

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(TEMEKE HIGH COURT SUB-REGISTRY)**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**MATRIMONIAL CAUSE NO. 11 OF 2022**

**EDINA JECKONIA HUMBO .....PETITIONER**

**VERSUS**

**SELEMANI YASSIN NGONYANI..... RESPONDENT**

**JUDGEMENT**

*14/09/2022 & 21/09/2022*

**I.C. MUGETA, J**

The issue for my determination are two:

- i. Whether the marriage between the parties has irreparably broken down.
- ii. Who should have the custody of the child?

The fact of the case are that the petitioner and the respondent married in 2009. They were blessed with a girl child now aged 13 years. The petitioner testified that their marriage has turned into a bed of thorn instead of roses due to the respondent's behaviour of adultery, cruelty by beating and using obscene language against her. The respondent denied those allegations. However, he does not oppose the petition for divorce. While each witness

*Mugeta*

is entitled to credence and ought to be believed I have no reason to disbelieve the petitioner that she has been beaten up by the respondent and his engagement in extra marital affairs. The respondent made general denial to these allegations. Adultery and cruelty are enough reasons for the grant of divorce under section 107 (2)(a) and (c) of the Law of Marriage Act [Cap 29 R.E 2019] (he LMA). I find and hold that the parties can no longer live together as husband and wife. I accordingly dissolve their marriage and grant divorce decree as prayed. The first issue is answered in the positive.

The petitioner also prayed for custody of the issue of marriage and the respondent has no objection provided that the petitioner who is a Christian should not take the child to church because she is a Moslem, her father's faith. I accordingly grant custody of the child to the petitioner on the said condition. The respondent shall have the right of visitation. The child who is at boarding school shall also be free to decide whether to stay with the mother or the father during vacations. The answer to the second issue is that custody of the child is given to the petitioner.

The consequent order is maintenance of the child. The petitioner prayed for Tshs. 300,000/= per month as maintenance for the child when she is on vacation. The respondent testified that he can provide Tshs. 100,000/= per



month. Since in terms of section 129 of the LMA the respondent ought to maintain the child for education, medication and other needs even when she is not staying with the petitioner, I believe Tshs. 100,000/= per month as her maintenance during vacation is sufficient to provide for her food. I take this view because it is admitted in evidence that the respondent has loans to settle by deduction from his salary. The income obtained from the loan was applied towards acquisition of the matrimonial assets.

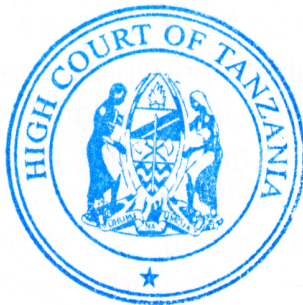
I move to the division of the assets.

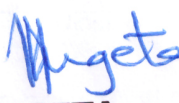
Division of matrimonial assets in this case is not as difficult as it is always the case. This is because before the trial commenced, the court facilitated the parties settlement on this issue in case divorce is granted. That is why no issue was framed about it. It was agreed that the petitioner shall get the matrimonial house located at Chamazi – Dovya and a plot at Mlamleni, Kongowe - Pwani Region bought in the name of Tayana. She shall also get half the value of the pharmacy at Chamazi - Dovya – Dar es Salaam.

On his part, the respondent shall get a one room house opposite to the matrimonial house at Chamazi - Dovya, unfinished house at Chamazi - Dovya, a plot at Mlamleni - Kongowe, a plot at Kisarawe 2 - Kigamboni – Dar es Salaam, a plot at Kibamba - Dar es Salaam, a motor vehicle T.817 DKG,

Toyota IST, half value of the value of the pharmacy at Chamazi - Dovya and the whole of the food shop at Chamazi - Dovya. I order the properties to be shared in the stated manner.

In conclusion, the petition is granted. Divorce decree is issued, custody of the child is given to the petitioner with the respondent right of visitation and stamping with her during holidays as the parents agree or as she chooses. The respondent is responsible for her maintenance including payment of Tshs.100,000/= per month when the child is with her mother during school holidays. Division of the matrimonial assets is as above described. No order as to costs.



  
**I.C. MUGETA**  
**JUDGE**  
**21/09/2022.**

**Court:** - Judgement delivered in chambers in the presence of the parties and John Msuya and Abdul Azizi, advocates for the petitioner and the respondent respectively.

**SGD: I.C. MUGETA**  
**JUDGE**  
**21/09/2022**