

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE HIGH COURT SUB-REGISTRY

(ONE STOP JUDICIAL CENTER)

AT TEMEKE

MATRIMONIAL CAUSE NO. 8 OF 2021

LUCIANA KIZWI ABDI @RUKIA ABDI KIZWI.....PETITIONER

VERSUS

XAVIER MASALU NDALAHWA..... RESPONDENT

Date of last order: 3/1/2022

Date of Ruling: 3/1/2022

RULING

N.R. MWASEBA, J.

This ruling is in respect of the Preliminary Objection raised by the respondent that the petition is bad to her for being instituted without being referred to the Marriage Conciliation Board as required by the Marriage Act.

When the matter was coming for mention on 3/1/2022 the counsel for the petitioner, Ms. Magreth Kissoka notified this court that she had been

served with the reply to the petition and found that there is a preliminary objection. So, she conceded by the objection and prayed for the petition to be struck out without costs.

In his reply, the respondent did not object the prayer of striking out the matter but he prayed for costs under **Section 87 of the Law of Marriage Act** which gives this court power to grant costs where the petitioner has failed to make full disclosure of relevant facts. That in her petition she said the matter was referred to marriage conciliation board while not. So, he has been sued with no reason and he has incurred costs.

Ms Kissoka learned counsel said it was a mistake not to attach Form No 3 but the facts are there as pleaded under paragraph 7 of the petition that they have attached it. She submits that she has not decided to waste the court's precious time by conceding with the preliminary objection.

It should be noted that granting costs in matrimonial proceedings is a discretion of the court but the same must be exercised judiciously. **Section 90 (1) of the Law of Marriage Act**, CAP 29 R.E 2019 stipulates as hereunder:

"Costs in matrimonial proceedings shall be in the discretion of the court:

Provided that, a woman shall not be ordered to pay the costs of her husband or former husband unless the court is satisfied that she has sufficient means of her own to make such an order reasonable."

I have gone through the pleadings, there is no dispute that the parties were husband and wife who contracted a Christian marriage as shown under marriage certificate attached to the petition as annexure "RAK-1". The petitioner's counsel has conceded to the preliminary objection without wasting the precious time of the court. It is pleaded under paragraph 7 that the certificate from the conciliation board has been attached, but actually it was not attached. It seems to be mistakenly forgotten to be attached as stated by the counsel for the petitioner. Taking into consideration the nature of this case I do not see any justification to grant costs.

Having so said, the preliminary objection has merit thus it is sustained. The petition is struck out and each party should bare its own costs.

It is so ordered

DATED at DAR ES SALAAM this 3rd day of January, 2022.



N.R. Mwaseba
N.R. MWASEBA

JUDGE

3/1/2022