IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

PC CIVIL APPEAL NO. 29 OF 2020

(Arising from Civil Appeal No 15 of 2019 of Bunda District Court and Originating in the Bunda Urban Primary Court on Civil Case No 116 of 2019)

ROSE JOSEPH .....APPELLANT

Versus

IDD MAGOTI ..... RESPONDENT

JUDGMENT

3rd & 12th November, 2020

Kahyoza, J.

It is in the interest of the state and parties that suits must come to end. **Rose Joseph** *(the appellant)* sued **Idd Magoti** claiming for division of matrimonial properties acquired during the substance of their marriage from 2002 to 2012. The trial court dismissed the claims on the ground that the primary court at Bunda Urban adjudicated the matter between the parties vide **Civil Case No. 101/2012**.

Aggrieved, **Rose Joseph** unsuccessfully appealed to the District Court, which upheld the decision of the trial court.

Undaunted, **Rose Joseph** appealed to this court contending that-

1) the appellate magistrate erred in law and fact by holding that the suit before the trial court was res judicata;
2) the appellate magistrate erred in law and fact for failure to invoke properly the principle relating to Division of Matrimonial assets;
3) appellate magistrate erred in law and fact for failure to make the division of Matrimonial assets equally between the appellant and respondent.

The Court heard the appeal orally. The applicant submitted that before the marriage broke down irreparably, they couple acquired jointly two houses. She played to be given one of the houses. The respondent deposed that the appellant took her share already. He added that he obtained one of the two houses before the married to the appellant.

This is the second appellate court. It is a trite law that where there are concurrent findings of facts by two courts, the second appellate court should not disturb the findings, unless, it is clearly shown that there has been a misapprehension of evidencing a miscarriage of justice or violation of some principle of law or procedure as it held in the case of **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores V A.H Jariwallatla Zanzibar Hotel** [1980] T.L.R. I would have stooped at that, but let me go further to determine whether the two courts below finding is justified.

I scrutinized the record of the trial court. The record shows that there as **Civil Case No 101/2012** before the same court and between the same parties. The appellant was a claimant in that case. She instituted the suit claiming division of matrimonial property acquired by the parties during the substance of the marriage. The appellant applied for division of the matrimonial property after the court granted divorce vide Matrimonial case, No. 36/2010. The part of the judgment of the trial *court in* ***Civil Case No 101/2012*** *reads-*

> *"Hili ni shauri la madai Na.* ***Civil Case No 101/2012*** *mdai ni Rose Joseph na mdaiwa ni Idd Magoti, mdai anadai madai ya kugawana mali walichuma ndani ya ndao. Mali zilizoorodheshwa na mdai;-*
>
> *i) nyumba yenye vyumba 4 shs. 20,000,000/=*
>
> *ii) kiwanja chenye msingi wa shs. 4,000,000/=*

iii)....xxi).....NA"

The primary court decided the claim. Aggrieved, **Rose Joseph** appealed to the district court of Bunda.

After seven years **Rose Joseph,** went to the same court to re-institute a claim for division of matrimonial property, a claim, which the same court determined in ***Civil Case No 101/2012.*** It is very likely that **Rose Joseph** did not succeed to get a house as one of the property allocated to her during the division, that does not entitle her to re-institute her claims. Suits must come to end. The law does not allow parties to the suit, which has already been determined to litigate on the same matter. Rule 11 of the **Primary Court Civil Procedure Rules**, GN. 310/1964, stipulates that-

> *"Where in any proceeding before a court, the court is satisfied that any issue between the parties has already been decided by the court or by and other court of competent jurisdiction in another proceeding between the same parties. The court shall not try the issue but shall try the other issues, if any, involved in the proceedings."*

I have no reason to hold different from the two courts below, that the claim for division of matrimonial property had already been determined vide ***Civil Case No 101/2012***, the appellant had no any colour of right to re-institute it. The claim for division of matrimonial property was *res judicata*. The doctrine of *res judicata* ensures finality in litigation and is also meant to protect an individual from multiplicity of litigations as demonstrated by the Court of Appeal in the case of **Umoja Garage v. National Bank of Commerce Holding Corporation [2003] TLR 339.** The litigation has to come to an end. In **Stephen**

Masato Wasira v Joseph Sinde Warioba and the AG. [1999] TLR 334 the Court of Appeal quoted with approval the famous words of Lord Romer in **New Brunswick Railway Co. v British and French Trust Corporation Ltd**. (3) at page 770:

> *"... It is no doubt true to say that, whenever a question has in substance been decided, or has in substance formed the ratio of, for been fundamental to, the decision in an earlier action between the same parties, each party is estopped from litigating the same question thereafter. However, this is very different from saying that he may not thereafter litigate, not the same question, but a question that is merely substantially similar to the one that has already been decided."*

In the upshot, I find that the appellant had no justification or ground to re-institute the claim for division of matrimonial property, after the same was adjudicated in ***Civil Case No 101/2012***. I uphold the decisions of the district and primary court. Consequently, I find the appeal meritless and dismiss it with costs.

It is ordered accordingly.

J.R. Kahyoza
JUDGE
12/11/2020

Judgment delivered in the presence of the parties. B/C Ms. Tenga

THE HIGH COURT OF TANZANIA
MUSOMA

J.R. Kahyoza
JUDGE
12/11/2020