

TANZANIA / JUDGMENT

19950307 TZHC Dar es Salaam

COURT
TZHCDECIDED
7 March 1995

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, ,,:LN THE HIGH COUR'I· O:F' TJUJZANIA . AT DAR ES SALAAM PC CIVIL AP11 EAI, NO. 127 OF 1994 (From the decision of the Dist~ict Court of Temeka at KJ.vuv~1·1·1 Z,~o.,,t 1·n 1;~v.;.1.· A',.,,.,, 1 no ·],': ~i~ 1993 .. \..U - J.. ~L . ..,~.,, J... 0 _;;.;:'C(.,i. _.,, _...._ V Original Civil Case Iio. 2:~·6 of l':392 of Temeke ·Primary Court. YUSUFU ALLY ••0••0000000000eOOOOOCGO O O •0 APPELLAN'T' versus AFISWA ALLY •••o••eoo•o•ooooooo~oo••~• DEFENDANT

JUDGMENT

MA.INA, J. In a pr:~tj_ tion for divorce filed by the respondent, . Afiswa Ally, at T0meke primary court, the petition was dismissed for lack of sufficient evidence to dissolve the marriage. T·he I>? spondent appealed to the district coμ.rt which held that there was sufficient evidE:mce to dissolve the marriage, and a~~ordinc:ly granted. a decree of divorce. The appellant Yusuf Ally was dissatisfied, and he is appealing. The parties were married to ea0h other in 1985 and they separated in 1988. They resumed cohabitation briefly :i.,n 1990 and separated again. There were frequent quarrels f between them, and the main problem according to the respondent and her two witnesses, was the failure by the appellant to provide maintenance. Since 1988 the respondent lived with her parents exc0pt for a few days in 1990 when she returned to the matrimonial home at the appellant's request. There. was also undisputed evidence that the appellant had issued one 11 talak 11 • in-accordance with Islamic law. The appellant had'always insisted _that the-respondent should go baek to him, but sho has str::ingly refused to rGturn to the matri- monial home~ The appellant admits ths, t ho issued one II talak 11 to~.: the respondent in 1991 but he wanted her to return to 2 him. She has always refused to return to him. He also denied the allegation that he wilfully refused to provide ~ maintenance. The district court found as a fact that the parties cannot live together peacefullyo I agree. Since 1988 they have beon liv.ing separately and the r.espondent has been staying with her·parents. Furthermore, the appellant issued "talak" in accordance with Islamic law, thus terminat- ing the marriage. His action amounts to the irrGpara.blo \ breakdown of ·'C.:hc marriag0 under section 1C70jof the Law of Marriage Act 1971. There is the additioTI~l cr~untl that the appellant has· not provided ~aintenance tc the respondent ~nd the children of the marriag00 The respondc:nlt left the matrimonial home due to tho husbanc1. 1 s fa.ilure to provide r:laintenance. She was forced by circumstancos to lea-vo the matrimonial home. All these factors render tlrn rn2.r:ri2.go tetwee:r:i the parties irreconcilable, and so the district magistrate properly held that the

raarriage has irreparably broken down. The decree of divorce was properly granted by the district court. I cay just point out that the court does not have the \, \ power under the law to order a sponse to return to the matrimonial hc-1:10, and this is provided in sedtion 140 of the Law of i'Is. rri::i,ge Act. Tho appeal is dj.smissc~ with costso W. J. MAINA JUDGE Dar es Salaam 7th·March 1995 · Appellant present Respondent pre.sent. i ,, ' ,'

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