**Eugen v Hadija**

**Division:** Court of Appeal at Dar Es Salaam

**Date of judgment:** 13 October 1973

**Case Number:** 29/1973 (1/74)

**Before:** Sir William Duffus P, Spry V-P and Law JA

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**Appeal from:** High Court of Tanzania – Kwikima, Ag.J

*[1] Matrimonial Causes – Maintenance – Wife in desertion – No liability on husband to maintain wife –*

*Marriage Act* 1971, *s.* 63 (*T.*)*.*

**Judgment** The following considered judgments were read.

**Spry V-P:** The parties to this appeal are husband and wife. They are living apart but neither has petitioned for divorce. The respondent, the wife, sued her husband, the appellant, in the Utamini Primary Court, claiming Shs. 300/- per month as maintenance. She claimed that her husband had driven her from the matrimonial home without just cause. The magistrate, in agreement with the assessors, decided this issue against the wife. He held, however, that as there had been no divorce, the husband had a duty to maintain his wife. He thought the amount claimed was excessive. He awarded Shs. 600/- as maintenance for six months and ruled that within that time the wife had to apply for separation or divorce or return to her husband and that if she failed to do so, the husband would not be liable for any further maintenance. The husband appealed to the District Court, when the magistrate, in agreement with an assessor, upheld emphatically the finding that the wife had deserted her husband without reason and set aside the award of maintenance, holding that, as the guilty party, she had no claim on her husband. The wife appealed to the High Court, where the judge in a very brief judgment, held that as the parties had not been divorced, the wife’s upkeep was the husband’s responsibility. He restored the award of Shs. 600/-. The husband now appeals to this court, on a certificate by the High Court that a point of law of general public importance is involved; that is, whether a husband’s duty to maintain his wife subsists if the wife, without good cause, deserts the matrimonial home. The appeal turns entirely on the interpretation to be given to s. 63 of the Law of Marriage Act, 1971 which, so far as is relevant, reads as follows: “63. Except where the parties are separated by agreement or by decree of the court and subject to any subsisting order of the court– ( *a*) i t shall be the duty of every husband to maintain his wife or wives and to provide them with such accommodation, clothing and food as may be reasonable having regard to his means and station in life;”. Mr. Lubuva, who appeared for the Attorney-General as amicus curiae and to whom we are grateful for his assistance, submitted that while, on a strict interpretation of s. 63, the wife would appear entitled to maintenance, the court ought to take a broader view and look generally to the intention of the legislature. The husband was willing for his wife to return; it was the wife who wished to live apart and in those circumstances she ought not to be entitled to maintenance. He referred also, by way of analogy, to para. 74 of the Restatement of Customary Personal Law (G.N. 279 of 1963), but I think, with respect, that that paragraph must now be regarded as superseded by the relevant provisions of the Act. With respect, I do not think that even a strict interpretation of s. 63 helps the wife’s case. It is true that in the absence of an agreement for separation or of a decree of a court, a husband is under a duty to maintain his wife but the normal way a husband maintains his wife is basically by providing a home, food and clothes. This, on the evidence, the husband has done in the present case and is still prepared to do. He has, therefore, discharged his duty. It is not, in my opinion, open to the wife to reject the home that is offered to her and claim instead a money payment to enable her to live where and how she pleases. It would, of course, be different if the standard of living offered were unreasonable or the conduct of the husband made it impossible for the wife to continue to live with him, but on the concurrent findings of the lower courts and their assessors, that is not the case here. I should perhaps add that while, at first sight, it might appear from the wording of paragraph (*a*) of s. 63, that the provision of accommodation, clothing and food is distinct from and additional to the maintaining of a wife, on a closer analysis, it is, I think, clear that what the paragraph means is that it is the duty of a husband to maintain his wife and that in maintaining her, the standard of accommodation, clothing and food must be reasonable. I think, with respect, that the judge was wrong and I would allow the appeal, set aside the judgment of the High Court and restore that of the District Court. The husband did not apply for costs, and in the circumstances we make no order for costs of the appeal. **Sir William Duffus P:** I have read and entirely agree with the judgment of the Vice-President and as

Law, J.A. also agrees, the appeal is allowed in accordance with the order set out in the judgment of the

Vice-President.

**Law JA:** I agree with the judgment prepared by the Vice-President, which I have read in draft, and with

the order proposed.

*Appeal allowed.*

The appellant in person.

The respondent absent and unrepresented.

*DS Lubuva* (Principal State Attorney) as amicus curiae.