

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TEMEKE SUB-REGISTRY
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE**

MATRIMONIAL CAUSE NO. 10 OF 2021

VALERIAN MCHOME RASHID..... PETITIONER

VERSUS

SCHOLASTICA EDWARD MANDWA..... RESPONDENT

JUDGMENT

Date of last order: - 12/09/2022

Date of judgment: - 21/10/2022

OPIYO, J.

In this petition, one Valerian Mchome Rashid prays to this court for judgment and decree against the respondent as follows;

- a) The court's declaration that the marriage between the petitioner and the respondent has broken down irreparably.
- b) A decree for divorce
- c) Any other relief(s) this honourable court deems fit and just to grant.

On 25th April, 2022 the petitioner enjoying the representation of learned counsel Dominitian Rwegoshora, and the respondent who appearing in person in consensus framed two issues for determination as stipulated hereunder;

- 1) Whether the marriage between the petitioner and the respondent has irreparably broken.



2) What are the reliefs entitled to the parties?

Testifying in support of the petition Valerian Mchome Rashid, petitioner herein as PW1 stated that, they celebrated Christian marriage on 18th June 2016 and marriage certificate No. 0195827 was admitted was marked as **exhibit P1**. PW1 further stated that, after their marriage they lived at the government houses at Kigamboni and agreed to shift at Salasala after renovating respondent's house, but he is not intending to claim anything after the decree of divorce. According to his testimony, after 3 years of peaceful and harmony their marriage got sour as the respondent started coming home late and neglected her duties like washing, cooking and leaving the house without husband's permission. That, in the one incident she left and stayed for two weeks attending the priests meeting and upon inquiry her reply was that she is tired of the marriage.

PW1 further stated that, at the marriage conciliation board, the respondent insisted to be left alone as she has no child and that PW1 should take his child away. It came to worse when the respondent started denying him conjugal rights for a duration of 9 months, he stated. He concluded by stating that, their marriage was not blessed by any child. They also did not acquire any property jointly. He thus prayed for the decree of divorce as their marriage has broken down irreparably.

On her part, the respondent, Scholastica Edward Mandwa, (RW1) stated that, the petitioner was not staying at home as he would leave for months without her knowing his whereabouts. He also had bad habit or



tendency of watching pornography sent by her niece, one Pili who is also his girlfriend. The respondent further stated that, the petitioner is the one who denied her conjugal rights as he was always busy watching pornography until midnight and thereafter he would demand conjugal rights from her without sufficient preparations. She stated that due to his addiction to pornography at different times he wanted to rape almost all female relatives who were staying with them.

Respondent's further testimony is that, the petitioner was not providing for the family and when she claimed for maintenance she was beaten and sometimes the petitioner would leave home with the groceries she bought to the unknown. The respondent also stated that, basing on the circumstances, she realized that the no longer loved her, since, if he really loved her, he could not threaten to kill her, deny her conjugal rights or refuse to communicate with her and be cheating with another woman whom he have a child with. At the end she conceded to the petitioner's prayer for the decree of divorce to be issued as prayed.

I find this to be a straight forward petition as in consensus the parties' framed only two issues for determination and the respondent readily conceded to the petitioner's prayer. In determination of the issues framed, I will start directly with the first issue as to whether the marriage between the petitioner and the respondent has irreparably broken down? It is a common understanding that a marriage is a voluntary union between a man and a woman and it is contracted with the consent of the parties (**Section 9(1) of Law of Marriage Act, Cap 29, R.E 2019**). That means, the subsistence of the marriage will



also depend on the parties willingness to stay together. Court can hardly compel them to stay together. In the case of **Ahmed Said Kidevu v Sharifa Shamte (1989) T.L.R** it was held that;

*"No proceeding may be brought to compel a wife to live with her husband or a husband with his wife, but it shall be competent for a spouse who had been deserted to refer the matter to a Board. Marriage is a voluntary union of a man and a woman, and it is contracted with the consent of the parties. It is intended that the marriage will last for their joint lives of the parties. However, when difficulties arise in a marriage, and one spouse decides to live separately from the other, the court cannot compel them to live together. Parliament, in its wisdom, enacted section 140 of the Law of Marriage Act, which clearly provides that a court cannot compel one spouse to live with the other. **The only remedy to a spouse who has been deserted is to commence divorce or separation proceedings.**" (Emphasis is mine)*

It is also stated in the case of **R v R (2004) T.L.R 121** that in deciding whether or not a marriage has broken down, the court shall have regard to all relevant evidence regarding the conduct and circumstances of the parties. What is required of the petitioner is proving that there are some factors necessary to warrant divorce as stipulated in **section 107(1) and (2) of the Law of Marriage Act, Cap 29, R.E 2019.**

It is trite law that divorce is not an automatic right upon filing a petition, rather in order for a court to issue divorce any of the grounds proving that the marriage has broken down irreparably must be put forward

(section 107(2) of the law of Marriage Act (*supra*)). In order for a court to issue divorce any of the grounds set by section 107(2) of the law of Marriage Act (*supra*) must come into play. In the case at hand what is common between the parties is that both blame each other on denial of conjugal rights. The petitioner herein claims that the respondent denied him his conjugal rights more than 9 months, likewise the respondent claims that the petitioner was always busy watching pornography until late night and sometimes stayed for months away from home denying her conjugal rights. The denial of conjugal right to a party in marriage amounts to mental torture as the marriage has to be consummated and due to this section 107(2)(c) of the Law of Marriage Act (*supra*) come into play. Also the respondent alleged beatings and adultery on part of the appellant. These facts were not denied by the appellant as he never cross examined the respondent on the same. At the end of the day in this case the respondent also readily conceded to the issuance of divorce in her testimony, indicating she also had her enough share from their matrimonial misunderstanding. It is also on record that the parties no longer live together and no longer in love. All these put together shows that this marriage has irreparably broken down. It could not be served by the conciliation Board the parties attended before petitioning for divorce.

Section 101 of The Law of Marriage Act, (*supra*) requires a matter to be referred first to a Marriage Conciliation Board. In the case at hand there was Form No. 3 cited as annexure ANN -B and paragraph 12 of the petition states that, the matter was referred to conciliation board and on reply to the petition this paragraph was admitted. This court finds that, though form No. 3 was not tendered as evidence during the hearing but

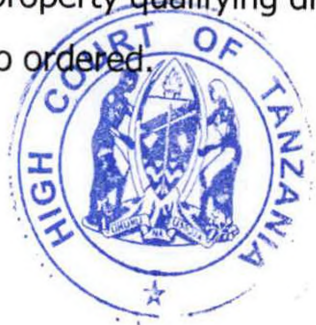


as it was not disputed it forms part of the pleadings hence this court concludes that this compliance was not overlooked. Thus, upon finding that this marriage has broken down irreparably, marriage is dissolve and divorce decree issued.

After issuance of divorce decree, what comes into play is the order of custody, maintenance, division of matrimonial properties, if any, and other reliefs, this allows us to sail to the second issue as to 'what relief are the parties entitled to?' Unfortunately, the marriage between the parties was not blessed with any child. Therefore, there is no issue of custody involved. Also there is no matters of division of matrimonial properties as there is none. In the petition especially on paragraph 6, the petitioner clearly stated that the house at Salasala is owned by the respondent and although he contributed to its improvement, he was not intending to claim his share (see also paragraph 8 of the petition). He maintained the same position in his testimony.

Having observed the above, I declare that the marriage between Valerian Mchome Rashid and Scholastica Edward Mandwa has broken down irreparably and hereby grant a decree of divorce. No orders as to custody or maintenance as the parties were not blessed with any issue of marriage. Also, no division of matrimonial properties as there is no joint property qualifying division.

It is so ordered



A handwritten signature in blue ink, appearing to be "M. P. Opiyo", is written over a horizontal line.

M. P. OPIYO,

JUDGE

21/10/2022