

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

PC CIVIL APPEAL NO. 104 OF 1993

(From the decision of the District Court
of Temeke District at Kivukoni Front)
~~Original Civil~~ Appeal No. 62 of 1992
From Civil Case No. 67 of 1991 of the Temeke
Primary Court

ZAINABU YUSUFU MAMBA APPELLANT

versus

* ALLI A. LILACHO RESPONDENT

JUDGMENT

MACKANJA, J.

The appellant petitioned successfully for divorce before the Temeke Primary Court, Temeke District. The original case arose from alleged matrimonial offences which, according to the appellant/petitioner, had led to the marriage breaking down irreparably. She alleged before the trial court that the respondent was illtreating her by denying her necessary provisions of life; he frequently assaulted her without cause and that as a result of those assaults she had reported the incidents to the Police. She later withdrew the charges. All this was not denied and the trial Court found the allegations established.

On the other hand the respondent testified that the appellant had denied him conjugal rights continually for three years; that she is truant and wayward to the extent of having several extra-marital partners; that she is a frequent right-mover who, once, was beaten

up and left naked. All these allegations were also found proved and that there was no more love between the spouses. This is evidence of a broken marriage. The decision of the trial court that that marriage be dissolved was, in the circumstances, sound and there was ample evidence to support it.

The respondent was, however dissatisfied. And, so, he appealed before the District Court at Temeke. The learned District Magistrate observed, quite correctly, that courts of law have a duty to investigate and decide on the evidence before them whether or not the marriage in question has broken down irreparably before annulling it. If the learned trial magistrate had addressed his mind correctly on the ills which afflicted this unfortunate association he would not have faulted the decision of the trial Court. For as I have said, there was sufficient evidence which established an acrimonious relationship between the spouses which is not conducive to a healthy matrimony.

It has come to the notice of this Court that both courts below did not consider the issue of custody of the minor children of the marriage. The trial court should hear the parties and make orders which are appropriate in the circumstances.

For the reasons which I have given the appeal is allowed. The decision of the District Court and the order for separation which were made in its appellate jurisdiction are set aside. The judgment of the trial court is restored. The appellant shall have the costs.

Delivered.


J. M. MACKANJA

JUDGE

2/12/1993

Appellant: Present in person
Respondent: Absent.