

IN THE HIGH COURT OF TANZANIA
AT IRINGA

(PC) MATRIMONIAL APPEAL NO. 1 OF 2012
(From the decision of Njombe District Court in
Matrimonial Appeal No. 4 of 2011 - Original
Matrimonial Cause No. 15 of 2011
of Njombe Urban Primary Court)

VICTORIA SIGALA APPELLANT

VERSUS

NOLASCO KILASI RESPONDENT

5/8/2014 & 3/10/2014

JUDGEMENT

MADAM SHANGALI, J.

The appellant VICTORIA SIGALA has filed this appeal against the decision of the Njombe District Court in Matrimonial Appeal No. 4 of 2011 originating from Matrimonial Cause no. 15 of 2011 of the Njombe Urban Primary Court. The respondent NOLASCO KILASI had filed a petition for divorce against the appellant before the trial Urban Primary Court in 2011. After hearing the petition the trial Urban Primary Court ruled in favour of the appellant and

declared that the marriage between the spouses has broken down irreparably. After that, the trial urban court went ahead and gave orders on the custody of children and distribution of matrimonial assets to the effect that the two children of the marriage who were above seven years were placed in the custody of their father, the petitioner, respondent, while the third child who was under the age of seven years was placed under the custody of their mother, the appellant. Regarding to the matrimonial assets the trial Urban Primary Court distributed all furnitures and domestic utensils among the warring parties but on the issue of matrimonial house it ordered the appellant to be paid T.Shs.1,000,000/= by the respondent.

The appellant was dissatisfied with the decision of the trial Primary Court. On her first appeal before the District Court at Njombe the appeal was dismissed and the decision of the trial Primary Court upheld.

The appellant was still disgruntled and undeterred she has filed this second appeal intending to impugn the decisions of the lower courts. She has come with four grounds of appeal namely;

1. That, the District Court erred in law in that its judgement was no judgement at all but an affirmation of the lower courts judgement.

2. That, the District Court erred in law by distributing the matrimonial assets arbitrarily without assigning any reasons especially on the house which was agreed by both parties that it was built by the parties joint efforts..
3. That the District Court misdirected itself by affirming the lower court's decision that the matrimonial home is in the possession of the appellant and the respondent is intending to move in another illegal wife in the house.
4. That the District Court misdirected itself by holding that the T.Shs.20,000,000/= value of the house, the appellant should be compensated T.Shs.1,000,000/= knowingly that it was built by joint efforts and the appellant is still living in the said house with her children.

In this appeal the appellant was represented by Mr. Kingwe, learned advocate while the respondent appeared in person and unrepresented. The appeal was heard by way of written submissions.

In his written submission the advocate for the appellant decided to drop the second and third grounds of appeal and argued only the first and fourth grounds.

In support of the first ground of appeal the appellant argued that according to Order XX rule 4 of the Civil Procedure Code, Cap. 33 a judgement should contain a concise statement of the case, the points for determination, the decision thereon and the reasons of such decision. The appellant assailed the judgement of the first appellate District Court for failure to reach that standard because it failed to show arguments advanced by the parties and rushed to affirm the decision of the trial Primary Court.

On the fourth ground of appeal the appellant complained that having found that the matrimonial house was built out of the joints efforts of the spouses and that its value was estimated to be T.Shs.20,000,000/=, the first appellate District Court was wrong to compensate the appellant only T.Shs.1,000,000/= which was arbitrarily assessed. The appellant asked this court to interfere on such unjust decision and employ the provisions of Section 114 of the Law of Marriage Act, Cap. 29 together with the findings in the case of **Bi Hawa Mohamedi Vs. Ally Seifu**, CA Civil Appeal No. 9 of 1983, and allow her appeal to the extent that the matrimonial house should be distributed equally.

In response the respondent submitted in support of the first appellate District Court judgement and argued that its judgement observed the law in its totality by reproducing the

facts and findings of the trial Primary Court and eventually the reasons behind the decision of that trial Primary Court. He argued that the first appellate District Court digested all grounds of appeal and found that there was sufficient evidence based on the allegation of adultery to establish that the marriage has broken down irreparably. He contended that having been so satisfied, the first appellate District Magistrate had no other option but to affirm and uphold that decision of the trial Primary Court.

On the fourth ground of appeal the respondent submitted that the appellant was not able to give evidence on how much she contributed towards the construction of the said matrimonial house. Nevertheless, the respondent appreciated the decision in the case of **Bi Hawa Mohamedi** (*Supra*) but he cited the case of **Bibie Maulid Vs. Mohamed Brahim** (1989) (HC) TLR 162 which ruled that the domestic duties also amounts to the contribution of property acquisition but not necessarily on 50% basis. The respondent insisted that the trial Primary Court was correct to award a compensation of T.Shs.1,000,000/= to the appellant. He further contended that the trial Primary Court opted not to order for the sale of the matrimonial house and instead left it to the respondent for the benefit of the children who were growing up to take possession of the same because they are entitled to it as the heirs. The respondent asked this court to dismiss the appeal

with costs.

Having perused the record of proceedings and the judgements of the lower courts and having considered the parties submissions I am now set to determine the grounds of appeal.

On the first ground of appeal, I entirely agree with the respondent that the judgement of the appellate District Court is perfect, sound, clear and in conformity with the requirements of the law. In that judgement the District Magistrate narrated the facts and issues discussed before the trial Primary Court and eventually looked at each ground of appeal and decided in favour of the respondent by upholding the decision of the trial Primary Court. It is unfortunate that in his submission the appellant's advocate did not list or point out the exact issue or argument which was raised in the first appeal and deliberately ignored by that first appellate District Court. Therefore, the first ground of appeal remains a dry complaint without detailed explanation to elaborate it. That ground of appeal is therefore rejected.

On the second ground of appeal I agree with the appellant that both lower courts were wrong to award the respondent T.Shs.1,000,000/= as her share from acquisition of the matrimonial house. In the foremost that value of the

house of T.Shs.20,000,000/= was not verified. Secondly the compensation of T.Shs.1,000,000/= was arbitrarily reached by the trial Primary Court. Thirdly, that amount of T.Shs.1,000,000/= was awarded to the appellant by the trial Primary Court on allegation that the house should remain in the hands of the respondent as part of the children's inheritance.

On appeal, the respondent claimed that the appellant should have adduced evidence to show how she contributed to the acquisition of the matrimonial house. That means even T.Shs.1,000,000/= awarded to the respondent was reached without evidence as to the extent of her contribution. I find it queer that the respondent has been castigating the appellant for not adducing any evidence to show her contribution to the acquisition of the house while there is no scintilla of evidence to establish the respondent's contribution to the acquisition of the same house. The evidence is clear that the house was constructed during the subsistence of the marriage and in the joint efforts of the spouses. It is disheartening on the part of the appellant that when it comes to the distribution of the same it is only the appellant (*woman*) who is asked to produce evidence to show her contribution to the acquisition of the house. It is in such situation and in defence of women rights in this country that the Court of Appeal of Tanzania, in the case of **Bi Hawa Mohamedi** (*Supra*) decided on the objectives

of the Law of Marriage Act and stated that, the “*joint efforts*” and work towards the acquiring of the matrimonial assets have to be construed as embracing “*the domestic efforts*” where there is no direct efforts of a wife to the acquisition. In that decision the Court of Appeal went further and directed that what is important in the division of matrimonial property is the wife’s contribution or efforts but not her contribution towards the breakdown of the marriage.

In my considered opinion I am highly persuaded and guided by the principle in the decision in **Bi Hawa Mohamedi** (*Supra*) and **Bibie Maulidi** (*Supra*) that in determining contribution towards the acquisition of matrimonial or family assets every case must be decided in accordance with its peculiar facts and circumstances. Indeed, there is no fast and hard rule in deciding on the amount of contribution and division of the matrimonial assets. Where the matrimonial assets were acquired during the happy days of subsistence of marriage and in the joint efforts of the spouses there is no need of requiring one spouse to give evidence to show the extent of his/her contribution. The distribution of such assets should automatically proceed in equal terms.

In the present case there is nothing to suggest or establish that the appellant did not contribute to the acquisition of the matrimonial house and there is no evidence to establish that the house was built by the respondent

himself or to suggest the percentage of their contributions. The fact is that the matrimonial house was acquired during the happy days of the pendency of the marriage through the joint efforts of the spouses. Now, unfortunately, that the marriage has broken down, the matrimonial house must be equally shared.

It must be understood that division of matrimonial assets, following the dissolution of marriage is not equivalent to the division of the assets of the deceased or say administrator of the estate of the deceased where all heirs and beneficiaries have a share. The division of matrimonial assets is between the spouses. Therefore, the act of awarding the respondent a lions share of the matrimonial house on the pretext of taking care of the children as potential heirs is untenable. The respondent was given custody of children because he convinced the trial Primary Court on his ability to care for the best interest of the children. Now he wants to take both the children and matrimonial house leaving the appellant with nothing. That is not fair at all.

In conclusion, the appellant is entitled to equal share of the matrimonial house. Therefore the matrimonial house should be sold at the market value or should be valued by the qualified valuer and the proceed thereof be distributed equally among the spouses i.e. appellant and respondent.

The appeal is allowed to that extent and the appellant is entitled to her costs.

M. S. SHANGALI

JUDGE

3/10/2014

Judgement delivered in the absence of the appellant and her advocate and in the presence of the respondent in person.

M. S. SHANGALI

JUDGE

3/10/2014