

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

(PC) CIVIL APPEAL No. 15 OF 2019

*(Arising from the District Court of Bukoba at Bukoba in Civil Appeal No. 31 of 2018 &
Original from Bukoba Urban Primary Court in Civil Case No. 5 of 2018)*

LEONIDA JOHN ----- APPELLANT

Versus

THEODORY SIRILO ----- RESPONDENT

JUDGMENT

14/06/2021 & 14/06/2021

Mtulya, J.:

Ms. Leonida John (the Appellant) approached this court and filed two (2) grounds of appeal to protest decision of the **District Court of Bukoba at Bukoba** (the district court) in **Civil Appeal No. 3 of 2018** (the appeal). In brief, the two grounds are irritable on, viz: first, division of the share in matrimonial property house situated at Kagondo area within Bukoba Municipality; and second, suppression of the decision in **Civil Case No. 5 of 2018** determined by the **Bukoba Urban Primary Court at Bukoba** (the primary court) by the district court.

Today morning when the appeal was scheduled for hearing in Civil Session Cases, the Appellant invited legal services of Mr. Gildon Mambo to argue the appeal for her. However, after a short

consultation with the Respondent and this court, Mr. Mambo decided to abandon the second ground of appeal and argued the first one on the division of matrimonial asset house owned jointly by the parties. To his opinion, the holding of the district court in granting the Appellant $\frac{1}{4}$ of the value or share proceeds of the house and $\frac{3}{4}$ of the same to the Respondent violates Appellant's rights and does not consider the rights of the parties' children who are still young and currently learning in primary and secondary schools.

According to Mr. Mambo, the proper and ideal course would be auctioning of the house and monies collected from the sale be deposited in special bank account or children's bank account in favour of their studies. With other orders of the district court, Mr. Mambo did not dispute and he was happily to enforce them as they are. This line of thinking was well received by Mr. Theodory Sirilo, the Respondent, who briefly stated that he agrees with the suggestion in favour of their childrens' education.

I think, in my opinion, the parties in the present appeal had invited the traditional method of dispute settlement, which is partly encouraged by section 3B and Order VIIIC of the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code). The agreement is also supported by section 114 (1) & (2) (d) of the **Law of Marriage Act**

[Cap. 29 R.E.2019] and part of cherishing precedents in **Bi Hawa Mohamed v. Ally Sefu** [1983] TLR 32; **Pulcheria Pundugu v. Samwel Huma Pundugu** [1985] TLR 7; and **Samwel Moyo v. Mary Cassian Kayombo** [1999] TLR 197.

I have scanned the record of this appeal and found out that the decision of district court at page 10, the learned magistrate stated that:

...considering the nature and circumstances appearing in this case, I hereby quash and set aside the trial court's order for division of the matrimonial assets and in substitution thereof, I make the following orders:

- 1. The Kagondo house should be valued where the appellant shall get a $\frac{3}{4}$ share of the proceeds while the respondent is awarded a $\frac{1}{4}$ share of the valued proceeds of that house;*
- 2. Plot No. 196 Block A Muleba should also be valued where each party shall receive a $\frac{1}{2}$ share from its proceeds; and*
- 3. Division of other assets and order of custody and maintenance are not disturbed and remain as ordered by the trial court.*

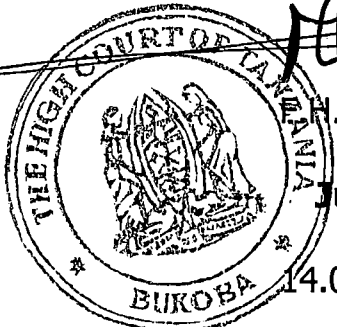
The parties are comfortable with all the cited orders, save for the first one on division of proceeds from the Kagondo House. Today, after consultations, the parties found out that they do not have dispute as such, and may end their differences in favour of their three children who are currently studying in different schools. They prayed this court to order sale of the house and proceeds from the sale of the house be deposited in childrens' bank account to assist them in their studies. Prayers of this nature cannot be disputed by this court. This is a court of justice and must cherish the law in section 3A of the Code, section 114 (2) (d) of the Law of Marriage Act and precedent in **Bi Hawa Mohamed v. Ally Sefu** (supra).

Having said so, and considering the parties are in harmony when the Kagondo house is sold in favour of their children, I have formed an opinion to order the sale of the parties' house located at Kagondo area within Bukoba Municipality in Kagera Region after valuation of the same by Government Valuer, and proceeds of the sale be deposited in childrens' bank account in favour of their studies.

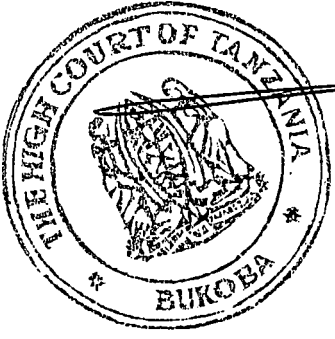
I also decided to maintain other orders of the district court as depicted at page 10 the district court judgment delivered on 30th October 2018. I award no costs to any party. The reasons for such

decision is obvious. The appeal is partly allowed and the parties in the present appeal were wife and husband, and now intending to care their children to their best interest in education.

It is so ordered.

 *[Signature]*
F.H. Mtulya
Judge
14.06.2021

This judgment was delivered in chambers under the seal of this court in presence of the Appellant Ms. Leonida John and her learned counsel Mr. Gildon Mambo and in the presence of the Respondent, Mr. Theodory Sirilo.

 *[Signature]*
F.H. Mtulya
Judge
14.06.2021