

TANZANIA / JUDGMENT

elisafani moses sawe vs rahab e sawe 2010 tzhc 429 18 august 2010

COURT
TZHCDECIDED
18 August 2010

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IN THE HIGH COURT OF TANZANIA AT PAR ES SALAAM MATRIMONIAL CAUSE NO. 2 OF 2002
ELISAFANI MOSES S A W E PETITIONER VERSUS RAHAB E. S A W
E RESPONDENT f _ _ Date (of last order -18/6/2010 Date'of Ruling - 18/8/2010
EXPARTE JUDGMENT Shangwa, J.: On 25th October, 2005, this Court dissolved the parties
marriage on grounds that it had broken down irreparably. There remained the issue of division of
matrimonial assets i.e house No.572 Mbezi juu plus cars and households. Also there remained the
issue of custody of two children namely Moses and Valentina who are in the custody of the
Respondent. The Respondent appeared in Court for the last time on 9.2.2009 and the matter was
fixed for hearing on 15.4.2009. On that date, she did not appear in Court. So, the matter was
adjourned for hearing on 25.5.2009 with an order that she should be notified to appear but she
did not appear on that date. The matter continued to be adjourned until 26.3.2010 when Mr
Rweyongeza for the Petitioner stated that the Respondent had lost interest in the matter and
requested the Court to proceed in her absence, and prayed to prove the matter by affidavit. I
granted his prayer and ordered that he should file the affidavit on 16.4.2010, and it was so done.
This affidavit was sworn by the petitioner Elisafani Moses Sawe (Mbise). With regard to the
matrimonial assets, the petitioner avers at paragraph 9 of his affidavit that there are no cars and
household items which were acquired jointly as alleged by the Respondent in her answer to
amended petition for distribution between him and her. At paragraph 10 of his affidavit, the
petitioner avers that there is only one house which he built from the proceeds of his private
business before he married the Respondent. With regard to the custody of children, the
petitioner avers at paragraph 13 of his affidavit that they were blessed with two children namely
Moses Charles Sawe and Valentina Charles Sawe. At paragraphs 14 and 15 respectively, the
petitioner avers that the Respondent has hidden his two children whom he has not seen for a
long time something which has caused him to suffer mental torture and that it will be in the
welfare of both children to be placed in his custody. Having considered the petitioner's
averments in his affidavit, I am convinced that the Respondent did not contribute anything in the
acquisition of house No.572 Mbezi juu except that it was built by the Petitioner through his own
money and action plans. Also, I am convinced that the cars and households were not acquired by
the parties through their joint efforts during the subsistence of their marriage. The Petitioner
who married the Respondent in 1997 when they contracted a Christian Marriage at Tabata

Lutheran Church bought those items by using his own money for his family use. I cannot therefore pass any order for sharing the same between them. With respect to the Petitioner's averments concerning the two children in issue, I think that it is now the right time that they should be placed in his custody. Moses who was born in 1998 is now about 12 years old. Valentina who was born in 2000 is now about 11 years old. This means that these children are old enough and they can live with their father (Petitioner) comfortably. The Petitioner has sufficient means to care for them until they reach the age of majority. The Respondent who has for so long been denying the petitioner to visit them or have access to them should hand them over to him immediately. It is so ordered. Thus, I enter judgment in favour of the Petitioner. Each Party to bear its own costs. A. Shangwa JUDGE 18.8.2010 Delivered in open Court this 18th day of August, 2010 in the presence of the Petitioner and in the absence of the Respondent. 18.8.2010

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