

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

P.C. CIVIL APPEAL NO. 63 OF 2004

***(From the decision of the District Court of Uianga
Civil Appeal No.24 of 2003 Mr. Mtanda SDM)***

DOSANTUS UYALOAPPELLANT

VERSUS

ZAINA MASOMBOLA.....RESPONDENT

J U D G M E N T

A.Shangwa,J.

The Appellant Dosantus Uyalo is hereby appealing against the decision of the District Court of Ulanga at Mahenge in Civil Appeal No. 24 of 2003 which originated from Matrimonial cause No.8 of 2003 which was instituted by the Respondent Zaina Masombola in the Primary Court of Vigoi.

In his petition of appeal, the Appellant has raised two grounds namely:

1. That the District Court erred in law and in fact in holding that there was marriage between the parties, which could be dissolved.
2. That the District Court erred in law in ordering that there are properties which were jointly acquired, which should be divided equally.

In its judgment, the Primary Court of Vigoi found that there was a marriage between the parties because of having lived together as husband and wife for more than two years and that their marriage has broken down irreparably. Upon the said finding, the Primary Court of Vigoi dissolved their marriage and ordered that the properties which were acquired by them during the subsistence of their marriage

should be divided equally. The District Court of Ulanga upheld the decision of the Primary Court of Vigoi.

There are two issues which this Court is required to determine in this appeal. The first one is whether or not there was marriage between the parties and if so whether their marriage has broken down irreparably. The second one is whether or not there are matrimonial properties which have to be divided equally between the parties following the breakdown of their marriage.

From the trial Court's record, I have gathered that the Appellant and the Respondent are both Christians. They started living together from 1992. In 1993, they got their first child who later died. In 1996, they got another child who is still alive. In 1999, the Appellant fell in love with another woman which sparked off a quarrel between them.

In 2000, the Appellant deserted the Respondent. He left her in the matrimonial home with their child and went to live with the aforementioned woman.

The Respondent reported the matrimonial difficulty to her father Cosmas Makemba. On 4/1/2003, Cosmas Makemba convened a family meeting. The Appellant was called to that meeting. Efforts to reconcile the parties failed. Thereafter, the Respondent referred the matter to the Marriage Conciliation Board which tried to reconcile the parties but in vain.

The Appellant is a business man who owns some properties namely : Four grinding machines, one sawing machine, five houses four of them are located at Lupiro area and another one at Mtimbira area, one Shamba with Coconut and Orange trees and a wholesale shop.

In my opinion, although the Appellant and the Respondent never went through a formal marriage of any sort, there is evidence to show that both of them lived together as wife and husband from 1992 to 2000 which is a period of about eight years. During that period, they were blessed with two children. The Respondent's relatives knew that she was living with the Appellant as wife and husband. I have no doubt therefore that both of them were duly married within the provisions of S.160 (1) of the Law of Marriage Act, 1971 which provides as follows:

" 160 (1) where it is proved that a man and woman have lived together for two years or more, in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married".

The Appellant's claim that he merely lived with the Respondent for the whole period of about eight years as his concubine is not supported by the facts. For this reason , I hold that both the Primary Court and the District Court were legally justified in holding that both parties were married to each other.

Due to the fact that the Appellant deserted the Respondent in favour of another woman, it was proper for the Primary Court to dissolve their marriage which appeared to have broken down irreparably.

With regard to the question as to whether or not there are matrimonial properties which have to be divided equally between the parties, I wish to state that there are plenty of them. As earlier mentioned, these properties include houses and machines. From the record of the trial Court, it is not

quite clear as to how much efforts were contributed by the Respondent in acquiring those properties. Therefore, instead of dividing them equally, the Respondent should get one house in which she is living with their child and two grinding machines. In the final analysis, I do allow this appeal to that extent only and order that each party should bear its own costs.


A. Shangwa

JUDGE

30/11/2005

Delivered in Court this 30th day of November, 2005.


A. Shangwa

JUDGE

30/11/2005

ADVOCATES.

1. Dominic Kashumbugu and Co; Advocates for the Appellant.
2. Tanzania Women Lawyers Association (TAWLA) for the Respondent.