

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**PC CIVIL APPEAL NO. 111 OF 2018**

**SHAIBU M. ROMBOLA.....APPELLANT**

**VERSUS**

**REHEMA DONALD .....RESPONDENT**

*(Arising from Civil Appeal No. 81 of 2017 Temeke District Court;  
Origin Civil Case No. 67 of 2017 Temeke Primary Court)*

**JUDGMENT**

*Date of Last Order: 27/04/2020*

*Date of Judgement: 30/7/2020*

**S.M. KULITA, J.**

This is an appeal lodged by one **SHAIBU M. ROMBOLA** who is dissatisfied with the decision of Temeke District Court in Civil Appeal no. 81 of 2017, originating from Civil Case No. 67 of 2017 Temeke Primary Court.

Aggrieved with the judgment of the District Court the appellant lodged this appeal with ten grounds of appeal as hereunder;

1. That the Magistrate erred in law and facts in misinterpreting the provision of section 114 of the Law of Marriage Act [Cap 29 R.E. 2002].
2. That the Magistrate erred in law and facts to shake hands with the respondent that the debt was not settled in a certain percentage.
3. That the lower court erred in law and facts by ignoring the facts that some properties were acquired and disposed during the existence of the marriage.
4. That the lower court erred in law and fact in disregarding the documentary evidence.
5. That the lower court erred in law and fact by holding that the debt is still the same regardless of the part/initial payments effected by the appellant.
6. That the Magistrate erred in law and fact by not discussing, analyzing and holding over some grounds of appeal as raised by the appellant during the hearing.
7. That the Magistrate erred in law and facts to hold that there is no documentary evidence which was tendered by the appellant during the hearing.

8. That the lower court erred in law and facts by raising the issues which do not cover the dispute in its entirety hence rendering unfair judgment.
9. That the question of compensation was not properly addressed.
10. That generally the evidence on records does not match with of the findings of the district court.

During the submission the appellant opted to consolidate the 5<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> grounds of appeal into the 2<sup>nd</sup> ground. She also consolidated grounds no. 6 and no. 8 of appeal as one ground. He then submitted as follows;

As for the 1<sup>st</sup> ground of appeal the appellant submitted that the rights of the appellant were not fully determined in accordance with the provisions of section 114 of the Law of Marriage Act. She said that the District Court arrived into unfair decision upon ordering the issues of monetary compensation which were not proved and the Law of Marriage Act does not provide for the matters of compensation.

The appellant submitted collectively with regard to grounds 2, 5, 9 and 10 of appeal that the parties herein signed an agreement at the ward executive office on 04/03/2017 in which the appellant

paid Tanzanian Shillings 1,000,000/= thus the remaining debt was Tanzanian Shillings 3,400,000/= and the same was addressed before the District Court but the decision was in favor of the respondent.

With regard to ground three of appeal the appellant submitted that the matrimonial asset, a motor vehicle make Toyota Sienta was acquired and then disposed during the existence of the marriage upon agreement with the respondent. However, the District Court ordered the Appellant to compensate the Respondent of the said asset while the parties had agreed to dispose the same.

Arguing on grounds no. 6 and 8 collectively the appellant submitted that there were two issues which were raised by the District Court; the first issue was whether the trial court erred in analyzing the evidence adduced by the appellant and the second issue was whether the trial court had pecuniary jurisdiction to order the Tsh. 11,200,000/= compensation. The appellant submitted that it was not proper. He also stated that the District Court left some grounds of appeal undetermined hence the judgment was unfair on part of the appellant.

In reply the respondent collectively argued grounds 2, 5, 9 and 10 of appeal by saying that the properties were acquired during the

subsistence of their marriage, it was therefore right for the District Court to invoke the provisions of section 114 of the Law of Marriage Act in dividing the matrimonial assets between the parties. The respondent went on submit that the motor vehicle make Toyota Sienta was sold by the appellant and she got nothing and that the appellant owed the respondent TShs. 4,200,000/= and he never settled it.

With regard to ground three where to the award of Tanzanian Shillings 11,200,000/= was granted to her the Respondent submitted that it was due to the fact that the appellant stopped her from working where she had worked for 14 years and that the Appellant promised that he would find another job for her the act which was not affected, hence the court awarded her that said amount.

As for grounds no. 6 and 8 the respondent just quoted the findings of the first appellate court which is the District Court, I will discuss them in the course of my analysis.

Having carefully considered the submissions of both parties here is my analysis; starting with grounds no. 2, 5, 9 and 10 it is the trite law that following dissolution of the marriage between the parties among the issue which the court is required to determine is the

division of matrimonial assets between the parties to the extent of their contribution. The guiding provision is section 114 of the Law of Marriage Act [Cap 29 RE 2002] which states;

*(1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to the division between the parties of matrimonial assets acquired by them during the marriage by their joint efforts or to order the sale of any such asset and the division between the parties of the proceeds of sale.*

*(2) In exercising the power conferred by subsection (1), the court shall have regard,*

*(a)..... Not Applicable .....*

***(b) To the extent of contributions made by each party in money, property or work towards the acquiring of the assets.***

***(c) to any debt owing by either party which were contracted for their joint effort,***

In the instant matter it is undisputable that the parties herein the only asset acquired during the subsistence of their marriage was the said motor vehicle which the respondent claims and never

disputed by the appellant that it was disposed at a tune of TShs. 7,200,000/=. The appellant did not offer the proceeds of sale to the respondent while she is entitled to enjoy the fruits of the matrimonial asset acquired in joint efforts of the parties. The only remedy which the trial court ought just to grant was the monetary compensation to the extent of contribution made by the respondent. In my view the respondent is entitled half the amount for the sale of the Motor Vehicle which is TShs 3,600,000/=. It should also be noted that much as the appellant has decided to dispose the said motor vehicle with or without the consent of the respondent without offering to the respondent the proceeds of the said sale that was totally wrong and I am of the view that the appellant cannot benefit from the said wrong. The same position was held in the case of **BI. HAWA MOHAMED V. ALLY SEFU (1983) TRL 9, C.A.** where the court stated;

*"..... such conduct must be taken into account be allowed to fritter away assets by extravagant living or reckless speculation and then to claim as great a share of what is left as he would have been entitled to it if he behaved reasonably...."*



The appellant has also raised the issue of part payment of TShs. 1,000,000/= where he submitted that the remaining balance is TShs. 3,200,000/=, out of TShs. 4,200,000/= which was paid to him as a loan by the respondent as ordered by the trial court. I have gone through the records of the trial court specifically at page 6 of the typed judgment, it is not disputed that the respondent borrowed the said sum of Tsh. 4,200,000/= from the respondent but there was no evidence to prove that TShs. 1,000,000/= had actually been paid back to the respondent apart from mere oral words of the appellant. As the appellant admits to have been loaned that sum of Tsh. 4,200,000/= by the respondent the lower courts were right to order him to repay the Respondent.

With regard to the issue of payment compensation of TShs. 11,200,000/= to the respondent as ordered by the trial court which includes the respondent's loss of income for resignation, there is no proof that the respondent was forced by the appellant to quit the said job nor there is a proof of promise by the appellant that he was going to pay the respondent in the event she could not secure another job. Even if that is the case that was a separate agreement which the parties herein had entered. The said sum of money should not be regarded in the division of the matrimonial



assets. The respondent had misconceived to raise that fact in this Matrimonial suit. The respondent has a right under the provisions of section 56 of the Law of Marriage Act to sue the appellant in a separate civil suit. The section states;

*“A married woman shall have the same right as has a man to acquire, hold and dispose of property, whether movable or immovable, and the same right to contract, the same right to sue and the same liability to be sued in contract or in tort or otherwise”.*

Therefore, the trial court and the first appellate court did not address themselves properly in that aspect. If there is any claim of such like nature the respondent ought to pursue a legal action against the appellant but not through this matrimonial issue.

Having said so this appeal is partly allowed to the following extent;

- i. The payment of compensation of Tanzanian Shillings 11,200,000/= is hereby overruled.
- ii. The order of payment of TShs. 4,200,000/= by the Appellant to the Respondent stands still as so decided by the lower courts.

- iii. The Appellant to pay the Respondent her share of division of matrimonial asset, the motor vehicle make Toyota Sienta at the rate of 1/2 of the disposed value (Tsh. 7,200,000/=) which is Tanzanian Shillings 3,600,000/=.

I make no orders as to costs.



**S.M. KULITA**

**JUDGE**

**30/07/2020**

