However, the respondent was fired for a misconduct and later her contract was terminated too. Currently, both are unemployed and the respondent is not ready to move back to Canada. Due to the unemployment, they shall be unable to pay the school fees for the two children at the International School of Tanganyika which is USD 54,000 per annum which is due for payment end of this

month and of this month and the house monthly rent of USD 2,000. The petitioner has no work permit to further stay in Tanzania and she has no option other than to leave for Canada.

As indicated above the major relief sought is divorce. Other reliefs are consequential orders. Therefore, it is important to start with address the first issued which is based on allegation of adultery, violence desertion and neglect starting with the issue of adultery.

The evidence by the petitioner has narrated about the adulterous life of the respondent and that he has been telling lies about his past family status in Uganda where he left and has abandoned a woman he lived with and two children. One of them is a daughter who visited and stayed with them last year. That here in Tanzania the respondent has amorous relationship with other women, consequently, he has sired with Lisa a son called Jaden who is seven years old. It is my view that this evidence which is unchallenged is credible and in terms of section 107(2)(a) of the Law of Marriage Act [Cap. 29 R.E 2019], this is enough evidence to declare the parties' marriage as irreparably broken down because the parties' marriage is monogamous.

The evidence about desertion and violence is insufficient. While paragraph 8(iii) the petitioner avers that the respondent is not staying at home since 2019, in her evidence the petitioner testified to the effect that desertion started in December, 2021. That period is not sufficient to amount to desertion which ought to be willful and for a period of not less than three years per section 107 (2) (d) of the Law of Marriage Act. On violence, nothing serious was said other than that the respondent is abusive over phone and one night he broke their room's door to gain accesses after the petitioner locked herself therein. The evidence on neglect refers to failure to pay house rent and school fees. However, there is no evidence that the respondent does this out of lack of care but for his unemployment.

Besides adultery, another reason which warrants divorce is the parties' inability to agree on where to be domiciled after Tanzania. Both parties are foreigners who are unemployed and they are unable to meet family obligations like paying house rent and school fees. This unemployment disqualifies them to further stay in this country, therefore, it is a good idea that the petitioner should go back to her home place. However, if the respondent disagrees to go with her, there is no other option than her

leaving without him. This makes it impossible to maintain their marriage life. A divorce is the solution under the circumstances.

Therefore, based on the evidence of the petitioner about adultery life of the respondent and impossibility of living together in another country other than Tanzania, I find it just and reasonable to declare that the marriage between the parties has irreparably broken down. For the foregoing, I dissolve their marriage.

What about custody of the children? The children are currently under the custody of the petitioner. I had the opportunity to listen to them and hear their views about their future life without both parents. They expressed their discomfort about living with one parent. However, they said, should the unexpected happen that the parents have to live in separation, they choose to live with their mother in Canada for reasons which are unnecessary to reproduce here. This, and the fact that the father is absent to give his side of the story are sufficient reasons to grant custody to the petitioner.

On maintenance, the petitioner testified, and I agree, that she cannot push for such orders as there is a big chance that they shall be impossible to

enforce when she is in Canada and the respondent being untraceable. Therefore, I hold, the petitioner shall bear the burden to maintain them in the absence of the respondent. However, in case he surfaces, it is his duty to maintain the children in terms of their upkeeps, education and health care. He is allowed access to the children on arrangement with the petitioner.

I move to the division of the matrimonial assets. The parties have some properties herein Tanzania. These are structures in a rented farm at Mbozi and a bakery and a bar in Mbeya. The structures include, a house, a godown, a milling machine, a tractor and carpentry machines. The petitioner testified on her contribution on the construction of the mill house. Considering that level of her contribution in acquisition of these properties and the efforts she puts in taking care of the family, I order these properties to be sold and the proceeds be equally divided between the parties.

The petitioner also testified about their joint ownership of a bakery and a bar in Mbeya. However, she gave no evidence on her contribution in their acquisition which limits her contribution to doing domestic works. I order

the same to be distributed at 40% share to the petitioner and the respondent to retain 60% share in those properties.

To sum up, I have held that a divorce decree be issued, custody of the children is granted to the petitioner and the respondent is allowed access subject to arrangement by the petitioner. In absence of the respondent the petitioner to maintain the children without prejudice to the respondent's obligation to maintain them when he surfaces. Maintenance shall include general upkeep, education and health care. The structures in the farm at Mbozi shall be sold and the proceeds divided equally between the parties while the bakery and the bar at Mbeya shall be shared at 40% share to the petitioner and 60% share to the respondent. The rest of the prayers in the petition which are that the respondent provide air tickets for the petitioner and the children to Canada and damages for adultery with Lisa Siame are rejected. This is because there is no evidence that the petitioner can afford to pay for the same. However, costs for the same can be deducted from the respondent's share in the properties divided between them. On damages for adultery the same is untenable because Lisa was not joined to the case, therefore, she cannot be condemned unheard.

In the event, I allow the petition to the stated extent without orders as to costs.


I.C. MUGETA

JUDGE

28/1/2022

Court: Judgement delivered in chambers in the presence of the Petitioner and Dosca Mutabuzi advocate for the Petitioner, Respondent is absent.

Sgd: I.C. MUGETA

JUDGE

28/1/2022