

**IN THE HIGH COURT OF TANZANIA  
TEMEKE SUB-REGISTRY  
(ONE STOP JUDICIAL CENTRE)  
AT TEMEKE  
MATRIMONIAL CAUSE NO. 17 OF 2022**

**LAURA PROSPER TILLYA .....PETITIONER**

**VERSUS**

**STANLEY JOSEPH STANLEY .....RESPONDENT**

**JUDGMENT**

*Date of last order: 31/03/2023*

*Date of Ruling: 31/05/2023*

**OMARI, J.**

The parties herein were married in the Christian form on 01 June, 2013. Their union has been blessed with two children both of whom are under 18. Problems crept into their marriage and they have been living separately for a period of six years. On 26<sup>th</sup> September, 2022 the Petitioner filed a Petition for Divorce to which the Respondent filed an Answer to the Petition which was then followed by a Reply to the Answer from the Petitioner. When this Court called the matter for hearing on 31 March, 2023 the parties through their advocates informed this Court that, after taking into account the issues framed and agreed upon, they are not at issue and have agreed, through a Deed of Settlement filed on 22

March, 2023 to an amicable settlement on custody of the children of the marriage as well as their maintenance and the distribution of matrimonial assets. Thus, prayed for this Court to record and adopt the said Deed and issue a judgment per its terms.

Before going to the terms of the Deed, I find it imperative to state that this court in **Joseph Warioba Butiku v. Perucy Mugunda Butiku** (1987) TLR 1, held:

*'where the parties have agreed on sufficient issues of fact and law raised in their pleadings, the court may pronounce judgment and order accordingly'*

Having cited the above case, I am also alive to the truth that in our jurisdiction there is no such thing as mutual consent divorce or consent divorce in the manner such kind of divorce(s) exist and is practiced in other jurisdictions. In our jurisdiction a court is duty bound as per the provisions of section 108 of the Law of Marriage Act CAP 29 RE 2019 (the LMA) to among other things consider whether the breakdown of the marriage is irreparable. The said court is to be guided by provisions section 107 of the LMA which provides for evidence that the marriage has broken down. Section 107 (2)(f) of the LMA provides that,

voluntary or separation by decree of the Court, where it has continued for at least 3 years is evidence that a marriage has broken down. In the present case, the parties have been separated for six years. In addition to their conduct and circumstances which can clearly be seen in their pleadings their marriage is broken down.

It is my considered view that the requirements of section 107 of the LMA are met, since neither of parties are contesting this and they have mutually agreed on the custody of the children of marriage, maintenance and division of their matrimonial assets through a Deed of Settlement, then I see no reason to disturb their agreement. In their agreement the parties have also mutually agreed that one of their properties, that is a Plot No. 70 in Lumala, Mwanza shall be given to their children under the guardianship of the Petitioner, Laura Prosper Tillya who shall in cooperation with the Respondent transfer the same to the children as per the requirements of the law. I see no fault with this since it is the parties' property and they have agreed to proceed with it in that manner.

Accordingly, I pronounce the marriage between the parties as having irreparably broken down. Adopting the parties Deed of Settlement, I proceed to distribute the matrimonial assets as follows:

- i. The Respondent shall pay the Petitioner TZS 13,500,000/= and retain the Plot at Ibanda, Mwanza. This is to be done before 31 December, 2023.
- ii. The residential plot at Nyamuhongolo and the beach plot in Luchebele be granted to the Petitioner.

The parties have also agreed on the custody of the children. Taking into account their agreement, I order that:

- i) The two children be placed under the custody of their mother; the Petitioner, Laura Prosper Tillya.
- ii) Their father; the Respondent, Stanley Joseph Stanley to have right of access and visitation provided he gives prior notice.
- iii) The children will spend school holidays with the parents in a rotational manner.

The parties have also agreed to maintenance of the children. Adopting their agreement, I order as follows:

- i) Petitioner to continue covering for medical cost and health care of the children through her medical insurance cover. Any medical costs

not covered by the health insurance to be shared between the parties.

- ii) The Respondent to be responsible for school fees and transport for the children and the same to be paid directly to the respective school(s) and or service provider(s).
- iii) The Petitioner shall be responsible for the upkeep of the children including house rent, maid services, utilities, food and entertainment for as long as the children are residing with her.

In the event; the Petition is hereby granted. Consequently, the marriage is hereby dissolved, divorce decree to issue. This being a matrimonial matter; I make no orders as to costs.



  
**A.A. OMARI**

**JUDGE**

**31/05/2023**

Judgment delivered and dated 31<sup>st</sup> day of May, 2023.

  
**A.A. OMARI**

**JUDGE**

**31/05/2023**