

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**PC CIVIL APPEAL NO. 25 OF 2017**

*(Arising from judgement of Karatu District Court in Civil Appeal Land No.  
05 of 2017)*

**FEBRONIA WILLIAM ..... APPELLANT**

**VERSUS**

**ISRAEL ROBERT ..... RESPONDENT**

**I. MAIGE, J**

**JUDGEMENT**

This is a second appeal. In the first appeal at the District Court of Karatu, the appellant was challenging the decision of the primary court of Karatu to the extent of division of matrimonial assets. The District Court dismissed the appeal for being devoid of any merit. On top of dismissing the appeal, the district magistrate reversed the decree of the **trial court** on maintenance and substituted the amount of **TZS 150,000/=** per month granted with the trial court with **TZS 80,000/=**.

In her petition of appeal, the appellant has enumerated four grounds of appeal which can be reduced into two main grounds. First, that the district court was wrong in determining the appeal basing on extraneous matters. Two, the district incorrectly appraised the evidence adduced at the trial court.

On the date of hearing, the parties appeared in persons and were not represented. In his submissions, the appellant adopted the grounds of appeal and urged the Court to allow the appeal. The Respondent on his part, adopt the statement in a reply to the petition of appeal and invited the Court to dismiss the appeal.

I have had a look on the grounds of appeal and the reply thereto in line with the decision of the District Court and the evidence on the record. I understand that as a general rule, in the second appeal the Court is not expected to make a reappraisal of the evidence. More so, it would ordinarily not interfere with the concurrent factual finding of the lower courts. It can only do so if there is a misdirection on the part of the lower courts on pertinent issues of law. In this case, the appellant claims, among others that, the district court decided the appeal basing on extraneous matters. The ground, in my view, goes to a fatal misdirection on point of law because a Court of law is bound to decide a matter basing on evidence and sound judicial principles. On top of that, I have observed, there was no concurrent finding of the lower courts on the issue of maintenance. For, the first appellate court reversed the same.

With that remarks, let me start, right away with the first ground. In here, the first appellate court is faulted for deciding the appeal basing on extraneous matters. After going through the judgments and proceedings of both the trial court and the first appellate court, I entertain no doubt that this ground is well founded. I will explain. The appeal at the District Court was initiated by the appellant herein. The respondent did not raise any cross appeal. As clearly captured in the judgment of the first appellate court, the only issue raised in the appeal before it was distribution of the matrimonial assets. The first appellate court without there being a cross appeal, proceeded, in its own motion, to reverse the decree. Quite unusually, the decision, as correctly submitted for the appellant, was based on extraneous facts and assumption of facts from the presiding district magistrate. For clarity, I will reproduce here below the relevant part of the judgment. Thus:-

*During trial de novo to another primary court magistrate, I met with wonders, respondent was appealed by opposing that Tshs 80,000/= was large amount to him to pay per month, during rehearing for the second time, the amount was added from Tshs 80,000/= to 150,000/= per month , the amount which I think is large amount because since the first judgment the respondent was dissatisfied with that amount; Tshs 150,000/= per month in rural area is large amount of money, I don't know the factor considered because section 136 of the law of marriage Act (cap 29 R.E. 2002) required*

*the court to have regard to the advise of the welfare officers and the others when considering question relating to maintenance. (sic)*

It is clear from the above extract that the presiding district magistrate considered in his decision, a judgment and proceedings of the primary court which were reversed and quashed by the same court on appeal. The presiding magistrate appears to have expected the trial magistrate, in his decision, to be influenced by the judgment his brother magistrate which had been reversed by the same court on appeal. With due respect, that was quite wrong. Once a judgment is set aside and retrial *de novo* ordered, the trial magistrate entertaining the matter *de novo* cannot in law consider what was decided in the reversed judgment to be the basis of his decision, as doing so would render his decision prejudicial.

In his finding above, I have noted, the presiding magistrate is making reference of the evidence of the welfare officer. In my reading, the said welfare officer was not among the witnesses who testified during trial. Neither was there any report from such officer which was exhibited in evidence. This would further confirm the proposition by the appellant that the appeal was decided on extraneous matters.

For that reason therefore, I will agree with the appellant that the decision of the district court to the extent of divorce was erroneous for being based on extraneous matters.

On the issue of distribution of matrimonial assets, the two lower courts had concurrent opinion. My look at the proceedings of the trial court does not suggest of there being evidence to support the proposition that the landed property in question was acquired by the joint efforts of the parties herein. The appellant claimed in evidence to have participated in the purchase of the property. She does not say how much did she contribute. On cross examination, I have noticed, she admits that the purchase price was paid by the respondent after she had left. The sale agreement on the record as the courts below correctly held, indicates that the purchase was in 2014 November when the parties had already departed each other. The appellant who had a burden of proof did not bother to produce the vendor to establish her claim. The evidence on this aspect was based on her sole sweeping evidence. The other two witnesses, her father (pw-2) and mother (pw3) did not make any comment on this issue. Therefore, I will hold that the second ground of appeal has no merit and it is accordingly dismissed.

In the final result therefore the appeal partly succeed to the extent of the decree of maintenance and fails to the extent of distribution of matrimonial assets. The decree of the trial court is upheld in the circumstance. Each part shall, in the circumstance, bear its own costs.

It is so ordered.

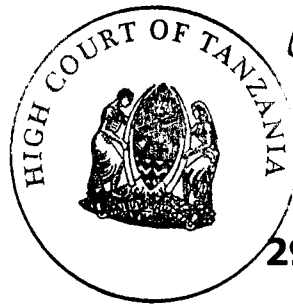
Right to appeal is explained.

  
**I. MAIGE**

**JUDGE**

**29/10/2018**

Ruling delivered in the presence of both parties in persons this 29<sup>th</sup> day of October 2018.



  
**I. MAIGE**

**JUDGE**

**29/10/2018**