

IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT VUGA

CIVIL CASE NO. 71 OF 2016

MARGARETH KATE KALEZA PETITIONER

VERSUS

SAMWEL JULIUS MKWAYA RESPONDENT

JUDGMENT

BEFORE : HON. ABDUL-HAKIM A. ISSA, J

This petition was filed by Margareth Kate Kaleza, the Petitioner against Samwel Julius Mkwaya, the Respondent. The Background to this petition is that the Petitioner and the Respondent contracted a civil marriage before the Office of the Regional Commissioner of Urban West Region of Zanzibar on 14th February 2015. A marriage certificate was produced to that effect. But during the pendency of their marriage the Petitioner discovered that the Respondent had sexual relationship with the mother of the Petitioner, and the said mother confirmed about that relationship. Therefore, the Petitioner approached this Court praying for nullification of her marriage.

The Respondent was served by the petition and was summoned to appear before the Court, but he refused to appear and the Court heard the petition ex parte. The Petitioner submitted to the Court that she brought this application asking the Court to give her a divorce. The reason for asking for a divorce is that her husband, the Respondent before marrying her had relation with her mother and she was not aware of that relationship. Further, her husband has shown disrespect to the family of the Petitioner, and he has been stopping her from seeing her family and her children. He has also barred her from participating in family activities as well as social activities. The Petitioner submitted further that she was active in church choir

and was teaching children in the Sunday school, but the Respondent has stopped her from all these activities, and she can no longer tolerate that attitude. The Petitioner added that her marriage did not involve her parents and after she realised the relationship between her mother and her husband she felt she should go back to her parents. She prayed that she should be given divorce and she should be allowed to go to her house and collect her personal belongings.

There is only one question for determination in this petition, and this is whether the Petitioner has advanced sufficient grounds for this Court to nullify her marriage and gave her a divorce. The issue of marriage and divorce for the Christian community in Zanzibar is governed by two legislations, namely: the Matrimonial Decree, Cap. 68 of Zanzibar Revised Law, 1934 and the Native Christian Divorce Decree, Cap. 70 of Zanzibar Revised Law, 1934. Both these legislations have almost similar provisions regarding nullification of marriage. Section 7 and 8 of the Matrimonial Decree provides:

"7. Any husband or wife may present a petition to the High Court praying that his or her marriage may be declared null and void.

8. A decree of nullity of marriage may be made on any of the following grounds: –

- a. That the respondent was impotent at the time of the marriage and at the time of the institution of the suit;***
- b. That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;***
- c. That either party was a lunatic or idiot at the time of marriage;***
- d. That the former husband or wife of either party was living at the time of marriage, and the marriage with such former husband or wife was then in force.***

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud".

The Native Christian Divorce Decree has almost similar provisions in section 12 and 13 as follows:

"12. A husband or wife may present a petition to the High Court praying that his or her marriage may be declared null and void.

13. The following are the grounds on which a decree of nullity of marriage may be made –

- a) That the respondent was permanently impotent at the time of the marriage;**
- b) That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;**
- c) That either party was a lunatic or idiot at the time of the marriage;**
- d) That the former husband or wife of either party was living at the time of marriage, and the marriage with such former husband or wife was then in force.**
- e) That the consent of either party to the marriage was obtained by force or fraud.**

(2) If the Court finds that the petitioner's case has been proved it shall pronounce a decree nisi declaring the marriage to be null and void.

After careful examination of the above provisions from the two legislations, and after considering the submission made by the Petitioner it is clear that the Respondent had sexual relation with the mother of the Petitioner and the Petitioner was not aware of that truth when she entered into marriage. But there is no doubt that the Respondent was aware of this truth and he hides it from the Petitioner. Therefore, this Court is of the view that fraud has been committed by the Respondent in

obtaining the consent of the Petitioner. This explains why this petition was brought. The Petitioner has learned the truth and she can no longer continue with that marriage. This ground of nullification is covered by the proviso of section 8 of Matrimonial Decree, and section 13 (e) of the Native Christian Divorce Decree.

Therefore, this Court satisfied that this ground has been proved and it is hereby declaring that the marriage between Petitioner and Respondent is null and void. A divorce should be issued to the Petitioner and she should collect all her personal belonging from the Respondent.

It is so ordered.

(Sgd) ABDUL-HAKIM A. ISSA

JUDGE

12/4/2017

COURT

This judgment was delivered in Chambers on this 12.14.2017 in the presence of Petitioner, Magreth Kaleza and in the absence of Respondent, Samwel Julius Mkwaya.

(Sgd) ABDUL-HAKIM A. ISSA

JUDGE

12/4/2017

COURT

The right of appeal has been explained.

(Sgd) ABDUL-HAKIM A. ISSA

JUDGE

12/4/2017

I Certify that this copy is true from the original.



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YESAYA KAYANGE
DEPUTY REGISTRAR
HIGH COURT – ZANZIBAR



/HALLY/