

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**PC. CIVIL APPEAL NO. 61 OF 2017**

(Arising from Magu District Court Civil Appeal No. 13 of 2017, original  
Civil Case No. 46/2016 PC. Magu)

**JONATHAN LUPONDIJE ..... APPELLANT**

**VERSUS**

**NEEMA ISAYA ..... RESPONDENT**

**JUDGMENT**

**28/08/2018 & 31/01/2019**

**RUMANYIKA, J.:**

Appeal, therefore its historical back ground is against judgment of 09/06/2017 of the District Court of Magu, quashing decision on a ruling on objection proceedings to order of attachment of a TV 1 set make Panasonic 18", a wooden table, 4 pieces of coaches and a cardboard in execution by Jonathan Lupondije (the appellant), of a judgment and decree issued in Civil Case No. 133 of 2016 by Magu Urban Primary Court ( the trial court) on 12/04/2017.

The grounds of appeal are two essentially:

1. that the 1<sup>st</sup> appeal court erred in law and fact not holding that the property attached personally belonged to the respondent (not matrimonial).

2. that the first appeal court erred in holding that the respondent and judgment debtor one Mathias P. Makoja were not proved wife and husband.

Parties appeared in person.

The appellant submitted that marriage of the respondent and judgment debtor had subsisted say for three (3) years. That out of Shs. 3.0 million, they had paid Shs. 500,000/= only. That is it.

The respondent submitted that there was nothing to fault the 1<sup>st</sup> appeal court. As the fish pond was her personal property and the judgment debtor actually was only her lover. Not husband. That is all.

A brief account and an undisputed evidence runs that on 25/09/2015, the appellant and Mathias P. Makoja (throughout not a party to proceedings but lover/husband of respondent), executed a sell agreement on a ¼ an acre fish pond for Shs. 3,000,000/=. Only Kepha Erasto and Edward J. Kulong'wa witnessed the agreement. Somewhere somehow it appears that the purchaser defaulted appearance, and, as said, through Civil Case No. 133 of 2016 the trial court held him liable and issued order of attachment of the said property. However, as the respondent hadn't been a party to case/proceedings, and personally he owned the property, she objected to the attachment unsuccessfully. But won on 1<sup>st</sup> appeal.

In his decision, the 1<sup>st</sup> appeal court rightly so in my view held that there wasn't evidence by appellant to show and prove that attached was matrimonial property. Leave alone evidence to show that the respondent and judgment debtor were wife and husband.

I understand that when buying utensils and other households, ordinarily spouses did not in the respective cash sale receipts demonstrate partnership/joint ownership. The appellant and judgment debtor may have been formally or by presumption wife and husband yes! But no witnesses came forward to seriously or on balance of probabilities establish kind of marriage. So that now, this court may consider the property attached as matrimonial.

Secondly, as the respondent, during the appeal complained, the two may have had stayed as spouses or as lovers for three years fine! But the evidence did not show and prove that the three years stay under the roof had been consecutive and property acquired during that period.

Thirdly, and I think this was even more serious, not only the respondent wasn't a party to the loan agreement, but also she was not invited to witness the deed. If at all the agreement was intended positively or negatively to affect the pair. Unless for reasons known to him, the judgment debtor just sold the fish pond but in the back of wife (the appellant).

Appeal is, in its entirety dismissed with costs. Ordered accordingly.

Right of appeal explained.

  
**S.M. RUMANYIKA**  
**JUDGE**  
**26/01/2019**

Delivered under my hand and seal of the court in chambers this 31<sup>st</sup>  
day of January, 2019 in the presence of both parties in person.



  
O.H. Kingwele

**DEPUTY REGISTRAR**

**31/01/2019**