

IN THE HIGH COURT OF TANZANIA**AT DAR ES SALAAM****PC.CIVIL APPEAL NO. 35 OF 2005****IBRAHIM MLOWE.....APPELLANT****VERSUS****DORTHEA ANSELIM.....RESPONDENT***Date of last Order 10/10/2006**Date of Judgment 7/12/2006***JUDGEMENT****A.R.MANENTO,JK**

In this second appeal, the appellant is alleging to be aggrieved by the decision of the district appellate court. Before I proceed with the judgment, I find it proper to briefly give the facts of the case.

The appellant had instituted a matrimonial proceedings at Temeke Primary Court. In his petition for divorce, he prayed for the dissolution of their marriage and division of their matrimonial property, namely a house situated at a police called Yombo. Though they have one child, he was not interested in its custody. After hearing the petition, the primary court came with a conclusion that there was neither a marriage between the appellant and the respondent nor was there any jointly built house between the appellant and the respondent. The petition was dismissed. On

appeal to the Temeke District Court, the appeal was dismissed. It was ruled that there was not even any presumption of marriage between the two. The appellant had alleged that they had contracted a customary marriage, a fact which lacked any evidence. It was just a mere assertion of marriage, which the court rightly rejected to consider in the absence of any evidence. The appeal was dismissed hence this second appeal.

In his first ground of appeal, the appellant said that the appellate district magistrate erred both in fact and in law for not holding that the appellant and the respondent had contracted a customary marriage. In his submissions he contended that he had gone to the respondents parents with two unnamed elders being a woman and a man where they paid a goat and two tins of alcohol. He never mentioned any of those two persons before the trial court to substantiate his allegations. Not only that, but the people who lived with the respondent never recognized him as a husband of the respondent. On the evidence in record and the submission before this court, no reasonable person would hold otherwise than what the two subordinate courts had held. There was no customary marriage between the appellant and the respondent nor could it have been said that their cohabitation have led to the presumption of marriage among the two.

Long duration of stay between man and a woman does not entitle parties to acquire the status of married couples. The couples must acquire a reputation of married couples from the people who are living near to them. All the witnesses other than the appellant himself never recognized him as a husband of the respondent. On those reasons, the appellate district magistrate was right to hold that there was no marriage between the appellant and the respondent. Therefore, ground number one of the petition of appeal is dismissed.

The second ground of the petition of appeal is meaningless because, though the house in issue is alleged to bear two numbers, yet it is the same house. The third ground is that the respondent is jobless, so she could not have money to build such a house. On his submissions, the appellant submitted that they cohabited way back before 1998 when they vacated to the home in issue and that he was/is a driver. He had been driving Scandinavian buses. On the other hand, the respondent submitted that she was a business woman, buying plastic materials from Mombasa and sold then in whole sale at Dar es Salaam. After the introduction of the VAT ie value added tax, she found the business not paying. She engaged herself with buying of maize at Korogwe. That is the place he met with the appellant who had no specific motor vehicle to drive. They started having love relationship and when the appellant came to his relatives in Dar es Salaam, they met and further continued with their love affairs. She begotten a child. Then she shifted from maize

business to timber business. She had, to my satisfaction explained as to how she got the money to build a house. While doing those businesses, she bought the plot in the year 1997/8 for shs. 700,000/=.

The purchase was witnessed by DW2 George Mami DW3 Optati Peter had accompanied the respondent to Yombo where they bought the plot where a house was slowly build by the respondent. The respondent occupied the house in the year 2003.

Unfortunately, the appellant had never narrated on how the plot was acquired, and the house was built. He only said that he had been giving the respondent some money to buy the building materials and supervised the building of the house as he was always an Safari.

To start with, the appellant and the respondent never married. If they lived as concubines and the appellant contributed towards the building of the house in issue, it could never be termed as matrimonial property. He was just giving the respondent some presents as a reciprocal for the love making and nothing more. The respondent did satisfy the subordinate court on how she built the house and I am also further satisfied that the respondent had been doing some business from which she got some money to build the house. The house is therefore the property of the respondent.

Having said so, I hereby dismiss the appeal with costs to the respondent.


A.R. Manento JK
22/11/2006

Coram: A.R. Manento JK

Appellant – Present in person

Respondent – Present in person

CC: Kalage.

Comit: The judgment is read in the produce of the parties today,
7/12/2006

Manento, J.K
7/12/2006