

A Quest for Dissolution of Marriage and its Necessitates in Tanzania

Saphy Lal Bullu*

Abstract

This article meant to talk about the dissolution of marriage and the grounds for it. In law, to dissolve a marriage, the law of marriage provides the principles to be observed; and that observation based on the regulations set up by the court once is satisfied and prove the conduct of the responded which lead to the irrepealably breakdown of the man and wife. Additional to that, the author anticipates presenting some of the conditions for which a divorce is granted, defences which are applied against the petition for divorce, and the consequences therein. In this clause, a writer intends to anticipate the prospect of dissolution of marriage (Divorce) which in Tanzania is based on one principle i.e. breakdown of union. This principle basically implies that, for a decree of dissolution of marriage to be issued, the court must be satisfied that the union has stopped down with no hope of it being recovered.

Keywords: Marriage, Divorce, Dissolution of Marriage, Irreparable Breakdown.

INTRODUCTION

Marriage is a mutual agreement entered by men and women who are ready to establish their matrimonial rights and obligation as one [1]. Various authors, including Wimalasena [2] define marriage as a union between men and women with similar intention. Despite of having various cultures and religion, the significance of marriage remains the same as a marriage between parties who make a partner relationship and involves duties and obligations of the parties. Still, sometimes a marriage can come to an end and the parties to that marriage have a duty to prove before the court desirable issues which lead the irreparable breakdown of the so called marriage in order for the court to grant a divorce [3]; At this stage, the court should consider the grounds which provide a chance for a marriage to be broken, and these including adultery, insanity, desertion, cruelty, and non-maintenance of the spouse.

DISSOLUTION OF MARRIAGE AND ITS PERCEPTION

A marriage is dissolved through divorce [4], which is granted by the court with jurisdiction [5]. In simple language, dissolution of marriage can be taken as a legal termination of spouse ordered by a court with intention to freely one part of that union [6]. In Tanzania, the dissolution of marriage can be entertained by the court of jurisdiction before the expiration of two (2) years from the date of union [7]. Once a spouse wants to apply for a divorce, that person has to petition for it with convincing grounds that marriage has broken down irreparably [8]. The endurance of marriage depends on the funding offered by the parties to a union [9]; And at one time there is no more support between parts of that marriage with many quarrels, and the parties fail to repeal the matters in between; that union should be declared as

*Author for Correspondence

Saphy Lal Bullu
E-mail: saphy.bullu@out.ac.tz

Lecturer (Ph.D), Department of Civil and Criminal Law, The Open University of Tanzania, Tanzania

Received Date: May 26, 2021
Accepted Date: September 27, 2021
Published Date: January 10, 22

Citation: Saphy Lal Bullu. A Quest for Dissolution of Marriage and its Necessitates in Tanzania. Journal of Family & Adoption Law. 2021; 4(2): 12–19p.

irreparable and thereafter spouses are encouraged to get all practical steps to break up the union [10]. Despite the fact that, a court has power to break up a marriage, [11] at that place are particular subjects which should be followed by the same court in order to proceed and allow a petitioner a decree of dissolution of marriage, i.e. divorce even when the union has not lasted for 2 years from the day of the month of the solemnization of the alleged union. S.100 (2) of the Law of Marriage Act empowers a court to dissolve a marriage and award a divorce if it is satisfied that the petitioner is suffering unbearably from the marriage [12].

GROUND FOR DISSOLUTION OF MARRIAGE

Despite the fact that, marriage is a union between parties and should be protected by the law, at that place are some various factors which give powers to the court to take the so called marriage to an conclusion. Sect 99 of the Law of Marriage Act stipulates grounds of which a marriage can be resolved by the court of competent [13].

In laws, for the requester to prove before the court that the spousal relationship has broken down irreparably one or more of the following has to be shown as evidence before the court by a requester.

INTELLIGIBILITY FOR THE GROUNDS AND DESOLUTION OF MARRIAGE

In order for a court to proceed with a dissolution of marriage, there are some reason(s) [14] which lead a petitioner's rights for divorce and those reasons should be supported with evidence that a marriage has broken down irrepealably; [15] And once the court is pleased and influenced that marriage is completely irrepealably will grant a decree for the dissolution of marriage/ divorce. The following are the demonstrations of the grounds for divorce towards the dissolution of marriage.

Cruelty

Cruelty is defined as a situation when one party to a marriage life mis-treats another party physically or mentally; [16] in Tanzania, section 107 (2c) of the Law of Marriage Act identifies cruelty as whether mental or physical, inflicted by the respondent on the petitioner or on the children, if any of the marriage.

In similar to that, various judicial system tries to define cruelty through its decisions by articulating 'as a wilful and unjustifiable conduct of such a character as to cause danger to the life, limb or health which can be bodily or mental or so as to give reasonable apprehension of danger' [17].

The definition insists that, a party who is mistreated has the right to apply before the court for their marriage union to be dissolved once it is proved that the marriage has broken down irreparably [18]. In the case of **Russel v Russel** [19], Lord Lopez elaborates cruelty by said that, *there would not be cruelty if the applicant/plaintiff has not been physically injured or dangerous to his/her health or if there is no reasonable apprehension of danger to his/her life, limb or health*. Similar to that, In the case of **Latham v. Latham**, [20] the court build some of the conditions which establish the entertainment of cruelty between spouses. In this case, the court states that the acts of cruelty which authorise a divorce is anything that tends to bodily harm and thus renders cohabitation unsafe, or as expressed in the older decisions, that involves danger of life, limb or health. And also, the case of **Bowman v. Bowman**, [21] indicates the satisfaction of the court to grant a divorce in respect of dangerous and unlawful treatment, including cruelty, defamatory actions, violence between spouses, such situations bring power to the court to disband the so called marriage in order to reduce suffering to the petitioner not only physical pain but also mental agony [22].

In addition to that, for a cruelty to be taken as evidence that a marriage has broken down irreparably, the respondent must have been habitually cruel whilst and such cruelty must be persistent [23]. That situation was celebrated in the case of **Hoffecker v. Hoffecker** [24] where a court granted a divorce for desertion to the Applicant on the ground of cruelty tantamount since there

was no physical violence presented before the court. The application for dissolution appears to fall within the category of mental cruelty plus an adverse effect upon the health of Applicant.

All in all, For the purpose of divorce to be issued on the ground of ruelty, the cruel acts must range either from battery, insults, repeated lies, and/ or laments. Thus anything which can be injurious physically or mentally or heath wise can amount to cruelty. It does not matter whether the respondent intended to harm the applicant or that during the act, the respondent was not aware of the implication of his/her acts, as long as the act is injurious, and it amounts to cruelty and therefore warrants an aggrieved spouse to petition fro a decree of dissolution of marriage.

Desertion

The act of desertion established once one part of the marriage union leave their matrimonial house without justification or consent from the other part of their marriage relation [25]. In similar to that, Farrugia [26] stipulate that, *Dissertation also implies the abandonment of the matrimonial home with the intention of permanane, without good grounds on doing so* [27]. While on the other hand, Rufus.Jr [28] argues that, the art of dissertion occurs once one spouse leave the other spouse intentionally. In similar to that, sec. 13(1) of the Hindu Marriage Act of 1955 stipulate that desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the cconsent of or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be onstructed accordingly [29].

The act of desertion can either be of physical/actual or constructive [30]. Sometimes, simple desertion can be seen as misbehaviour when a partner leaves a matrimonial home without reasonable grounds and without the consent of the other spouse having no aim of coming back to the marital house. While, Constructive desertion means the state of things; where one spouse is actually not ‘walking out’ of their matrimonial home; that situation is called a constructive dissertion [31].

That is spouse does not leave the matrimonial home but his/her behaviour compels the other spouse to leave the house For example; if a wife leaves matrimonial home because the husband ill-treats her, the wife will not be regarded as destroying party because cruel acts of the husband made the wife to vacate the matrimonial home.

A distinction can be made between simple desertion and constructive desertion. In simple desertion, the facts presented to the court must show that the respondent intended to leave the union and that the desertion was against the will of the suppliant. Only if the doings of one party to the marriage causes the other to leave the matrimonial home then constructive desertion may be indicated. But, for the intention of divorce, desertion be it constructive or simpler if proved by sufficient evidence is enough to justify a court decree of dissolution of marriage (divorce).

Adultery

The UN Working Group on the issue of discrimination against women in law and practice defines adultery as a criminal offence that violates women’s human rights [32]. Both religious prohibit the act of adultery to its fellows. For instance, in Islam Adultery is defined as an illegal act of intercourse; premarital or extramarital by a person whether a man or a woman with a person to whom they are not married [33]. On the other hand, Christians defined as a sexual intercourse between a man and a married woman [34]. Adultery violate the marriage contract betweenn spouses [35] and is one of the major sins condemned by our Almighty.

The Law of Marriage Act of Tanzania [36] defines adultery as an act of sexual intercourse between a male and a female who are not married to each other when at least one of them is married to someone else and the intercourse is not by force [37]. Adultery can be also viewed as the most

extreme violation of the duty of fidelity in the marriage, and its ground for divorce remain of great importance and extra serious repercussion for the guilty person [38].

The party who claims that the other spouse is guilty of adultery must prove his or her claim before the court, and for the court to announce the order for divorce, the court must be satisfied with the evidence provided by the party who making such allegations, and also the party has a duty to prove that there is no conspirator to arrange the adultery, condoned the adultery or connived at the adultery [39]. If the court determines that the applicant, spouse has conspired, condoned or connived at the adultery, the divorce will not be awarded.

A husband can commit an adultery with his wife for instance, if a human being enters into a monogamous marriage and later on (without varying the character of marriage) marries another woman, the man will be regarded as committing an adultery with the second wife if he experiences sexual intercourse with her.

For example, in the case of **Kristina Hamisi v. Omari Ntalala** [40] the court received a petition for divorce along the basis of criminal conversation, and the applicant believes that her husband is committing with his new wife, he had married under the Islamic religion while their marriage was contracted as monogamous marriage under Christian religion. The court declares that, since the second marriage was void, the respondent was committing an adultery with the 'second wife'.

The decision above shows that, the purposes of obtaining a divorce on the ground of adultery a petitioner must prove that the respondent engaged in voluntary sexual intercourse with another person of the opposite sex during the subsistence of the marriage, and if successful proved the court may accept it as an evidence for causing a marriage to completely breakdown [41].

Non Maintenance

It has been known that, during the marriage each spouse have an obligation to participate in the maintainane on the household of the family and spouses at his/her best abilities; and where necessary, during the marriage spouses can arrange and confirm the obligation of one spouse to pay maintainane to the other [42].

The law levies a duty to spouses for maintenance, a husband has a duty to maintain his wife by providing her with basic needs same as to a wife; [43] And in exceptional cases a wife is duty bound to maintain her husband if the husband in incapable of working for gain due to physical incapacity or otherwise [44]. The law articulate that, when a marriage is still in existence and a husband neglects his duty to provision of basic needs, it is sufficient evidence that marriage has broken down irreparably and thus warrants a wife to petition for decree of dissolution of marriage. Yet, there is no automatic privilege to spousal mainanane on divorce or dissolution; though the legal instruments gratify the judicial system to determine whether there are any state of affairs which provide attitudes towards the ground for dissolution of marriage in a possible way to parties [45].

The same applies under the exceptions circumstance when a wife is bound to keep a husband and refuse without justifiable reasons to execute so, once a ourt is satisfied may award a decree of dissolution of marriage upon an application by a husband on grounds of non-maintenance.

Hence, a party to a marriage can rely on failure to pay maintenance, provided that the respondent has habitually and wilfully failed to yield alimony. Reasonable attempts must have been made by the petitioner to seek maintenance and if a husband or wife in the exceptional circumstances wilful continues to neglect to provide suitable support for his wife (or husband in exceptional cases) when able to do so or when failure to do so is because of his idleness, profligacy or dissipation then the aggrieved spouse can petition for divorce on ground of non-maintenance [46]. In some countries,

including Hungary, the court determines the maintenance by considering the circumstances including the behaviours of the spouses during and after the marital cohabitation [47]. The maintenance does not depend on the reproachable behaviour or the fault of the debtor, the spouse who lacks necessary means is entitled to maintenance after divorce regardless of the other party's reproachable behaviour [48].

Mental Illness

Basically, a soul with a disease of mind cannot enter into a valid marriage, and if such person contracts a marriage such marriage will be viewed as invalid and the court can grant a divorce on that ground but on the option of the innocent party [49].

There are instances in which a spouse entered into a valid marriage, both being sane, but later on one of them encounters disease of brain. In such cases, the court will also grant a divorce on the ground of spouse's insanity despite the fact that initially both spouses were sane.

Nonetheless in the latter instance, there has to be a testimony from two (2) medical doctors, at least one has to be a psychiatrist proving that the disease of the mind is incurable as prescribed by S. 107 (2) (h) Law of Marriage Act and if the disease of the mind is curable the court will not award a decree of dissolution of the marriage (divorce).

To boot, in exceptional cases a court can dispense requirement of testimony from the psychiatrists if the insane spouse does same cruel acts which cannot be supported by the other spouse cruelty in this sense carries the meaning of cruelty as illustrated previously.

Thus, for purposes of divorce, the time when the disease of mind occurred, possibility of recovery and proof of the condition are material. Respondents must be either "unlikely to recover" or "incurably of unsound mind".

Impotency

Inability of spouses to enter into a sexual intercourse after a marriage is among of the grounds where a part to that union may petition for divorce and the court have the right to consider the application as a ground for divorce and annul the marriage [50]. Thomas [51] in his article articulate the definition of importance as a physical or psychological condition that makes it impossible for a spouse to engage in sexual intercourse. On the otherhand, the Mississippi law [52] state that importance means the inability of one of the parties to perform sex.

Non-consummation after a marriage makes such a union is voidable marriage in which case a party to such marriage may apply for the court to issue a decree of dissolution of marriage (divorce). in similar to that, Puxson and Dawkins [53] articulate that, failure to consummate, if due to importane or wilful refusal, is a ground for having the marriage annulled. The authors further instist that, in the case of impotence the ability must have existed at the time of the marriage and must have persisted up to the date of the hearing of the petition [54]. Although the sterility by itself is not a ground for divorve, the court in the case of *Cowen v. Cowen* [55] decides that, if the intercourse throughout the marriage, the husband has used contraceptive that means that marriage has not been consummated; hene the wife has not agreed to this practice (except for adequate reasons) she can obtain a decree of annulity. The act of wilfus refusal to consummate between spouses was first made as a ground for divoce to annul the marriage [56].

Although the law of marriage of Tanzania is silent on the issue of spouse infertility, it is assumed that when a married couple is fully consummated, but either party to a marriage is infertile and thus cannot raise children; such cannot be a priming coat for either party to petition for divorce. So basically, infertility of a partner is not a basis for divorce, but non consummation after marriage is.

Change of Religion

Change of religion known as "conversion" defines as a voluntary renounced of his or her religion by adopt another religion after going through some formal ceremony. The act of change of religion of the spouses to any other religion affords to the other spouse as a ground for divorce. Section 107(2i) stipulate that, hange of religion by the respondent, where both parties followed the same faith ath the time of the marriage and where according to the laws of tht faith a change of religion dissolves or is a ground for the dissolution of marriage.

GENERAL SUMMARY AND CONCLUSION

Equally it has been formulated in several materials, marriage is a coupling between the parties and came to an end once one party to that marriage is not satisfied with the life they are going past through. For a valid marriage, there are general rules to be followed in order to establish that union to exist. Nevertheless, in that respect are some of the events occurred during the marriage life cause the breaking of the so called married. There are various components which led the marriage to come to an end, however, that the constituents should be shewed by the court as are serious ones and they cannot repayable. These factors, as cited above, should be acquainted before the court and the court has a duty to show the raised allegation is beyond and they cannot be retrieved, and from there the court accepts a responsibility to announce the breakdown of the so called union.

REFERENCES

1. See Also Section 9 of the Law of Marriage Act, Cap. 29 R.E 2019.
2. Wialaena N.A an Analytical Study of Definitions of the Term 'Marriage' International Journal of Humanities and Social Social Vol. 6, No.1 2016:166; defines marriage as a "personal association between a man and a woman and a biological relationship for mating and reproduction".
3. See Sec. 110 (1a) of the Law of Marriage Act.
4. See Sec. 110 (1a) of the Law of Marriage Act; and also see R.G.C.Jr (1961:362) Constructive Dissertation as a Ground for Divorce in Virginia, Virginia Law Review, Vol. 47, No.2. available at www.jstor.org [accessed on 28.01.2021]; the author says that "since Divore is purely a creature of the statute, all action for divorce must based upon the circumtsances that the legislature has been fit to donate as sufficiently grave to warrant dissolution of matrimonial union".
5. Sember B What is a Dissolution of Marriage? Available at legalzoom.com [accessed on 18/09/2020]; author says that "dessolution is the formal, legal ending of the marriage by a court, commonly known as divorce. The author further urges that, a dissolution of marriage completely ends your legal relationship as spouse and ends your marriage".
6. Sec. 110 of the Law of Marriage Act, R.E 2019; and see also OSBA Committees & Sections, Law And Facts: Divore, Dissolution& Separation (2018:1) available at <http://Ohiobar.org> [accessed on nov, 2020].
7. Section 10 of the Law of Marriage Act, R.E 2019; see Also section 1 (2) (c) of the Matrinomial Causes Act (1973) Cap 18.
8. Sember.
9. See also Scott ES. Marriage, Cohabitation and Collective Responsibility for Dependency, University of Chicago Legal Forum: Vol. 2004: Issue. 1, Art.7.
10. Kum L.W (1978:56) The Duty to Maintain Spouse an Children During Marriage Malaya Law Review Vol.29 No.1 available at www.jstor.org; Kum articulates that, the duty to maintains one's family while marriage is still subsisting operates when matrimonial jurisdiction of the High Court has been attracted by the presentation of a petition for divorce, judicial separation, or nullity of marriage.
11. See also sec110 of the law of the marriage Act.
12. See Also section 4 of the Matrinomial Causes Act (1973), Cap 18.
13. Law of Marriage Act, R.E 2019.
14. Sec. 107 of the law of Marriage Act, these include adultery, sexual perversion, cruelty, wilful neglect, desertion, imprisonment, mental illness, change of religion.

15. See also Arya R (2014) What are the Grounds for Dissolution of Marriage available at www.blog.ipleaders.in [accessed on 20/08/2020]; the author says that the basis of the claim of dissolution of marriage on “no fault” ground is that at least one of the two parties claims that the marriage is no more viable and the differences are irreconcilable.
16. See Also Hashim NM et-al Disolution of Marriage on the Ground of Cruelty Journal of Malaysian and Comparative Law (2019:85) Vol. 37 Pp 85-100.
17. See Said Mohamed V. Zena Ally (1985) TLR 13.
18. See S. 107 (2) (C) of the Law of Marriage Act of Tanzania; and See also Hashim (2019:85).
19. (1897) Ac 395.
20. 71 Va. (30 Gratt.)307 (1878).
21. Bowman V Bowman (1949) 2 All ER 127 at P.353.
22. Similar to that, R.G.C.Jr (1961: 362) insists that, a divorce may be a decree for cruelty, reasonable apprehension of bodily harm.
23. See also the Case of Nunzio Colarossi v. Michelina Colarossi (1965) EA 129; Hashim et-al (2010:89) Dissolution of Marriage on the Ground of Cruelty: A Comparative Overview of Fasakh and Irretrievable Breakdown of Marriage Principle Journal of Malaysia and Comparative Law, Vol.37 available at www.ejournal.um.edu. the authors state that at present, in most countries in the world defines cruelty whether in the form of physical or mental has become one of the most common ground sought for divorce. The authors further insist that, the act of cruelty of the respondent, either physically or mentally is more than adequate to the term behaviour as stated under the present law, and in the case of irretrievable breakdown of marriage, both objective and subjective tests have been used by the court to decide whether or not the plaintiff can reasonably be expected to live with the respondent in consequence of the respondent’s behaviour including cruelty. If it is proven, then the application for divorce will be granted by the court.
24. 200 Va. 119, 104 S.E.2d 771 (1958).
25. Ruben DL Desertion V. Instructive Desertion March, 2015 available at www.mdlaws.com/family [accessed 21/01/2021].
26. Farrugia (1995:631).
27. The Collins Dictionary defines desertion as a wilful abandonment, especially of one’s spouse or child(ren) without consent, in violation of legal and moral obligations.
28. Rufus (1961:362).
29. The Hindu Marriage Act of 1955.
30. See also Ruben (2015).
31. See also Rufus (1961:363).
32. United Nation Special Human Rights Procedures (2012:1) available at www.ohchr.org/docs
33. See also Quran (17:32) and 7:33.
34. See Lev (20:10).
35. Carnelley M. (2013: 185) Laws On Adultery: Comparing The Historical Development Of South Africa Common Law Principles With Those In English Law. Vol. 19. N.2 available at www.scielo.org [accessed on 28.01.2021], author states that adultery threatens the core of family life and the stability of the institution of marriage and potentially creates uncertainty about the paternity of the marital offspring.
36. Sec. 77 of the Law of Marriage Act, R.E 2019.
37. See also Goody J (1956:287) A Comparative Approach To Incest And Adultery, The British Journal of Sociology Vol.7, No.4 Available At www.jstor.org [Accessed 28 Jan. 2021]. Goody defines adultery as a voluntary sexual intercourse of married person with one of the opposite sex, married or single. Goody (1956:291) further articulate that, in English adultery is defined in relation to the marital status of one or both participants and is in effect residual to the category incest.
38. Farrugia R (1995:629) International Marriage and Divorce Regulation in Malta Family Law Quarterly Vol. 29 No.3.

-
39. For instance, section 1 (2) (a) of the Matrimonial Causes Act (1973) includes adultery as a possible evidence that a marriage had broken down irretrievably, and it is sufficient reason for a spouse to obtain a divorce.
 40. Kristina Hamisi V. Omari Ntalala (1963) E.A. 463.
 41. The situation like that was celebrated in the case of *Gray v. Gray* (1976) Fam.324 where the English High Court decided that the wife who admitted committed adultery.
 42. See also the Marriage Act available at www.oikeus.fi/en/index accessed on 28.01.2021.
 43. Sec. 63 of the Law of Marriage Act.
 44. Sec. 63(b) of the Law of Marriage Act.
 45. Durham LB (2015) Spousal Maintenance – What Is It? Do I Have To Pay It? How Much And For How Long? Available at www.familylawpartners.co.uk/blog [accessed on 28.01.2021]
 46. Such opportunity did present itself in the case of *Quek Ah Chian v. Ng Guang* (1968:255) 1 M.L.J.; where the Magistrate hearing the case and found that the petitioner had neglected to maintain his wife; and See also *Kum L.W* (1978:59) The Duty to maintain Spouse and Children During Marriage *Malaya Law Review* Vol.29 No.1 available at www.jstor.org [accessed on 21/12/2020]. [accessed on 21/12/2020].
 47. Weiss E, and Szeibert O. (2002:14) Grounds for Divorce and Maintenance between Former Spouses available at ceflonline.net [accessed on 21/12/2020].
 48. Weiss E, and Szeibert O. (2002:18).
 49. See also sec. 107 of the Law Of Marriage Act.
 50. Chisholm ID (1972:544) Sexual Problem in marriage: Non Consumation. *Postgraduate Medical Journal*. Available at www.pmj.bmj.com [accessed on 2.02.2021]. Chisholm articulates that, The inability of a married couple to enter into the physical relationship of sexual intercourse has seemed to lawyers so striking a negotiation of the contract and ends of marriage that courts have been willing to accept evidence of this occurrence as grounds for annulment.
 51. Thomas J Is Importance a Ground for Divorce available at www.lawforfamilies.com [accessed 04/02/2021].
 52. Mississippi Code, 2019 Title 93, Chapter 5 Sections 93-5-1 Causes for Divorce. Available at www.lawjustia.com [accessed 04/02/2021].
 53. Puxson M and Dawkins Y (1964:15) Non Consumation of Marriage. *Medicine, Science and the Law* available at www.journal.sagepub.com [accessed on 2.2.2021].
 54. Puxson and Dawkins (1964:15).
 55. *Cowen v. Cowen* [1946] P. 36
 56. See also the Matrimonial Cause Act, 1934.