

**IN THE HIGH COURT OF TANZANIA
AT TABORA
PC CIVIL APPEAL NO. 57 OF 2005
(From Original Civil Case No. 456/2004 Ujiji
Primary Court & Civil Appeal No.8/2005
Kigoma District Court)
IDD S/O RISASE.....APPELLANT**

**VERSUS
SAFI S/O OMARY.....RESPONDENT**

J U D G E M E N T

17th Apr.07 & 21st June,07.

MZIRAY, J.

This is an appeal by the herein appellant to oppose the decision of the district Court of Kigoma in Civil Appeal No. 8/2005 from original Civil Case No. 46/2004 of the Primary Court of Ujiji.

The appeal has this history. The appellant and the respondent were married in 1998. They are blessed with one child. Due to some matrimonial problems their marriage was dissolved by the Primary Court of Ujiji with an order that the

appellant should pay shs.5,000/= per month towards the maintenance of the child of the marriage. The trial court did not decide on the distribution of the matrimonial assets as a result the respondent appealed to the district court.

On hearing the appeal the district court reversed the decision of the trial court and ordered the appellant to pay shs. 20,000/= per month towards the maintenance of the child of the marriage. In addition it ordered that the properties listed in the annexure to the Petition of Appeal which are in possession of the appellant should be handed to the respondent as compensation for her contribution in the marriage. The contribution is in respect of a house allegedly built on joint efforts. The items to be given to the respondent are in the annexure to the Petition of Appeal, save for the house. The appellant was aggrieved by the decision of the district court hence this appeal.

child caused by change in circumstances. It is submitted that the respondent has deserted the child by placing him in the custody of the respondent's mother without consulting the appellant. It is his view that as the child had now attained the age of seven years, custody should now be placed on the appellant.

In opposing to the appeal the respondent prayed for the decision of the district court to be upheld. On the new issue introduced she denied the assertion that the child stay now with her mother. She submitted that as the appellant has married another woman if custody of the child will be placed on the appellant it is going to affect the welfare of the child. As a whole she prays for the appeal be dismissed with costs.

I will start with the award of shs. 20,000/= per month towards the maintenance of the child of the marriage. It transpired that the child is now seven years old. Presumably he is attending Primary

The appellant filed nine grounds of appeal which in essence he is opposing the order of maintenance of shs. 20,000/= per month and the award of matrimonial properties given to the respondent. Mr. Kayaga, learned Counsel who appeared for the appellant in submitting in respect of the order of maintenance argued that the district court erred because it did not address itself on the earnings of the appellant which are meagre. He submitted that the amount fixed is arbitrary and unreasonable. He is in favour of the amount fixed by the trial court.

On the order giving the respondent all the household items the learned counsel argued that there was no evidence that the respondent contributed in joint efforts with the appellant towards the acquisition of the properties. It is contended that the order left the appellant empty handed and subjected him to hardship.

The appellant introduced a new issue not in his Memorandum of Appeal of change of custody of the

School. There are essential needs for school. The child needs food and clothes. At times he will require medical care. All these requirements cannot be met by shs. 5,000/= per month. It must be more than that. Though the appellant did not want to reveal his earnings per month, being a taxi driver he must be earning an average net income of not less than shs. 100,000/= per month. If he part with shs. 20,000/= from this amount for the welfare of his child it will not affect his life. I agree with the district court that an amount of shs. 5,000/= per month for the up keep of a child is just a peanut which can only assist very little in up bringing a child. It was therefore justified for the district court to increase this amount to shs. 20,000/= per month which in my view is reasonable and sufficient to meet the expenses of the child. The appellant cannot therefore succeed in this ground of appeal.

The second issue is on the order of the district court giving the respondent the listed household items and her clothes which were retained by the

appellant. For the clothes the appellant is not disputing to hand over to the respondent. The dispute is over the household items. From the record of the trial court the marriage between the parties existed for about six years. During this period the respondent must have in one way or another contributed her efforts to acquire the matrimonial properties. She asserted that she made her contributions to complete the construction of the matrimonial house. Though the appellant has asserted that the said house was inherited from his deceased father, this assertion was dismissed by the district court. It was proper for the district court to dismiss the appellant assertion because there is no evidence to show that the house was acquired through inheritance. I take that it was a matrimonial property. If the house was left with the appellant then it was just and equitable for the respondent to get the household items ordered by the trial court as her share in the division of the matrimonial assets. There is no reasonable ground for him to complain in this court. The decision of the trial court when

dealing with this issue was quite proper. This ground of appeal also fails.

Lastly is on the issue of change of custody of the child introduced by the appellant when arguing his case in this appeal. This is completely a new issue which is not even included in the Memorandum of appeal. It cannot be considered. If the appellant want this issue to be determined the procedure is for him to file an application in respect of this issue and not to bring it through the back door.

In total I find that the appeal is filed without sufficient course. I dismiss it with costs.

R.E.S. MZIRAY
JUDGE

Right of appeal explained.

R.E.S MZIRAY
JUDGE
21/6//07

I hereby certify that this is a true copy of original judgment.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

S.B. BONGOLE
DISTRICT REGISTRAR