

**IN THE HIGH COURT OF TANZANIA**

**AT MWANZA**

**PC. MATRIMONIAL APPEAL NO. 41 OF 2017**

*(Arising from Musoma District court Civil Appeal No. 37 of 2017, Originating from  
Musoma Urban Primary Court Civil case No.3/2017)*

**SAFINA ALLY.....APPLICANT**

**VERSUS**

**DAKU ABDALLAH .....RESPONDENT**

**JUDGMENT**

Hearing concluded..11/10/2018 &

Judgment delivered..02/01/2019

**Gwae, J**

The appellant, **Safina Ally** is appealing against the decision of Musoma District Court (1<sup>st</sup> appellate court) dated **26<sup>th</sup> September** 2017 which upheld the decision of Musoma Urban Primary Court (trial court) delivered 19<sup>th</sup> April 2017.

Initially, the trial court distributed the matrimonial assets acquired by the joint efforts of the parties, ex-spouses whose marriage was conducted in 1986 through Islamic rite and was duly dissolved in the year 2017 that the appellant to get 25 % out of the immovable properties (and that each

should party should pay Faída Marco the sum of Tshs. 1,000, 000/= being the outstanding loan.

Being dissatisfied with the concurrent decisions of the courts below, the appellant has preferred this appeal by advancing a total of six grounds of appeal but in essence there are two grounds of appeal, namely;-

- i. That, the courts below erred in law and fact for holding that the company (industry) owned by the parties is not subject to division of matrimonial assets
- ii. That, the learned magistrates sitting at primary and the District Court aforementioned erred in law and fact for failure to consider the evidence adduced before the trial court

When this appeal was called on for hearing, both parties had no legal representation, unrepresented. Supporting her appeal, the appellant argued that the 1<sup>st</sup> appellate court erred in law by distributing the matrimonial assets to the appellant and respondent at the rate of 25% and 75% respectively.

On his part, the respondent submitted that both decisions of the courts below were just and fair adding that a company was a different

legal entity. The respondent further argued that the courts below were justified to distribute the immovable matrimonial assets at the rate of 25 % and 75 % to the appellant and him respectively due to the reason that he was employed whereas the appellant was a mere house wife.

In her rejoinder, the respondent stated that he is entitled to 50 % out of the immovable matrimonial assets as she was engaging in various domestic activities.

In the **1<sup>st</sup> ground** of appeal, it is trite law that a company registered under Companies Act, Cap 212 Revised Edition 2002, has its own way of dissolution or winding up in the event of bankruptcy and related event, section 157 provides;

1) The winding up of a company may be—

- (a) By the court; or
- (b) Voluntary; or
- (c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply unless the contrary appears, to the winding up of a company in any of those modes.

The courts below were therefore justified to decline distribution of the industry duly registered through the Companies Act. This appellant's ground of appeal is therefore baseless.

Regarding the **2<sup>nd</sup> ground** of appeal, the appellant's testimony is to the effect that all properties (three houses, plots industry and domestic utensils) were acquired by the joint efforts of the parties during subsistence of their marriage. Looking at the evidence adduced by both sides, it is observed that there was a serious contention as to the house located at Nyakato area, the respondent is found contendingly stating that the house at Nyakato is the belonging of his late mother while the appellant though admitting that the same was built through the efforts of both parties.

However, the in respect of the house at Nyakakato, I find the same to be built or was intended for the respondent's mother who is now deceased but her heirs if any can inherit.

Looking at the extent each party's contribution to the acquisition of the matrimonial assets, I am impressed by the evidence adduced by both sides that the appellant was not only a house wife but also a business woman (DW's testimony-"Alikodi Mafrizer afanye biashara ya kuuza samaki pia alikuwa anakanga dagaa na kusafirisha kwa pesa niliyomkopea").

Requirement of ascertainment of extent of contribution is provided for under section 114 (2) (b) of the Law of Marriage Act, Cap 29 R. E, 2002 judicially interpreted in 186 and in **Mariam Tumbo v Harold Tumbo** (1983) TLR 293.

“In accordance with s. 114(2) (b) of the Law of Marriage Act, 1971, the court is required in exercising its power of division of assets to have regard to the extent of contributions made by each party in money, property or work towards the acquiring of the assets; housekeeping is a conjugal obligation and cannot be equated to work which refers to the physical participation in the production of the asset itself”.

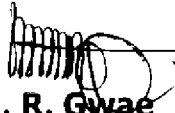
**(See also Bi Hawa Mohamed v. Seif (supra), Muthembwa v Muthembwa [2002] 1 EA)**

According to the evidence adduced by the parties and on record, it is clearly established that the appellant was not a mere house wife engaging only in domestic activities but also in business, she therefore deserves more than was she was awarded by the trial court

In the event, the appellant’s appeal stands allowed to the above extent. The concurrent decisions of the subordinate courts are partly confirmed and faulted to the extent herein. Justice and fairness of this


particular matrimonial case entitles the appellant to 45 % of their immovable matrimonial assets and respondent 55 % out of the same. Given the relationship between the parties, I shall not make any order as to costs of this appeal and courts below.

It is accordingly ordered.

  
**M. R. Gwae**  
Judge  
02/01/2018

Right of appeal fully explained



  
**M. R. Gwae**  
Judge  
02/01/2018