

**IN THE HIGH COURT OF TANZANIA
AT DODOMA**

(PC) CIVIL APPEAL NO. 48 OF 2004

**(From the decision of the District Court of Manyoni at
Manyoni vide Civil Appeal No. 2 of 2004. Original Civil
Case No. 9 of 2002 of Urban Primary Court.**

Before – E.E.M. Mwamtemi, Esq., District Magistrate

ELIZEBETH KUTIMWA APPELLANT

Versus

KEPHA HUZI RESPONDEN

22/6/2006 & 25/7/2006

J U D G M E N T

MASANCHE, J.:

The appellant, Elizabeth Kutimwa, and the respondent, Kepha Huzi, were once man and wife. They had got married to each other in 1987. To the time their matrimonial life ran into problems, in 2002, they had sired four children.

In 1997, problems started to arise in the matrimonial life. The husband started complaining that the wife was not respecting him. On 21/1/97, the respondent caught his wife, the said Elizabeth, committing adultery with a person called Wilson Alexander, described in the proceedings as a "young man." These two were caught in fraga delicto committing adultery on the bed of the respondent. The adulterers confessed and were fined shs. 20,000/= each, and were

told to jointly bring five goats. The adulterers paid that "fine." It is said they were caught again the second time, committing adultery. So, the respondent opened a case in the Urban Primary Court of Manyoni. He was granted the divorce. Some more orders were given on the matrimonial properties and the children. The respondent was told to give to the wife:

1. One house,
2. 2 beds and their mattresses,
3. Two cooches,
4. 3 stools,
5. One bicycle,
6. A trolley,
7. Domestic utensils,

It has also ordered that the children should remain with the wife, but the ex husband would maintain them, through the Village Office. No order was given as regards dowry.

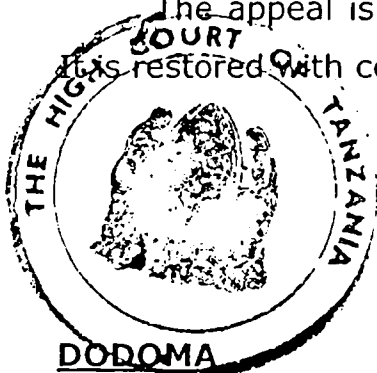
The respondent got satisfied with the judgment on everything, except the matrimonial property. So, he appealed to the District Court on the matrimonial property issue.

The District Court, indeed agreed, with the Primary Court decision, on everything, except on the issue of matrimonial assets. It waived the decision on matrimonial property. The wife now appeals to this court, on the order of denying her a share in the matrimonial property.

After reading the entire record, I agree with the first appellate Court that the appellant was caught in adultery and, indeed, later deserted the husband. That, however, does not, in itself disqualify her from getting a share of the matrimonial assets, when it comes to the division of the same. Blameworthiness in matrimonial cases is considered only when it comes to the issue of refund of dowry. In cases of refund of dowry, the court must ascertain who was the causer of the break down of marriage. If the man was the sole causer, he is not entitled to recover anything (See Chigoli Gomahingo v Wilson Mchane [1983] TLR 311). With other matrimonial offences – adultery, sexual perversion, the distribution of the assets must follow the principle in Bi Hawa Mohamed v Ally Sefu Civil Appeal No. 9/83 (Court of Appeal) – now reported in [1983] TLR p 32.

And, what goes to who, is an exercise which is best done by the trial Court. I do not see any justification for disturbing the distribution done by the trial Court, in its last paragraph, in the judgment.

The appeal is allowed. The Primary Court judgment is restored.
It is restored with costs.



25th Julay, 2006

(J.E.C. MASANCHE)

JUDGE

Appellant – Present in present bolts out in jubilation.

Respondent – Present in person.