

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 151 OF 2020

*(Arising from Kinondoni District Court Matrimonial Appeal No. 9 of 2020 Originating
from Kawe Primary Court Matrimonial Cause MTI/03/2019/MM/184 of 2019)*

JOHN EMMANUEL BALELE APPELLANT

VERSUS

VERONICA JOSEPH ALEXANDA RESPONDENT

JUDGMENT

16th and 27th July, 2021

BANZI, J.:

John Emmanuel Balele, the Appellant and Veronica Joseph Alexandra, the Respondent were husband and wife who contracted a Christian marriage on 7th January, 2017. Their marriage was not blessed with any issue. According to the Respondent, the two built a two bedrooms house on a plot given to the Respondent on a pre-wedding ceremony. Following the misunderstandings between them, on 5th March, 2019, the Respondent left home and went to live with her mother. The efforts to reconcile them proved futile whereby, the Respondent successfully petitioned for divorce before

Kawe Primary Court ("the trial court"). the trial Court, apart from dissolving the marriage, it ordered the Respondent to pay the Appellant Tshs.1,200,000/= as part of his contribution towards improvement on the Respondent's land.

Aggrieved with the decision of the trial Court concerning distribution of matrimonial property, the Appellant appealed to the District Court of Kinondoni, which dismissed the appeal and confirmed the decision of the trial Court. Still aggrieved, the Appellant lodged the appeal before this Court on three grounds, thus;

- 1. That the learned Magistrate erred in law and facts in holding that there was no sufficient evidence to prove ownership of matrimonial house while it was raised by the Appellant during proceedings at the trial court and the same was not objected by the Respondent.*
- 2. That the learned Magistrate erred in law and facts to lay a burden of proof to the Appellant on the plot given as a gift during send off ceremony while it was unequivocally stated by the Appellant in the trial court, a fact which has never been disproved by the Respondent.*
- 3. That the learned Magistrate contravened section 114 (1) and (2) of the Law of Marriage Act [Cap. 29 R. E. 2019] by not*

considering evaluation of matrimonial property to ascertain appropriate distribution of matrimonial assets based on extent of contribution by each couple.

At the hearing of this appeal, both the Appellant and the Respondent appeared in person unrepresented. The appeal was argued orally.

It was the contention of the Appellant that, at their wedding ceremony, the Respondent's mother gave them a plot as a gift. After staying in a rented house for six months, they began to construct the house on the said plot following his uncle's advice. Thus, the house in question was acquired by their joint efforts considering the fact that, he was the bread earner while the Appellant was a house wife. Therefore, he prayed for the appeal to be allowed by given his share over the matrimonial house.

The Respondent in her reply contented that, the plot in question was a gift given to her by her mother on the pre-wedding ceremony and not on their wedding ceremony as claimed by the Appellant. Besides, nothing was built on the said plot. Concerning the house in question, she contended that, the same belongs to her mother and the Appellant did not contribute anything during the construction. According to her, the Appellant is not

entitled to get Tshs.1,200,000/= as awarded by the trial Court because he contributed nothing on her mother's house. In that regard, she prayed for the appeal to be dismissed.

In his short rejoinder, the Appellant admitted that, the plot was given to them on the pre-wedding ceremony. However, he keeps on insisting that, during existence of marriage, they built the house on that plot by their joint efforts. He added that, if the house in question is not theirs, he couldn't have been staying therein until now following their divorce two years ago.

Having thoroughly considered the arguments for and against the grounds of appeal in the light of evidence on record, the main issue for determination is *whether the appeal is meritorious*.

It is worthwhile noting here that, according to section 114 (1) of the Law of Marriage Act [Cap. 29 R.E. 2019], the court has power, when granting or subsequent to the grant of a decree of divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts. However, according to subsection (3) such assets 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.

I have carefully examined the evidence of both parties in respect of the property in question. The Respondent in her testimony, did not reveal about any property jointly acquired by them other than one fridge. She did not reveal about the plot given to her on her pre-wedding ceremony. Everything concerning matrimonial house was revealed by the Appellant. According to his evidence, on the pre-wedding ceremony, the Respondent was given various gifts including plot located at Bunju A – Chalinze area. The same was given to her by her mother. It is apparent from his testimony that, the plot in question was acquired before the two got married. By this evidence, and since there is no any other evidence to the contrary, it is the considered view of this Court that, the plot in question is owned by the Respondent. The contention by the Appellant that, the said plot was given to both of them is unfounded as there is no any evidence to prove the same. It is a cardinal principle of law that, in civil cases, the burden of proof lies on the party who alleges anything in his favour. Refer to sections 110 and 111 of the Evidence Act [Cap. 6 R. E. 2019] as well as the cases of **Attorney**

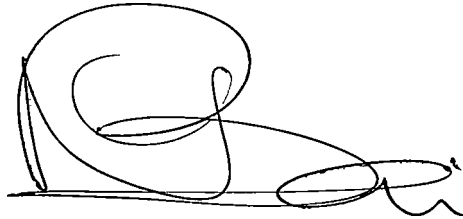
General and Two Others v. Eligi Edward Massawe and Others, Civil Appeal No. 86 of 2002 CAT (unreported) and **Joseph Kahungwa v. Agricultural Inputs Trust Fund and Others** (Civil Appeal No. 373 of 2019) [2021] TZCA 325 at www.tanzlii.org. In that view, the District Court committed no error by imposing a duty on the Appellant to prove over his claim about being the owner of the plot in question. Thus, the second ground lacks merit.

The next question to be answered is whether the said plot was substantially improved during the marriage by the Appellant or by their joint efforts. The appellant in his submission claimed that, the plot in question was developed by building the house therein. He also claimed to have contributed to the said construction. On the other hand, it was the contention of the Respondent that, the house in question is owned by her mother whereby the Appellant contributed nothing. She further claimed that, her mother's house was not built on the plot which was given to her on her pre-wedding ceremony.

I have carefully examined the evidence before the trial court. First and foremost, there is no scintilla of evidence to support the contention by the

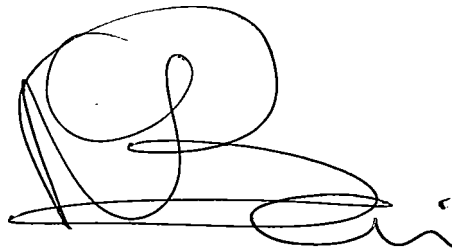
Respondent that, the house in question either belongs to her mother or it was not built on the plot given to her by her mother. Thus, her contention is unfounded because there is no evidence to that effect. On the other hand, the testimony of the Appellant reveals that, after he was advised by his uncle to construct the house on the plot given to the Respondent by her mother, the Appellant discussed the idea with the Respondent, and duo agreed and began the construction. According to his evidence, he contributed Tshs.1,200,000/= for purpose of purchasing the blocks. This in itself proves that, he has contributed towards improvement of the Respondent's plot. Nevertheless, there is no evidence to prove that, the Appellant has contributed more than what he mentioned towards the construction of the house in question. The contention of the Appellant that, he was the only bread earner is unfounded because his testimony shows that, the Respondent was selling "*vitenge*". In that view, and since the plot in question belongs to the Respondent but there was contribution by Appellant in the construction of two bedrooms house, I find nothing to fault the order of the trial court which was confirmed by the District Court in respect of payment of Tshs.1,200,000/=. Therefore, the first and third grounds also lack merit.

That being said, and for the reasons stated above, the appeal is hereby dismissed for want of merit. Owing to the nature of the matter, each party shall bear its own costs. It is so ordered.

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I. K. BANZI
JUDGE
27/07/2021

Delivered by the Deputy Registrar this 27th July, 2021 in the presence of the Appellant and in the Respondent both in person.

A handwritten signature in black ink, identical to the one above, consisting of a large, stylized 'B' followed by a horizontal line and a small flourish.

I. K. BANZI
JUDGE
27/07/2021