

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
PC CIVIL APPEAL No. 64 OF 2020

DOREEN W. MWANRI..... APPELLANT

VERSUS

WILBARD T. CHUWA..... RESPONDENT

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

(Kiliwa- Esq, RM.)

dated 26th November, 2019

in

Matrimonial Appeal No. 08 of 2019

JUDGEMENT

10th February & 8th April 2021

Rwizile, J

This is the second appeal. Doreen, the appellant developed an association with the respondent. They ultimately lived together and acquired a status of a husband and wife. In 2006, they were however blessed with one child. Sometime later, their otherwise happy life was locked in conflict. The appellant alleging adultery and cruelty in form of consistent assaults by the respondent that resulted to being chased from their matrimonial house. In 2018, the appellant petitioned the Kinondoni Primary Court for divorce, custody, maintenance and division of matrimonial assets.

The trial court granted a decree of divorce and gave 40% share of the house to the appellant on the house at Tegeta and was satisfied that the respondent was providing for their child. This decision aggrieved the respondent, who successfully appealed to the District Court of Kinondoni. The District Court quashed the trial court decision and ordered 10% share on the matrimonial house to the appellant leaving 90% to the respondent. The appellant therefore filed this second appeal resisting the 10% given to her. She is pressing for 40% of all assets acquired together when in marriage, which include; two houses, one shop, a bar and a hotel, one cupboard, sofa set, three beds and mattresses, one TV set, Deep freezer, one gas cooker and kitchen utensils.

The appellant is a legal aided person. It seems, she got drafting help from Women's Legal Aid Centre (WLAC). She therefore presented her appeal orally before this court while the appellant was represented by Mr. Paschal Chuwa learned Advocate.

The appellant was not wordy, she only submitted that she lived with the respondent for 15 years and that a portion given to her on their matrimonial properties was too little. She claimed, it was not fair for the same to be reduced from 40% to 10%. She prayed this appeal be allowed.

For the respondent, Mr. Chuwa learned advocate was of the submission that the decision of first appellate court was justified. He submitted that the district court was convinced that there was no marriage between the two and the Christian marriage that happened before was still subsisting. It was his view that there was no evidence showing ownership of the items mentioned by the appellant at this stage.

He submitted further that the property divided was procured before marriage and so the amount given to her is justifiable.

On her brief rejoined the appellant was of the view that same properties were developed during their marriage.

I have to note here, that the basis of this appeal hinges only on matrimonial properties. The evidence before the trial court was clearly stated by the appellant. She testified before the trial court that she was married to the respondent 2003. They were blessed with one child. She also said, she found the respondent with one house and a plot. She then said, she owned businesses. Her other evidence is that when she was invited to that house, it was not completely done. From her grocery business, she fixed tiles and painted the house and was able to purchase her other home utensils. This piece of evidence was only statement in respect of the property alleged acquired jointly.

The respondent on his party did testified and gave the story of their conflict. He did not dispute in his evidence in chief whether they never owned the house as alleged by the appellant. He only admitted that upon conflict she left their matrimonial house only to go to another man.

It is explicitly stated under section 114 of the Law of Marriage Act, that matrimonial assets are those jointly acquired by husband and wife during subsistence of their marriage, in the one hand or those separately acquired before marriage but substantially improved during pendency of the marriage.

Whatever the case, it is ones contribution in terms of money, work or service that dictates the amount of contribution towards the same properties. In this appeal, the first appellate court considered the

evidence by the appellant that she found the respondent in ownership of the house and a plot. That as the statement was taken as it and construed to mean there was nothing more done by the appellant. But her evidence further shows there were developments made in the house. This part of her contribution as she made was not disputed by the respondent. still, the respondent never testified otherwise or even cross examine on the same issue to show he was in such a resistance. It is my considered view that a fact not denied as key as this is, should be taken as admitted. Therefore, the district court was not justified to hold a different view in awarding the amount stated. It would appear that the evidence by the appellant is atleast strong compared to that of the respondent. the respondent in material terms did not in actual sense procure evidence to the contrary. I therefore agree with the appellant that the appeal has merit. It is hereby allowed.

The appellant has in categorical terms listed a number of properties to be shared. This has tasked my mind because, the original record and her evidence said the properties to be divided does not include properties other than the house. The litany of items to be divided far beyond the said house featured in the memorandum of appeal. I know I am not bound to determine this appeal with restrictions on the grounds stated, but be that as it may, there must be evidence showing the same existed. As hinted before I have found nothing of the sort suggesting that evidence was procured to prove existence of the same properties. It seems, if they indeed existed, then they do not form matrimonial assets as the appellant wants this court to believe.

Having said so, I hold that the decision of the district court falls short of merit. It quashed and order for 10% of the share of the house set aside.

the appellant is entitled as 40% of the same house as the trial court did.
I will, basing on the nature of the case, make no order as to costs.

AK Rwizile
JUDGE
08. 04.2021

Delivered in the presence of the appellant and respondent appearing in person, this 8th day of April 2021

AK Rwizile
JUDGE
08. 04.2021

 Recoverable Signature

X 

Signed by: A.K.RWIZILE

