Presumption of Marriage in Tanzania*

By *B. A. Rwezaura*

Introduction

In 1971 when the Law of Marriage Act[1] came into force in Tanzania, the law governing presumption of marriage was in a state of uncertainty. This uncertainty arose because of the failure of courts to distinguish between two closely related aspects of presumption of marriage. The first is presumption as to the validity of a ceremony and the second is presumption of marriage arising from long cohabitation by the parties.

In 1971 the Law of Marriage Act clarified the situation by providing two separate sections, namely, sections 41 and 160 for presuming the validity of a marriage. Unfortunately, the practice which had existed before 1971, coupled with the latent ambiguity in section 160, has resulted in the new provisions of the law being repeatedly misunderstood by the courts. This has resulted in defeating the true purpose of section 160 of the Law of Marriage Act. Moreover, section 41 of the Law of Marriage Act which cures certain formal defects in the marriage ceremony has rarely been invoked in those cases to which it is appropriately applicable, and the courts have up till now persisted in lumping together the two aspects of presumption under section 160 thus ignoring section 41.

The purpose of this note is to discuss some cases in which courts have failed to provide a clear interpretation of section 160 and to offer suggestions as to how the section should be approached.

The decision of Mfalila, J., in the case of *Francis s/o Leo v. Paschal Simon Maganga*[2] provides a good starting point for our discussion. In the above case, the appellant Francis Leo sued the respondent in a Primary Court at Mhongolo in Kahama District claiming a total of shs. 2,400/= being the legitimation fees of five children, at the rate of shs. 500/= for each of the four girls and shs. 400/= for the boy. The children were born during long cohabitation between the respondent and the appellant's daughter, Magdalena. At the trial it was revealed that Magdalena started cohabiting with the respondent since 1966 shortly after which she became pregnant. Magdalena and the respondent went to the appellant's home to discuss marriage arrangements, and the appellant demanded shs. 500/= and five goats as bridewealth. The respondent, who was at the material time already monogamously married to another woman, promised to pay

* I would like to thank my colleagues Professor K. Ponnuswami and Mrs. U. Wanitzek who read the draft of this paper and made helpful suggestions.

1 Act No. 5 of 1971. The Act applies only to Mainland Tanzania.

2 1978 LRT n. 22.

but did not do so. At the trial the respondent admitted the facts stated above, but argued that there was no requirement for him to legitimate his children with Magdalena as she was his lawful wife by the operation of section 160 of the Law of Marriage Act, 1971. The Primary Court, though accepting the argument of the respondent, nevertheless partly allowed the claim of the appellant and ordered the respondent to pay shs. 1,350/= on the ground that section 160 was not intended to remove the requirement for legitimizing children where bridewealth had not been paid. The respondent successfully appealed to the District Court at Kahama where it was held that once it was conceded that there was a valid marriage between the respondent and the appellant's daughter, the issue of legitimizing the children of the marriage did not arise. The District Court accordingly set aside the order of the Primary Court and substituted it with an order for payment of bridewealth of shs. 500/= and five goats, »in order to legalize his marriage to Magdalena«. The appellant appealed against this order to the High Court where the District Court was criticized of having fallen into the same error for which it had criticized the Primary Court«, i. e., by finding a marriage valid and still ordering the payment of bridewealth »to legalize it«. The court proceeded to deal with two issues which in the opinion of Mfalila, J., (the appellate judge) were not sufficiently covered by the two lower courts.

The court posed the question whether the respondent and Magdalena could be regarded as husband and wife after their ten years of continuous cohabitation under section 160 of the Law of Marriage Act. After citing the provisions of section 160, which is reproduced below for ease of reference,

> 160–(1) Where it is proved that a man and woman have lived together for two years or upwards, in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married.
>
> (2) When a man and a woman have lived together in circumstances which give rise to a presumption provided for in subsection (1) and such presumption is rebutted in any court of competent jurisdiction, the woman shall be entitled to apply for maintenance for herself and for every child of the union on satisfying the court that she and the man did in fact live together as husband and wife for two years or more, and the court shall have jurisdiction to make order or orders for maintenance and, upon application made therefore either by the woman or the man, to grant such other reliefs, including custody of children, as it has jurisdiction under this Act to make or grant upon or subsequent to the making of an order for the dissolution of a marriage or an order for separation, as the court may think fit, and the provisions of this Act which regulate and apply to proceedings for and orders of maintenance and other reliefs shall, in so far as they may be applicable, regulate and apply to proceedings for and orders of maintenance and other reliefs unter this section.

3 At p. 106 of the judgement.

Mfalila, J., stated as follows:

> »The first point that comes very clearly out of subsection (1) is that this section does not automatically convert concubines into wives at the end of two years or more of cohabitation. All that this section does is to provide for a presumption which is rebuttable, that such people *were duly married* [emphasis provided by court] and this »being duly married« surely must refer to the forms and procedures for marriage provided for under the Law of Marriage Act. Therefore all that is required to rebut the presumption is to establish that the two never went through a ceremony of marriage recognized under the Act. Once this is established the two can no longer be regarded as husband and wife even if they have lived together for hundreds of years«.[4]

After these remarks the court came to the conclusion, that since Magdalena and the respondent had not gone through a ceremony of marriage according to the Law of Marriage Act, they could not be said to be husband and wife. Their children were therefore illegitimate but could be legitimated under the appropriate provisions of the Customary Law (Declaration) Order.[5] The court noted, however, that there was no rule of customary law which compelled a natural father to legitimize his children, but he had an option to do so. After reasoning as above the court held that the five children belonged to the maternal side and would remain there until steps were taken by the respondent to legitimize them.

The Meaning of Section 160

It is now appropriate to consider whether the court was right in its interpretation of the provisions of section 160 of the Law of Marriage Act. In my view this interpretation was incorrect because of the following reasons:

The first reason is that if the section provides for presumption of marriage where a ceremony in accordance with the forms and procedures of marriage provided for under the Act has been alleged by one of the parties, why should the presumption arise after a period of two years or more? In other words, if parties go through a ceremony of marriage which they believe has resulted into a valid marriage between them, the presumption must start to operate soon after the ceremony and not wait for two years to elapse. Similarly, any person wishing to question the validity of such a ceremony need not wait for two years before doing so.[6]

The second argument that casts doubt on the court's interpretation of the section is that the section requires two things to be proved before the presumption can be said to operate. First, the couple must have lived together »for two years or upwards«; second, they must live in »such circumstances as to have acquired the reputation of being

4 At p. 107 of the judgement.
5 See Rule 181 of G.N. 279/63.
6 See s. 77 (i) (c) L.M,A. 1971.

husband and wife«.[7] The second condition certainly requires the parties to have acquired a reputation in their immediate community that they are husband and wife. This reputation need not be based on actual knowledge that a ceremony took place between the two persons but rather it may be based upon what the community sees to be the *de facto* relationship, such as, where the parties conduct themselves as husband and wife and encourage the rest of the community to regard them as such. I submit therefore that since section 160 requires reputation of marriage between the parties, it cannot at the same time require proof of a ceremony having taken place. This is so because proof of a ceremony can be made even before parties have acquired any reputation, simply by documentary or other evidence.

In my opinion, there are two types of presumption that may be made of a marriage contracted in Tanzania. The first presumption relates to the validity of a ceremony of marriage. In such a case, the parties allege that they went through a ceremony of marriage on such a date, at such a place and that due to loss or destruction of relevant records, they seek the court to presume that the alleged ceremony was properly conducted and that a valid marriage resulted between the parties. This presumption starts to operate from the time when the ceremony took place to any time in future even after the death of the original parties to the marriage.[8] It must be noted of course that the more recent the date of the alleged ceremony, the easier it is to prove its validity or invalidity. But a ceremony which took place many years ago, where records are misplaced or destroyed and witnesses unavailable, is quite difficult to prove and hence the courts will lean towards finding the alleged ceremony valid even if indeed there is some doubt in the mind of the court. This is so because »courts have in particular tried to avoid any decision which would bastardize children reputed to be legitimate«.[9]

The second type of presumption also possible under Tanzania law is the presumption as to the existence of a lawful marriage between the parties which arises by reputation. In this case the parties do not allege that they went through any form of ceremony under any law at any time. What they say is that they took each other as husband and wife, on a particular day and started cohabiting with an intention to live as man and wife, and that throughout their life they have regarded themselves as married to each other, and their immediate community has regarded them as such. This is a form of marriage by reputation, and I submit it is the one contemplated by section 160 of the Law of Marriage Act, 1971.

In sum, it should be stressed that the two forms of presumption are so different that they ought not to be confused. As soon as one alleges a ceremony, there is no need to add reputation and vice versa. But this dichotomy has not been perceived by the courts in Tanzania which have often mixed up the two presumptions. The reasons for this lack of

7 See for example *Elizabeth Salwiba* v. *Peter Obara* 1975 LRT n. 52 at p. 224.

8 Exceptions may be made by law as in cases where an irregularity in a ceremony of marriage results in a voidable marriage. There is also statutory limitation of time as to when petitions of nullity in such cases can be entertained.

9 Editor's note in *Re Bradshaw, Blandy* v. *Willis* (1938) 4 All E.R. 143.

distinction seem to be both historical and connected with the drafting of section 160. I agree with Mfalila I., that the words of sub-section 160 (1) that »there shall be a rebuttable presumption that they were duly married« can lead one to suppose that the presumption relates to the validity of the ceremony of marriage. Indeed, I think the draftsman could have more appropriately used instead of the words »duly married« a word such as »married« without qualification, or simply words such as »husband and wife« after the word »were«.

The second reason for the confusion, which I think is more fundamental, arises from the legal history of Tanzania. I give below a short background relating to the origin of this confusion. A brief account of English legal history might help to give this matter a correct perspective.

According to available records it appears that before the introduction of the decree *Tamest,* following the Council of Trent held in 1563, there was no formally recognized form of marriage in Christian Europe including the United Kingdom.[10] Parties did normally take each other by exchange of declaration either *per verba de praesenti,* e.g., »I take you as my wife [or husband]«, in which case a binding marriage followed immediately, or *per verba de futuro,* e.g., »I shall take you as my wife [or husband]«, in which case it became a binding marriage as soon as it was consummated.[11] The Council of Trent introduced a new element in the formality of marriage by requiring the presence of a clergy and required that parties should go through a ceremony. The introduction of this requirement did not take effect immediately as a good number of Christians continued to marry outside Church and the Church did not consider them as living in sin.[12] This was the case in England till 1753 when Lord Hardwicke's Act was introduced.[13] Lord Hardwicke's Act stipulated a special ceremony which emphasized the public nature of marriage and provided for compulsory registration in order to reduce the number of clandestine marriages which were prevalent at the time.[14] Yet it must be noted here that even after Lord Hardwicke's Act was passed, people did not fully comply with it, and those who continued to live together as husband and wife were still recognized as such, provided they had initial capacity to marry. This is the foundation of the concept of Common Law marriages.[15] With the passage of time a larger number of people accepted the formalities of marriage stipulated under various Marriage Acts which were handed down in succession after the Marriage Act of 1823.[16]

The introduction of the formal rules for contracting a marriage added a new dimension to the concept of presumption of marriage. This happened because in addition to the fact that the court was entitled to presume a Common Law marriage between parties who

10 Adrian Hastings: *Christian Marriage in Africa,* London SPCK 1973 para 64 at p. 67.
11 See P. M. Bromley, *Family Law,* 4th edition (1971), pp. 26–28.
12 Hastings op. cit. para 63 at p. 66.
13 Bromley op. cit. at p. 28.
14 Bromley op. cit. at p. 27–28.
15 See note 12 *supra.*
16 English Marriage Acts of 1836, 1898, 1949–1970.

had not followed any marriage rites, but had simply lived together and acquired the reputation of husband and wife, the court also had to handle new situations of parties who had tried to go through the requisite ceremony but had not properly followed the procedural rules, and there was therefore an allegation that the ceremony had not resulted in a valid marriage.[17] For many years English courts handled these two types of presumption sometimes separately and at other times together.[18] At least one common element in both types of presumption was the passage of time, i.e., long cohabitation of the parties and a reputation of marriage even though it was not strictly necessary in the latter case. This is shown clearly by the English cases decided in early 19th century.[19] It should not be surprising to us therefore that when the English judges came to East Africa and found a form of marriage under customary law, they readily applied similar legal principles which they had left behind in England. After the colonial period, Tanzanian judges followed the practice which their predecessors had firmly established. A few examples will help to clarify this point.

In the case of *Nyamakaburo Makabwa v. Mabera Watila*[20] the Governor's Appeal Board stated that,

> »when persons are living together as man and wife over a long period, and especially where there are children of the union, the Board would require the strongest possible evidence to rebut the presumption that the marriage was valid. It would require stronger evidence than that of the interested parties to confirm the assertion that no brideprice was paid and (in a case where the parties were reputed to be man and wife in the neighbourhood where they lived) even if satisfactory proof was forthcoming that the brideprice had never been paid further evidence would be necessary from an independent source to establish the assertion that non-payment of brideprice necessarily involves the invalidation of the marriage.«

In this case the main argument was that, since bridewealth had not been paid, there was no valid marriage between the parties. The Board argued that this was a marriage by reputation and there was a very strong presumption that a valid marriage existed even if bridewealth had not been paid.

But as may be noted from the above extract, the Board did not distinguish between the two types of presumption. By stating that failure to pay bridewealth (which is an aspect of the ceremony) did not invalidate a marriage, the Board mixed such irregularity in ceremony with a presumption of marriage in a situation where »persons are living together as man and wife over a long period« without having gone through any marriage ceremony.

17 This was a period of transition from Common Law form of marriage to statutory form.

18 See for example: *Tweney* v. *Tweney* [1946] P. 180; *Russel* v. *Attorney General* [1949] P. 319; *The Lauderdale Peerage Case* (1885) 10 App. Case 692 (H.L.); *Re Taplin, Watson* v. *Tate* (1937) 3 All E.R. 105 and *Sastry Velaider Aronegary* v. *Sembecutty Vaigalil* (1881) 6 App. Case 364.

19 See note 18 *supra.*

20 Governor's Appeal Board, Appeal No. 7/1944.

In *Sakala v. Elia,*[21] a case also involving long cohabitation and an allegation of non-payment of bridewealth, Mwakasendo, J., (following the holding in *Nyamakaburo's* case) stated that, »there are, of course, good and weighty reasons why courts have in particular cases applied the Common Law principle of presumption of marriage. The basic reason I believe is the reluctance of the courts to invalidate any marriage unless there are good and compelling grounds for doing so.« In this case Mwakasendo, J., admits that principles of Common Law had been adopted by courts in Tanzania and were often invoked to uphold marriages which were contracted without following laid down procedures or where parties were simply living together without having gone through any ceremony.

In another case of *Loijurusi v. Ndiinga*[22] an allegation was made that full payment of bridewealth had not been made and that therefore the marriage, which had lasted for six years, was not valid. Kwikima, Ag.J., as he then was, stated that,

> »it [was] against public policy to interfere with the family which is the fabric of the entire society and courts of law all over the world are very loath to allow such interference. The Anglo-Saxon Common Law, to which our legal system is heavily indebted, accords particular regard to the sanctity of marriage. On that principle this court has held that even under customary law, prolonged cohabitation raises a presumption of marriage unless there are circumstances indicating the contrary.«

In the foregoing passage, Kwikima, Ag.J., states clearly, perhaps more than any other judge before him, that the Common Law principle of the presumption of marriage had been adopted and incorporated into the Tanzanian law and hence the presumption applied to all marriages under customary law where long cohabitation is proved.

But what exactly was this presumption? Kwikima, Ag.J., thought it applied where a marriage existed by reputation. But Kwikima, Ag.J., did not get away entirely from the practice of lumping together the two types of presumption. For indeed in the following line of his judgment the learned judge noted that »there [was] another Common Law rule which stipulates that a subsisting marriage which has endured for some time cannot be declared null and void simply because it was not properly celebrated«. And hence applying this principle, the judge said, »the payment of brideprice is only one of the conditions of the celebration of marriage . . . and non-payment . . . cannot be fatal to a long enduring marriage«.

The foregoing statement by the Judge that there are two Common Law rules about the presumption of marriage is in line with the argument of this paper. Kwikima, Ag.J., readily admits that there is a Common Law principle of presumption of marriage based on reputation and long cohabitation, and another rule based on the principle that a marriage should not be invalidated merely because it was not properly celebrated. This distinction must be appreciated in order to unterstand the development of the presumption of marriage principle in our own jurisdiction.

21 (1971) H.C.D. n. 257.
22 (1971) H.C.D. n. 331.

Let us take the position that during the colonial period in Tanzania it was lawful to contract marriages either in accordance with the provisions of the Marriage Ordinance (Cap. 109) or in accordance with the provisions of Islamic and customary laws. The existence of several alternative ceremonies leading to a valid marriage according to the particular law meant that, in order to contract a valid marriage, the parties concerned had to adhere strictly to the stipulated rites. This meant that if a person purported to go through a customary, civil, or Islamic marriage without following the vital rites as provided for by the particular law, such person could not be said to contract a marriage recognized by the relevant law. This would be a ceremony that is defective by reason of non-compliance with the formalities attached to that form of marriage. The presumption that such a marriage is valid operates to validate the ceremony alleged to have been irregular. In case of customary law, the courts have been saying that bridewealth is not a vital part of the ceremony, and hence a marriage will not be declared invalid by reason alone of non-payment of bridewealth.[23] It is submitted therefore that all such cases should always be argued on the basis of the second rule, of presumption, that is, the presumption as to the validity of a marriage ceremony.

The provisions of section 41 of the Law of Marriage Act validate marriage ceremonies which formerly fell within the second type of presumption. After 1971 the legal position is that

»A marriage which in all other respects complies with the express requirements of this Act shall be valid for all purposes, notwithstanding –

a) any non-compliance with any custom relating to dowry or the giving or exchanging of gifts before or after marriage;
b) failure to give notice of intention to marry as required by this Act;
c) notice of objection to the intended marriage having been given and not discharged;
d) the fact that the person officiating thereat was not lawfully entitled to do so, unless that fact was known to both parties at the time of the ceremony;
e) any procedural irregularity; or
f) failure to register the marriage.«

It is clear from the above provisions that the intention of the legislature was to create a statutory basis for validating certain marriage ceremonies notwithstanding »any procedural irregularity«, provided that the essential requirements of the Act had been complied with.

In the light of the foregoing discussion, it is submitted that the presumption arising out of long cohabitation and reputation, i. e., where the parties do not allege that a ceremony at all took place at any time, ought to be decided under section 160 of the Act. If this submission is accepted it must follow that Mfalila' J.'s, opinion, in the case under review, is not correct.

23 Especially after 1963 following Rule 5 of G.N. 279/63 and s. 41 L.M.A.
See for example *Raphael Dibogo* v. *Frabianus Wambura* 1975 LRT n. 42.

Another point which is raised by the case of *Francis s/o Leo* is whether section 160 protects women cohabiting with men who cannot legally marry them because of an existing monogamous marriage or due to some other legal incapacity. According to Mfalila, J., the »section was an effective protection for girls like Magdalena« who cohabited with a man who could not marry her due to an existing marriage.
In my opinion section 160 does not protect such women. By saying this I should not be taken to oppose the idea of giving protection to such women and their children. My concern here is to give a correct interpretation of the law. I think that para 13 of the White Paper *(infra)* makes it clear that the presumption operates only »as long as the man at the time he started cohabiting with such a woman was legally capable of being married to her«.
Furthermore, there is a general principle of law that the law cannot presume against itself. The presumption created by section 160, even though rebuttable, has the legal effect of maintaining a marriage as valid as long as no person rebuts such presumption. The burden of proof lies always upon the person alleging that such cohabitation has not resulted into valid marriage. If this is the correct legal position, it would be an error of law to suggest that the law can presume a marriage between parties who cannot marry because of being in prohibited degrees of relationship, or otherwise lacking initial capacity to marry one another. I contend therefore that section 160 is not applicable at all in any situation where parties lack capacity to marry one another.
This interpretation unfortunately leaves a large number of women unprotected and many children potentially illegitimate (unless legitimated under customary law). Nonetheless one cannot achieve their protection by giving an incorrect interpretation of the law. The best solution in this case is for Parliament to provide an appropriate remedy by amending the law.

Conclusion

There are other problems arising from the operation of section 160 which require careful study and more detailed treatment. For example, couples who have lived together under circumstances provided for under section 160 often find themselves in circumstances where they need documentary proof of their marriage. How are they to get such documents when they did not go through any ceremony of marriage? Some couples have overcome this problem by swearing an affidavit which is then used for limited purposes as a marriage certificate. Is it necessary for such a couple to go through a ceremony of marriage merely to get a certificate of marriage?[24] This would be a long way

24 This course of action can have certain disadvantages. For example, in the case of *Re Bradshaw* (see note 9) it was held that a marriage ceremony performed after the parties' long cohabitation is fatal to the presumption of marriage for the period earlier than the date of marriage. The effect of this holding is to render children born before the ceremony illegitimate unless otherwise legitimated. So far as we know there is no general law in Tanzania which legitimizes children by reason of the subsequent marriage of their natural parents.

around the problem especially today where more young couples cohabit without bothering to go through a marriage ceremony of any sort.

It is not clear either whether parties who are deemed to be married under the provisions of section 160 can petition and obtain judicial divorce where evidence exists that their marriage has broken down. In the case of *Theresia Msiwao*[25] Makame, J., held that where the presumption of marriage under section 160 has not been rebutted, the parties remain married until either of them takes »the necessary steps« to bring the relationship to an end. It would appear from the foregoing judicial opinion that the taking of the »necessary steps« would include filing a petition for divorce by either party. The case of *Theresia Msiwao* came to the High Court as an appeal from the Primary Court and concerned the determination of custodial rights over a child born during the parties' long cohabitation. Although the couple did not specifically ask the trial or appellate court to make a ruling on whether or not they were presumed married – either party being too preoccupied with the issue of custody – the High Court, however, made a finding that »the parties had acquired a reputation of having been married to each other within the meaning of section 160 of the Law of Marriage Act«. It was after making an order for custody in favour of the father that Makame, J., noted that for »the avoidance of doubt, the parties, having acquired the reputation of being husband and wife, and being presumed married, are still spouses. If they feel they must end it [then] they must take the »necessary steps«.

The status of children born during long cohabitation is also uncertain. Thus whereas it can be argued that where the presumption of marriage under section 160 (1) has not been rebutted the children of that union will be legitimate, it is difficult to say what their status would be where the presumption is rebutted. For in such cases the court cannot hold that there is *not* and *never has been* a marriage between the parties and still hold that their children are legitimate [emphasis BAR]. Moreover although subsection 160 (2) grants jurisdiction to the courts to make custody and maintenance orders in respect of such children, it cannot be assumed *ipso facto* that such children are legitimate. For example, the fact that in an affiliation suit a court makes an order for maintenance does not mean that such a child is automatically legitimated by that order.

The relevant paragraph of the *Government White Paper* No. 1 of 1969, on which section 160 was based, makes it clear that the Government intended to protect women who live with men under the circumstances set out in section 160 and the children born of such a relationship. It reads as follows:

> »13. It is also proposed that the law should provide for the protection of the woman who lives with a man for a long time without being legally married to him. At the moment a man may live with a woman for many years and even have children, yet the day he is tired of living with her he may drive her out of his house or leave her. Such a woman cannot sue the man for maintenance and her children are illegitimate. The Government proposes, therefore, that in order to remove this injustice, if a man

25 *Theresia Msiwao* v. *Mwamba Mohamed,* DSM High Court (PC) Civ. App. No. 10/78 (unrep.).

cohabits with a woman for a period of more than two years then he would be presumed to have married that woman, and if they have children, such children would be deemed to be legitimate children of such spouses as long as the man at the time he started cohabiting with such a woman was legally capable of being married [to her].«

Unfortunately, this laudable goal was not properly translated into statutory language in order to protect children arising from long cohabitation. It seems the only way to achieve this result is to amend the relevant section.

Again it may be asked that if no presumption of marriage attaches to a relationship between parties who have no initial capacity to marry, under what law is the court to determine that very question? In other words when the court hears a case between a couple who had no initial capacity to marry and ultimately makes a finding to that effect, does this mean that such a finding by the court amounts to a rebuttal of the presumption under section 160 (1) which in turn must lead to the application of section 160 (2)? The answer to this question must be in the negative. In my opinion the correct legal position is that where a court hears parties and in the process of doing so discovers that the provisions of section 160 do not apply to them, this should then be regarded as case where there is no presumption *ab initio.* Consequently, the court ought dismiss the case at any stage if it is satisfied that the provisions of section 160 do not apply to the parties.

This interpretation appears to be supported ty the decision of Nyalali, Ag. J. (as he then was), in the case of *Elizabeth Salwiba* (note 7) where he held that the provisions of section 160 (2) do not apply in cases where the conditions stipulated by section 160 (1) have not been satisfied by the parties.

It may be concluded therefore that some of the problems arising from the application of section 160 are a result of inelegant draftsmanship, others are connected with the legal history of Tanzania, and yet others arise out of the practises of people who treat the section as if it was intended to create a new form of marriage.

Presumption of Marriage in Tanzania

By *B. A. Rwezaura*

Section 160 of the Tanzania Law of Marriage Act provides that where it is proved that a couple has cohabited as husband and wife for at least two years, there shall be a rebuttable presumption that the two are married. Where such presumption is rebutted, the woman shall be entitled to apply to the court for an order of maintenance (and other reliefs) for herself and any children of the ›union‹. The interpretation which courts have given to the above section is not clear and could lead to confusion. This is so mainly because courts have not drawn distinction between two different types of presumption, i. e. the first one dealing with long cohabitation where parties have not gone through any ceremony of marriage (section 160) and the second where parties have gone through a ceremony of marriage and the presumption relates only to the validity of that ceremony. This second type of presumption is covered under section 41 of the Act. Also judicial interpretation of section 160 has given the impression that this section can be applied to cases where parties had no initial capacity to marry. This interpretation is not legally tenable either because the law cannot presume against ifself. Unfortunately this opinion has the effect of denying financial benefits to many women cohabitees and their children but the wording of the section does not permit any other interpretation. Finally, given the fact that today a number of people are cohabiting without ceremony, the Act ought to provide for registration of such unions after the requirements of section 160 have been satisfied.

Natural Sciences, Technology and Language Instruction in Africa

By *Eckard Breitinger*

In a series of conferences the newly independent African nations have defined their educational policies, hoping to enhance economic growth by improving educational facilities. It was generally agreed that the inherited educational systems were not adequate to meet the needs of the new nations. The humanities and social science programmes were the first to be Africanized. ›By contrast, science and technology were for a long time considered culturally indifferent. However, the combination of science as a foreign concept of thought on the one hand and of foreign languages of instruction‹ on the other hand have obviously been at the root of the ineffectiveness of science education. Although a new emphasis was placed, in educational policies, on the teaching of and in national African languages and on African natural cultures, this still left science education in a glaringly isolated position within school syllabi, as the one and major domain of alienation of African students, due to the alienness of the subject matter, and of the method