

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

CIVIL APPEAL No. 21 OF 2020

*[Arising from Civil Appeal No 3 of 2020 of the District Court of Kilindi;
Originating from Civil Case No. 7 of 2020 of Songe Primary Court]*

BETWEEN

SALIMU RAMADHAN.....APPELLANT

Versus

ALLY SALIMU MATEBE.....RESPONDENT

JUDGMENT

MRUMA, J.

There was sufficient evidence to establish that the Appellant Salim Ramadhani and Mariam Abdallah Kidabu @ Mariam Ndaro were married according to Islamic rites in 2005. There was also undisputable evidence that the Appellant had extra marital relationship with the Respondent's wife before 2012 as a result of which the Appellant decided to give his wife a "talaq" in 2012. Finally it was established that the Appellant induced

On the other The Respondent hand gave evidence to the effect that he legally married Mariam Abdallah Kidabu @ Mariam Ndaro on 15th April 2020.

The learned trial magistrate found that on the evidence on record at the time the Respondent purports to have married Mariam Abdallah Kidabu, the marriage between Mariam and the Respondent herein was still subsisting. I do agree with this finding. The learned trial Magistrate was justified to conclude that this was a case of adultery and I would add that it is not only a case of adultery but also enticement as well.

"Talaq" in Islam is a divorce effected by the husband's enunciation of the word talaq or writing a word to that effect. There are three kinds of talaq. Talaq-e-ahasan, talaq-e-hassan and talaq-e-biddat. Talaq-e-ahsan is a single talaq by husband followed by a period of abstinence described as "iddat". The duration of abstinence "iddat" is ninety days or three menstrual cycles or three lunar months. If the couple resumes cohabitation or intimacy within the period of iddat, the pronouncement of divorce is treated as having being revoked. The evidence on record shows the couple resumed cohabitation one month after the said talaq. Therefore talaq is revocable and in this case it was revoked. Conversely at the time the Appellant was purporting to marry the Respondent's wife, the marriage between the Respondent and his wife Mariam Abdallah Kidabu @ Mariam Ndalo was still subsisting. It is difficult to imagine that the Appellant was not aware of the subsistence of that marriage. More so in this case in view of the fact that the two had previously been found committing adultery, in

consequence of which the Appellant was warned by the Respondent. It is therefore my finding like the finding of two courts below that the Respondent had cause of action against the Appellant.

Regarding proof of elements of tortious liability of adultery (ground 2), I agree with the lower courts findings that all elements were proved. I have conversed about the subsistence couples marriage throughout the Appellant's relationship with the Respondent's wife. By pleading that he had legally married the Respondent's wife the Appellant was in a way admitting that he had sexual intercourse with her. Having voluntary sexual intercourse with another man's wife is what constitutes adultery which is a civil wrong attracting liability to pay damages. Thus, the Appellant was correctly found liable for having sexual intercourse with the wife of the Respondent.

The appeal is dismissed in its entirety including the Appellant's liability to pay damages to the Respondent and the quantum of payable damages assessed by the trial court. Under the law damages for adultery or enticement is in the discretion of the court, and in the exercise of its discretion the court is obliged to pay due regard to any relevant custom of the community to which the parties belong, and in the question of adultery, to the question whether the husband and the adulterous wife were living together or apart at the time of the commission of the adultery. The parties in this case I do belong to one community "*Wanguu*" and all are professing Islam. As pointed out, it was both a case of enticement and adultery and in my view that is a circumstance which the

court can properly take into account when assessing the damages, I think that the damages that were awarded in this case, that is T.shs.3,000,000/=(Say Three million) only were reasonable in the circumstance of the case. In my view the award met the justice of this case. The Appellant shall pay costs of this case here and below.

Order accordingly.



A.R. Mruma,

Judge.



Dated this.....day of ^{4th} ~~February~~ ^{March} 2022.