

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

(PC) MATRIMONIAL APPEAL CASE No. 8 OF 2020

(Arising from the District Court of Handeni at Handeni in Matrimonial Appeal No. 5 of 2019 originating from Kabuku Primary Court in Matrimonial Cause No. 19 of 2019)

ADAM MOHAMED NDAGO ----- APPELLANT

Versus

MWAJABU BAKARI MSONGOLO ----- RESPONDENT

JUDGMENT

04.05.2021 & 05.08.2021

F.H. Mtulya, J.:

A complaint on division of matrimonial properties was registered in **(PC) Matrimonial Appeal No. 8** (the Appeal) of this court drafted in the following text:

That the learned Resident Magistrate erred in law and fact for failure to find that there was no proper proof over the size of the orange farm which the trial court ordered the Respondent to take 4 acres and the Appellant to take 5 acres while there was dispute that the whole farm was 5 acres only.

The available record shows that the **District Court of Handeni at Handeni** (the district court) in **Matrimonial Appeal No. 5 of 2019** (the appeal) on 16th June 2020 upheld the decision of **Kabuku**

Primary Court (the primary court) in **Matrimonial Cause No. 19 of 2019** (the cause). The ground which was registered in the district court in the appeal was that:

...the trial magistrate erred both in law and fact in division of matrimonial properties without considering contribution of the parties on acquisition of properties.

The reply from the ground is found at page 14 of the decision that:

...as there is contradiction on the size of the farm whether is 5 or 9 acres, let it be distributed equally to the Appellant and Respondent.

However, the district court had forgotten the issue which brought the parties at the first appellate court. The issue is not whether the property land should be equally divided between the parties or 4 acres to be granted to the Respondent. The issue was whether it was proper for the primary court to grant the Respondent 4 acres in absence of evidences of 9 acres on the record.

My reading of the record of this appeal shows further that when the proceedings started at the primary court on 24th May 2019 to the completion on 31st May 2019, there is no any facts or evidences

tendered to show that the parties had testified on their jointly acquired properties or extent of contributions made by each party in the properties. When the complaint was scheduled for hearing yesterday afternoon, the Appellant hired the legal services of learned counsel, Mr. Obediendom S. Chanjarika, to argue the appeal for him, whereas the Respondent appeared in person. Mr. Chanjarika had a very brief submission and contended that the purported division of matrimonial property did not abide with the law in section 114 (2) of the **Law of Marriage Act** [Cap. 29 R.E. 2019] (the Marriage Act).

According to Mr. Chanjarika, the law provides that the court shall have regard to the extent of contribution made by each party in money, property or work towards the acquiring of the assets, but the courts below did not take due regard to the law hence awarded 4 acres to the Respondent. The submission of Mr. Chanjarika was not protested by the Respondent, who briefly admitted that there were no evidences to substantiate contribution of each party in the dispute.

I have had the opportunity to read the judgments of the primary and district courts. The primary court at page 5 of the judgment held that:

...stahili ya mke ni kama ifuatavyo: nyumba ya vyumba vitano hapo komkonga. Mume atachukua nyumba ya wapangaji yenye vyumba sita. Mke atachukua kiwanja kitupu cha kwemkonga. Mme atachukua kiwanja Boma cha ruye. Kuhusu shamba la hekari tisa, mke atachukua hekari nne na mume atachukua hekari tano na pikipiki moja atabaki nayo mume kwa ajili ya kutunza familia.

As I said my reading of the proceedings in the record from 24th May 2019 when the suit started to 31st May 2019, when the cause completed, there is no any facts or evidences tendered in the primary court to show that the parties had testified on their matrimonial properties.

I would like to mention that the proceedings in this appeal are silent on properties which were divided by the primary court and its orders with regard to division of matrimonial properties were founded on imaginary proceedings. If proceedings are silent on properties and extent of contribution of each party, the remedy of such orders emanated from such proceedings are to be quashed from the record for want of the requirement of the law.

It was unfortunate that, the district court, on the other hand, blessed the orders of the primary court founded on imaginary

proceedings and, at page 14 of the judgment, the district court reasoned that:

As there is no contradiction on the size of the farm whether is 5 or 9 acres, let it be distributed equally to the Appellant and Respondent.

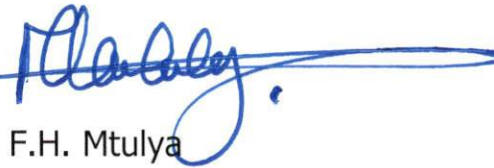
Decisions of this kind cannot remain in our courts' records, at least for the disputed matters of division of matrimonial properties jointly acquired by the parties in this dispute. This is a court of justice and has additional powers of ensuring proper application of the laws by the courts below. It cannot justifiably close its eyes when it sees breach of the law in section 114 (2) of the Act or any other laws (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). I have therefore decided to quash any orders emanated in the decisions of the primary and district courts related to the division of purported matrimonial properties jointly acquired by the parties.

Any interested party in the dispute may wish to initiate fresh and proper suit in competent forum in accordance to laws regulating division of matrimonial properties. As the parties did not dispute the order for divorce, and for the interest of justice and expeditious trials in our courts, I uphold the order of divorce issued by the primary

court in the cause. With costs of this appeal, I have decided to award no costs as the appeal is partly allowed and parties are family members with possibilities to sit and settle the division of matrimonial properties jointly acquired amicably.

It is so ordered.



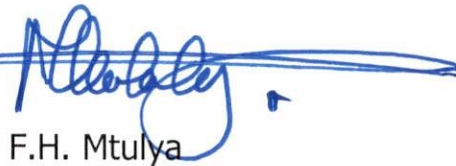

F.H. Mtulya

Judge

05.08.2021

This judgment is delivered in Chambers under the seal of this court in the presence of the parties, Mr. Adam Mohamed Ndago and Mwajabu Bakari Msongolo and in the presence of Mr. Obediodom S. Chanjarika, learned counsel for the Appellant.




F.H. Mtulya

Judge

05.08.2021