

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
PC CIVIL APPEAL No. 107 OF 2020**

LILY MWINGIRA..... APPELLANT

VERSUS

JOACHIM DOMINIC SIZYA.....RESPONDENT

(Appeal from the decision of the District Court of Kinondoni)

(Donasian- Esq, RM.)

dated 6th April, 2020

in

Matrimonial Appeal No. 57 of 2019

JUDGEMENT

10th February & 12th April 2021

Rwizile, J

This is the second appeal. Before they approached the court for orders, parties had lived together as husband and wife after they contracted a Christian marriage in 1987. Although they happily lived for a good number of years, they were not blessed with a child. It was not until 1990 when misunderstanding between them persisted and in 2008, the respondent decided to leave and desert the appellant. They separated for 11years, until when the respondent decided to file Matrimonial Case No. 54 of 2019 at Kawe Primary Court. The respondent petitioned for divorce and distribution of matrimonial property.

The case was heard and the trial court was satisfied that the marriage of the parties had broken down irreparably but did not issue a decree of divorce. The matrimonial property (house) was distributed at the ratio of 80% to 20% to the appellant and respondent respectively. The respondent was aggrieved by the said distribution, he

appealed against the same to the District court of Kinondoni. He succeeded, since the decision of the trial court was reversed by awarding the parties an equal share to their matrimonial house. This decision was a sad news to the appellant who felt aggrieved hence appealed before this court on two grounds that;

- 1. That the district court erred in law and fact for ordering the respondent to get 50% and the appellant 50% as her share of the matrimonial house located at Kunduchi area, Dar es salaam.*
- 2. The district court erred in law and fact for failing to uphold the decision of Kawe Primary Court which ordered the appellant to get 80% and respondent 20% share of the said matrimonial house.*

She therefore prayed for the decision of the Kinondoni District Court be quashed and set aside. The decision of the trial court be upheld. She also prayed for costs of this appeal and any other relief this court may deem just to grant.

At the hearing, the parties appeared unrepresented. They argued the appeal orally. In support of the appeal, the appellant did not have much to say, she just prayed for 80% share as was decided by the primary court, and prayed for costs of maintenance for 12 years.

Disputing the appeal, the respondent also like the appellant did not have too much to argue. He only praised the decision of the district court which awarded him 50% share, as a good and fair decision.

In a short rejoinder, the appellant said, the respondent lives at Urambo and sold some plots. She then prayed for the judgement. Parties did not argue on the grounds of appeal rather they stated what decision each party considers to be good and fair.

It appears that the two grounds of appeal are all referred to the distribution of matrimonial property. The question to be asked is, what would be the share of each party (spouse) on the matrimonial house. It is not in dispute that the parties had lived together from 1987-2008 and have acquired one house at Kunduchi Mtongani. The law is settled that, properties acquired by spouses, by their joint effort, during the subsistence of their marriage, or those which were substantially improved during marriage, are subject to distribution among them. This is expressly provided under

section 114(1)(3) of the Law of Marriage Act, herein referred as the Act, which states as herein;

*114-(1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any 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)

*(3) For the purposes of this section, references to assets acquired during the 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.***

It is also settled that, evaluation of what amount should be given to each spouse depends on the amount of contribution in terms of money or work that a spouse has put towards acquiring of the said property. Customs of the spouses, the debt owing by either party and the needs of the children are also among the factors to consider when determining what should be given to parties. This is as per the wording of section 114(2) of the Act. For ease reference the same is herein reproduced;

114-(1).....

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

(a) the customs of the community to which the parties belong;

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

(c) any debts owing by either party which were contracted for their joint benefit; and

(d) the needs of the children, if any, of the marriage, and subject to those considerations, shall incline towards equality of division.

It was also decided in loads of cases that the extent of contribution of the parties in acquiring matrimonial property is among the factors considered when determining what amount should be given to them (parties). The same was stated in the celebrated case of **Bi Hawa Mohamed vs Ali Seif** [1983] TLR 83 where the court categorically stated, even domestic chores done by the house wife should be considered as contribution towards acquiring matrimonial property. The case of **Bibie Maulid vs Mohamed Ibrahim** [1989] TLR 162, the court had this to say;

*'Among the factors to be considered in deciding how much parties should get from the matrimonial assets when the marriage is dissolved are **the extent of the contribution by each party** and debts owing as well as the customs of the community and needs of the infant children..... [Emphasis is added]*

Coming to the case at hand, it is not in dispute that the parties were not blessed with a child, no debt, and their customs are unknown. Apparently, I am left with one factor to consider, which is the extent of the contribution made by each party in acquiring of their matrimonial house.

It is in record and was testified by the respondent at the trial that he was the one who bought the plot and they started building their matrimonial house. however, he did not tell if the house was completed at the time, he left the appellant. But his witness testified that when the respondent left his wife in 2008 the house was not complete, it was not even roofed. On the other hand, the appellant testified to have built the house alone and her witnesses testified to have seen her building the said house alone. It is in record that, the appellant had adduced evidence to prove that she had improved the said house alone after the respondent deserted her.

It appears that, it is not only that the appellant had connected electricity and water to the said house, but also, she roofed it.

I must say, it would not be fair, if it can just be ignored, all the improvements done by the appellant in completing the house or consider them trivial only because she is a house wife doing small businesses. Since it is not disputed that the house was built by the parties during their marriage but was completed by the appellant's effort when

the respondent was having his life somewhere else. I am not in agreement with the decision of the district court to divide the house equally between them. I am in agreement with the trial court that, the respondent should get a small share of the house but not the amount of 20% which I consider to be too small. With respect, I think, respondent should be given 30% share of their matrimonial house.

This appeal is hereby allowed, the decision of impugned, on distribution of matrimonial property, is set aside. The appellant is entitled to 70% and the respondent 30% shares in their matrimonial house. I make no order as to costs.

AK Rwizile
JUDGE
12. 04.2021

Delivered in the presence of the appellant and respondent, who are in person this 12th day of April 2021

AK Rwizile
JUDGE
12. 04.2021



Recoverable Signature

X



Signed by: A.K.RWIZILE

