

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

PC CIVIL APPEAL NO.130 OF 2004

*(From the Decision of the District Court of Temeke in
Matrimonial Cause No. 101 of 2003 M.Chande ,DM)*

MOHAMED M. SALUM APPELLANT

VERSUS

JACK O. ATHUMANI..... RESPONDENT

J U D G M E N T

A.Shangwa,J.

In this case, the parties were husband and wife. Their marriage was dissolved by the Primary Court of Temeke in Matrimonial cause No 138 of 2002. It was dissolved on 17/10/2003. Upon dissolution of their marriage, the said Court ordered that the house at Yombo Buza area which it found to have been acquired by their joint efforts should be the property of their children and that it should be rented

and the rental income should be used to buy them food and pay their school fees.

The Appellant who was the Respondent before the Primary Court of Temeke decided to appeal to the District Court of Temeke against the said Court's finding that the house at Yombo Buza area which is within the territorial jurisdiction of that Court was acquired through their joint efforts. He filed matrimonial cause No. 101 of 2003.

Before the District Court of Temeke, the Appellant raised four grounds. One of them is that the trial Primary Court erred in law and fact by failing to believe that the house at Yombo Buza was built by him in 1989 in the absence of the Respondent when both of them were living under separation. He prayed the said Court to

maintain the order of the Primary Court that following the irreparable break down of their marriage, the house at Yombo Buza should be the property of their children but that the Primary Court's order of renting it should be reversed. He said that the said house is not big enough to be rented and that even if it is rented, it cannot fetch enough money to maintain their children. Furthermore, he told the District Court that there is no need to rent it because he has sufficient means for buying them food, clothing and paying for their school fees.

In reply, the Respondent told the Temeke District Court that the house at Yombo Buza area was acquired through their joint efforts. She prayed the said Court to reverse the Temeke Primary Court's order that it should be the property of their children.

In his judgment, the learned District Court Magistrate Mr. Chande held that as the parties' marriage has irreparably broken down, it was not proper for the Temeke Primary Court to order that the house at Yombo Buza be the property of their children. He reversed the said order by ordering that it should be sold and the proceeds of the sale should be divided equally between the parties.

The Appellant was not satisfied with the District Court's holding and order. He decided to appeal to this Court . He raised five grounds of appeal. All of them are interrelated. For this reason, I have decided to reduce them into two grounds which are as follows : One, that the District Court Magistrate erred in law and fact by ordering that the house at Yombo Buza be sold and the proceeds of sale thereof be divided equally between the parties. Two, that the District Court erred in law and fact by ordering that the said house

should be sold in total disregard of the fact that the future of their children depends on it.

The Appellant contended before this Court that the Respondent was a mere house wife whose contribution to the acquisition of the house at Yombo Buza which is in issue was minimal. In her reply, the Respondent submitted that she contributed 80% towards the construction of the house in issue. She said that, she took a loan from Tunakopesha for buying cement and Iron sheets which were used in its construction.

In re-joinder the Appellant stated that, the Respondent never contributed 80% to the acquisition of the house in issue and that the said building materials were not used in its construction but were used for repairing the Quarter at plot B 16 Temeke which is a city Quarter in which she is

living. He submitted that, he built it by using his own resources and registered it in the names of his children .

The facts of this case do show that the parties contracted an Islamic marriage in 1993. During their marriage, they got three children and acquired two houses through their joint efforts . One of them is situated at Kipunguni T.V. area and another one is the house in issue which is situated at Yombo Buza area. Apart from those houses, they owned two shops. One is located at Yombo Buza and another one is located at Mtoni Kichangani area.

The evidence on the trial court's record which was given by P.W.2 Msimu Pili , P.W. 3 Ally Shaban and P.W.5 Hamisi Mgeni do show that the house in issue was built during the subsistence of the parties marriage and not thereafter as the Appellant would like the court to believe.

The evidence further shows that at the time of their marriage, they had almost nothing. It was during the subsistence of their marriage that they acquired some properties which include the house in issue.

Furthermore, the evidence does show that when the Appellant fell in love with another woman, he shifted into the house in issue where he is currently living with her.

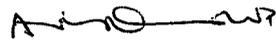
In my view, although the Respondent was a mere house wife, she did contribute towards the construction of the house in issue. Therefore, the District Court of Temeke did not err either in law or fact by ordering that it should be sold and that the proceeds of sale should be divided equally.

The Appellant's argument that the District Court erred in law and fact by ordering for the sale of the house in issue in total disregard of the fact that the future of their children depends on it has no merit. In my view, the future of their children do not depend on this house . Their children's future depends on how well they are brought up by their parents. In law, it is the duty of the father to maintain his children by providing them with everything including clothing, food and education. If he discharges his duty of care towards his children, they will be able to build their own houses when they grow up.

The Appellant's extra argument that the house in issue is registered in the names of his children and that therefore it cannot be sold is diluted by the fact that when he registered it in their names, he did not consult the

Respondent who appears to say that it was so registered in order to avoid its distribution between them after divorce.

For me, I think that this appeal has no merit and I hereby dismiss it. Like the Court below, I make no order as to costs.



A. Shangwa, J,

30/12/2005

Delivered in open Court this 30th day of December, 2005.



A. Shangwa,

JUDGE

30/12/2005