

her spcu. Aee · If such inci" ent s occur - an4 a person twice asaaul t ' his Gr har spcusa - I ...io not think that that alone woul_-'l be -suf~icient to justify a reasonable tribunal. to conclu..., e---tha. t the marriage vous ha,ve been torn apart beyon-" repair. A narriage bon~ or contract (for that matter)... samti ty as ±t is shoul ~ not be set asi ~ a ligh:tly;-in the~absence of evi~enoe that the same has foun.:t ercl bayon~ repair". While I entirely agree Wi tl,1 the l>istrict Magistrate that a marriage bon~ shoul .:i not be set a.si ..:ie lightly, I a.m..unaple to slaa..!~ his VieW that the primary court stra.yo 4 into an er:ro-r •iii hol ~ing, as i-t ..,i 4 1 that the appellant ha.:t esta.blishe.:i that she ha.:t be.en subjecte-'I to-violence on „_•• three occastins. The primary oourt ta fif:r1 ing was foun 4 e-'I upon the evi-lenco of· the appeP 3.llt as corroooratert by the teatimocy of Tha4 eyo Mkoi, „,; J,; a Church· Counoillor~ who tol 4 the trial court-that- the. ~pon""ent a~1Ilii..tta"" before the Church _C.ounoil to have assaul te"" the appellant on three ;;; I • . . , . occasions• ! also ;iisagree with the l>istrict M.:lgistra_,te on his finaing that thepartie~• .mirr:Lage has not irreparably broken ""own. There oan be no ~oubt that at ·least on two of the three occasi.ons the a.seaul ts were serious ones. One of thoe~ occasions was.referre~ to by a member of a locai Reconciliation .:Boa.r, Afom.so Shauri. The witness tol .:i the trial court this,: . 11 Nakumbtlka ..m.:i ai n4 lye . al iyekuja. kushtaki kwamba amepigwa na Dwana ·wake (m,.,,aiwa). :Bwa.na wake.... akaitwa akaja ha:po ak.a.kana kwamba l;lakumpiga ika.bi'l i huyu m4 ai a.pate barua aja kwenye hosP,i tali ali vyokuja a.kachunguzwa aka.onek:a.na alipata naumi'Vil. kwenye mkoho W-cl. ku.lia na alivimba kwenye Be.g-a na jicho la-mkono wa. kulia lilikuwai lek:t.m u n.:iipo 4 hapo a.ka.kubali m-"aiwa kwa.mba kweli alimpiga nfai•• •" The secon"" occasion was when; ac4o:i-:iing to .the appellantis ert""ence (which was not ch<:llenge~ on the point),• :t;he a.ssaul t was perpetrate,:i when the a_ppellarrb was nine months pregnant,. -In .Jl'f/' opinion, the :primary court was right,. when these assaults are co:nsi.:iare4 in the light of the general a.tmospher~--prevail±ng at the natrimonial home {.iqt!lOl.'i be"" by the appellant in he~ evir1enoe~~ to a limite4 extent a~nri.ttc~ by the respon4 ent),_to _ ho1 4 t as it 4 i;1 , that the partiesi marriage ha.:i irreparably broken .:iown~ The ill-t~eatment whica the respon.:ient h~s been subjecting the appellant to--oa.nnot, ~n nzy- oonsi 4 ere~ opinionr be 4 escribo.:i. as the reasonable wea.r an.:i taai., of ma.rrrie 4 life~ The law .:i9es not expect a. wife to ·put _up with the kin.:i of-ill-treatment the respon 4 ent has been subjecting the appellant ." to, I woul,, allow the a.:ppeal. •

- The appeal is allowe 4 1 the ~ecisi.on of the -"istriot oourt is recalleA an4 ~hat of the primary court restore.:i • • The appellant . . will have her costs in this Court as well as in tho two courts below. :S. A~ SA:MATTA ""i ;, ,,, ,,, ,11 •• I ' t' • ' 4 J ORDER; It is. .orlererl that this ju:=igm@t be~~~\o, the. l>ist.rici ' ~ra:te., llho :i.,s ha:r'elU ~:i:r~e., to ,reali 'the.~ ~-th~~_pa.rties• DODOMA i5e9~1987

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