

IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

(PC) CIVIL APPEAL NO. 83 OF 2020

*(Arising from Matrimonial Appeal No. 21 of 2019, before hon. C. Kiliwa ,
RM dated 28th February, 2020 at the District Court of Kinondoni)*

Amani Shabani Selemani.....Appellant

VERSUS

Fatuma RamadhaniRespondent

JUDGEMENT

Date of last order: 30.06.2020

Date of Judgement: 27.10.2020

EBRAHIM, J.:

This is the second appeal, Having been unsuccessful at the two subordinate courts, the Appellant herein has lodged the instant appeal raising two grounds of appeal that:

1. The appellate magistrate erred in law and facts to confirm that the marriage has broken down irreparably while the petition for divorce is founded on the Respondent's wrong doing.
2. The appellate magistrate erred in law and facts to confirm that the respondent contributed to the house at Goba-Kinzudi area while it

was acquired by the Appellant's former deceased wife and his 5 issues.

Brief facts of the case as could be gathered from proceedings on record are that the parties solemnised their Muslim marriage in December 1991. They were blessed with two issues. The Respondent left matrimonial home on 11th February, 2017 following the accusations that she was a witch and squabbles that started in 2010. The accusations came after the death of the two children. During the trial, the Appellant called two additional witnesses and the Respondent called one additional witness. After hearing the evidence from both parties, the trial court dissolved the marriage and distributed the matrimonial house located at Kinzudi – Goba at the ratio of 30% to the Respondent and 70% to the Appellant.

Aggrieved the Appellant unsuccessfully appealed to the District Court which upheld the decision of the trial court; hence the instant appeal.

The appeal was disposed of by way of written submission as per the schedule set by the court. The Appellant was represented by advocate Cleoplace James and the Respondent had the services of Tanzania Women Lawyers under the legal aid scheme.

In determining the appeal, I shall not reproduce the submissions by the parties but shall rather refer to the relevant submissions in the cause of traversing substantive issues.

I shall address the grounds of appeal generally. As it can be observed this is a second appeal. The second appellate court is discouraged from interfering with the concurrent findings of facts of the lower courts unless there has been a misapprehension of evidence, a miscarriage of justice or violation of some principles of law or practice. The said principle has been enunciated in the Court of Appeal case of **Salum Bugu Vs Mariam Kibwana**, Civil Appeal No 29 of 1992); and the case of **Amratal Danodor & Another t/a Zanzibar Silk Store Vs A.H Janowala t/a Zanzibar Hotel**, [1980] TLR, 31at page 35).

I have dispassionately gone through the rival submissions by counsels from both parties as well as going through the evidence on record.

Counsel for the Appellant has begun by raising the issue of jurisdiction that the matter did not pass through the Marriage Reconciliation Board as there is no certificate issued contrary to **section 101 and 106(2) of the Law of Marriage Act, Cap 29, RE 2002 read together with Form No. 3 as per Regulation 9 of the Marriage Conciliatory Board**

(Procedures) Regulation, GN No. 240 of 1971. He cited a number of cases to cement the issue of jurisdiction and effect of the absence of certificate accompanying the petition. This line of argument prompted me to go through the records. Conspicuously in the court file, there is Form No. 3 from Marriage Conciliation Board of Goba duly signed on 22.10.2018. It is obvious therefore that, much as the Appellant was represented by an advocate whom the diligence requires that he peruse the court file after being engaged; he did not do so hence came up with baseless argument. Verily, since there is evidence in record that parties passed through Conciliation Board, I find the argument that the petition was prematurely filed to be unmeritorious.

As for the ground that the court erred to declare that the marriage is broken whilst the allegations of witch craft were not proved; SMII while under oath told the court that her parents were not in good terms following the accusations by the Appellant and his children that the Respondent bewitched two children who died. The dispute necessitated them to move to Goba. The Appellant has never refuted in his evidence to have accused the Respondent that she was a witch. Furthermore, it is indisputable fact that after the Respondent moved to Goba, the couple remained separated

for almost two years until the Respondent decided to petition for divorce. It is therefore clear that the separation and ultimately divorce was also attributed by the Appellant from his conducts and it cannot be conclusively be pinned down to the exclusive wrong doing of the Respondent as per **section 107 (1)(a) of the Law of Marriage Act, Cap 29, RE 2019.**

Again, the act of being accused as a witch and cause of death of children is as well a mental cruelty inflicted by the Appellant to the Respondent in terms of **section 107(1)(c) of Cap 29.** That being said, I find this ground of appeal to be unmeritorious and I dismiss it.

As for the issue of division of disputed premises, Counsel for the Appellant claimed that the same was acquired jointly between the Appellant and the former deceased wife. Nevertheless, both Appellants witnesses, SUI and SUII testified before the court that it is only the plot that was bought before the Appellant has married the Respondent. The Respondent testified before the court that she found the Appellant with the plot but she also assisted in development of the property and building of the house. She said she bought cement, assisted in plastering etc. The evidence that the house was built after the Appellant has already married the Respondent is overwhelming. That being the position, the Respondent is surely entitled to

the share of the said house as per the principles illustrated in the case of **Anna Kanugha Vs Andrea Kanugha** (1966) (HCD); the celebrated case of **Bi Hawa Mohamed V Ally Sefu** [1983] TLR 32 and **Eliester Philemon Lipangagela Vs Daud Makuhuna**, Civil Appeal No. 139 of 2002, (HC) that spousal contribution must be put into consideration.

More-so section **section 114 (3) of the Law of Marriage Act, CAP 29 RE 2002** recognise the contribution of the other party in improving the asset acquired by one party before marriage. The section reads:

"114 (3) For the purposes of this section, ***references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts***". (Emphasis added).

As alluded earlier, there is evidence that the Respondent found the Appellant with the plot that has not been developed. She assisted into developing the same. Thus, the said property falls within the term of the assets acquired during the marriage. Therefore, I find this ground of appeal to be unmeritorious and I dismiss it.

For all purpose and intent, I find this appeal to have no merits hence I find no reason to fault the con-current findings of the two courts below.

Accordingly, the appeal is dismissed. Following the relationship of parties ,
I give no order as to costs.

Accordingly ordered



R.A. Ebrahim

Judge

Dar Es Salaam

27.10.2020