

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MATRIMONIAL APPEAL NO. 02 OF 2021**

**(Originating from Matrimonial Cause No. 2 of 2021 at Songea District Court)**

**SOPHIA KYANDO .....APPELLANT**

**VERSUS**

**THOMAS MANJATI.....RESPONDENT**

**JUDGMENT**

08.02.2022 & 28.03.2022

**U. E. Madeha. J**

The Respondent, in the District Court, had filed a matrimonial cause against the Appellant whereby he had prayed for judgment and decree for divorce, division of matrimonial assets jointly acquired, and the custody of Children.

The background of the matter can be traced from the record of the trial Court. As a matter of fact, the Appellant and the Respondent contracted a Christian marriage on 5.10.1996, after cohabiting for more than eight (8) good years. The certificate of marriage was admitted by the Court as exhibit D1. From 2006, their matrimonial life turned sour to the extent that they

separated for thirteen (13) years respectively. While living together as husband and wife, they were blessed with four Children: Suzana Manjati, thirty-seven (37) years old; Ado Manjati, thirty-one (31) years old; Venance Manjati, twenty-nine (29) years old; and Thomas Manjati, twenty-two (22) years old. They lived a happy marriage life and acquired different properties up to 2006. Trouble started in paradise whereby they experienced frequent quarrels and fights. The Respondent averred that; the Appellant not only bewitched him by including unknown traditional medicine (herbs) into the Respondent's skin oil, telling lies against him but also humiliated him in public.

The Appellant denied the Respondent's herein allegation and averred that she encountered a health problem which was incurable by hospital medicines. As a result, she started to use herbals/traditional medicine which made the Respondent believe that she bewitched him. The Appellant further argued that the Respondent abandoned her together with their Children and he decided to contract another informal and invalid marriage with another woman known as Ms. Tuli Mwaipopo from 2006 to date. They referred their misunderstanding at Mji Mwema Marriage Conciliation Board but the Board failed to settle the dispute between the parties as the Appellant said he no

longer want to live with the Respondent. After a full trial in September, 28<sup>th</sup> 2021, the trial Court declared that the marriage between them was broken beyond repair, hence they were divorced from the date of the judgment. The Appellant received one house at Plot No. 202 and one-fourth of the value of the house at Ruhuwiko-Mbinga District, while the Respondent received one house at Plot No. 500 and Three-quarter of the value of the house in Ruhuwiko-Mbinga. Due to their Children being at the age of majority, the Court did not order for their custody. The Appellant was dissatisfied with the decision delivered by the trial District Court, she lodged this appeal on two grounds of complaints namely:

- 1. That, the trial Magistrates erred in law and facts to proceed with the matrimonial cause without being referred to the marriage Conciliatory Boards.*
- 2. That the trial Magistrate erred in law and facts to decide the matter in favour of the Respondent relies on the wishes of the Respondent without considering grounds for divorce.*

When the appeal was brought for hearing, the Appellant appeared in person, arguing for herself while the Respondent enjoyed the service of Mr. Dickson

Ndunguru, the learned Advocate. The Appellant argued all grounds of appeal together. She submitted that, she is against the divorce order granted by Songea District Court for the reason that, it will affect the marital status of their Children. They also vowed before the Catholic Church that they would not be separated till death. She questioned, why would they do part ways?

Furthermore, the Appellant told this Court that they were granted a divorce decree at Mbinga Primary Court. But the said decision was later nullified by Mbinga District Court for the failure to refer their dispute to the Marriage Conciliation Board as required by the law. Yet the Respondent filed a new matrimonial cause at Songea District Court with the same mistake.

In reply, the Counsel for the Respondent argued that the ground of appeal raised by the Appellant is meaningless and not genuine because before they filed for divorce, they went to Mji Mwema Marriage Conciliation Board where the Board failed to reconcile them, hence the case was filed at Songea District Court.

As for the second ground, Mr. Ndunguru submitted that the grounds/reasons for divorce are clearly set out on page 11 of the trial Court judgment. Thus;

they separated for thirteen (13) good years now, they did not speak the same language and they fought frequently.

In rejoinder, the Appellant insisted that this Court has to set aside the divorce decree delivered by the trial Court and order the Respondent to return at home.

Having carefully considered the arguments by the Appellant and the Counsel for the Respondent, I decided to deal with the grounds of appeal filed by the Appellant in seriatim, starting with the first ground that the trial Magistrate erred in law and facts to proceed with matrimonial cause without being referred to the Marriage Conciliation Board. Section 101 of the Law of Marriage Act, Cap 29 R. E. 2019 (The LMA) provides *inter alia* that; -

*"101. – No person shall petition for divorce unless he or she has first referred the matrimonial dispute or matter to a Board and the Board has certified that it has failed to reconcile the parties:"*

From the above-quoted provision of the law, the use of the word '**shall**' imply that, it is a mandatory requirement for the parties to refer their matrimonial dispute to the Marriage Conciliation Board before instituting the

petition to the Court of law unless there is an extraordinary circumstance(s) which render impracticable for the parties to refer their dispute to the Marriage Conciliation Board. Section 101 (a) to (e), provides the circumstances where the reference to the Board is impracticable. Section 106 (2) of the LMA insist on the issue of the certificate issued by the Marriage Conciliation Board, the petition has to be instituted within six months from the date when the certificate was issued. The same stated by the Court of Appeal in the case of **Yohana Balole v. Anna Benjamini Malongo, Civil Appeal No. 18/2020 CAT at Bukoba.**

From the record, the Appellant alleged that the trial Magistrate proceeded with the matrimonial cause without the matter being referred the matter to the Marriage Conciliation Board. I went through the pleading which was used to institute the matrimonial cause at the trial Court and discovered the following; paragraph nine (9) of the petition explains that their dispute was referred to the Marriage Conciliation Board and FORM Number Three (3) from the Marriage Conciliation Board was attached to prove the same (**P2**). Additionally, on page twelve (12) of the trial Court typed proceedings the Respondent tendered FORM Number Three (3) to support his evidence.

They referred their dispute to the Marriage Conciliation Board and it was admitted to the Court to form part of the Respondent's evidence. The Appellant did not object at all. On top of that, the said Certificate of Marriage Conciliation Board was issued within the same month when the petition of the decree was filed in Court. Therefore, I found the first issue being baseless, as it has no leg to stand.

Moreover, the Appellant on the second ground alleged that, the trial Magistrate erred in law and facts to decide the petition in favor of the Respondent and relied on the wishes of the Respondent without considering the grounds for divorce.

Additionally, Section nine (9) of the LMA defines; **Marriage as a voluntary union of a man and woman intended to last for their joint lives.**

Therefore, it is a voluntary union and not otherwise. As per the record, the Respondent has no intention to continue living with the Appellant for their joint lives. Adhering to the Appellant's prayer, if this Court will order the Respondent to re-unite with the Appellant, it will lead to the miscarriage of the law and contradict the provision of section 140 of the LMA which prohibit any proceedings which compel the spouse to live together. For easy reference section, 140 proves that; -

*"No proceedings 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 has been deserted to refer the matter to a Board."*

According to the quoted provision of the law, this Court cannot compel the Respondent to live with the Appellant but rather the Court will consider if the grounds for divorce raised by the Respondent met the requirement of the law. When going through page eleven (11) of the trial Court judgment, I discovered that the trial Magistrate explained that the Appellant and the Respondent were separated for almost thirteen (13) years which exceeds the time provided by the law under the provision of section 107 (3) of the LMA. Consequently, the marriage between the Appellant and the Respondent has broken down irreparably.

Apart from that, the parties personally averred that, before they institute this case, they referred their dispute to the Marriage Conciliation Board to solve their conflict but all was in vain. Section 107 (3) of the LMA provides that, the failure of the Marriage Conciliation Board to reconcile the parties can be the ground/evidence that the marriage is broken down beyond any repair.



Therefore, I have no reason to fault with the decision of the trial court. This appeal has no merit and is hereby dismissed. Each party has to bear his/her own costs. It is so ordered.

**DATED** and **DELIVERED** at **SONGEA** this 28<sup>th</sup> day of **March** 2022.



A handwritten signature in blue ink, appearing to read "U. E. Madeha", is written over a horizontal dotted line.

**U. E. MADEHA**  
**Judge**  
**28/03/2022**