

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TANGA DISTRICT REGISTRY)**

AT TANGA

(PC) MATRIMONIAL APPEAL NO. 2 OF 2020

(From the Decision of the District Court of Handeni
in Matrimonial Appeal No. 1 of 2020)

BAKARI ABDALLAH MNIMBO..... APPELLANT

VERSUS

HADIJA YAHAYA MWAJONGA.....RESPONDENT

JUDGMENT

MKASIMONGWA, J

Bakari Abdallah Mnimbo (Appellant) and Hadija Yahaya Mwajonga (Respondent) had on 10/01/2014 contracted a marriage which was celebrated under Islamic rites. The two were blessed by a child namely Nasma Bakari Abdallah who is about 5 years old. The marriage was however terminated later on 31/12/2019 by a decree of divorce granted by the Primary Court of Handeni District at Chanika. Before the Primary Court, the Respondent did successfully petition for divorce on ground of frequent quarrels.

In determining the case, the Court again considered on the custody and maintenance of the child and ordered the custody of the issue to be under the respondent and that the Appellant was ordered to pay a sum of Tshs. 30,000/= monthly being maintenance of the child. The Court again considered whether the parties had properties jointly acquired. Apart from the households, the Court found to have been established that the two had jointly and together acquired a house. It was ordered that the house be sold and the sale proceeds be shared at a ratio of 75% and 25% to the Appellant and respectively.

Whereas the Appellant did not challenge the decision and orders of the Court, the respondent challenged them by appeal preferred to the District Court of Handeni District. In the appeal to the District Court, the then Appellant (Respondent) in this appeal complained on the distribution of the properties jointly acquired for the trial Court did not consider the actual contributions had the parties in acquiring them. She also attacked the Court's decision to the effect that there was no proof of the existence of a Plot located at Chogo. The Appellant in the Appeal before the District Court also complained that the Tshs. 30,000/= monthly maintenance of the child was not satisfactory. In determining the appeal, the District Court

partly allowed the appeal in that it ordered that each party enjoys 50% share of the house they jointly acquired during their marriage and that the amount of money payable as monthly maintenance of the child was enhanced to Tshs. 100,000/= reasoning that the Respondent therein is a teacher.

The Appellant is dissatisfied by the orders of the District Court. He therefore preferred this appeal. In the Appeal the Appellant has registered six grounds. In the grounds, the Appellant attacks the decision/orders of the "Trial Magistrate". I think, the Appellant who had drawn and filed the petition of appeal, being laymen, does not well understand as to who the trial magistrate is. I think at this stage of the matter the Appellant is faulting the Appellate Court. He ought therefore to refer the Magistrate who determined the appeal as the "Appellant Magistrate". The error is in my view not fatal for it does not vitiate the proceedings. Going by the grounds, they can be grouped into two. They are in respect of the division of the matrimonial assets and maintenance of the child.

When the Appeal came for hearing before the court, appeared both the Appellant and Respondent in person. When was invited to argue his case, the Appellant contended that he is aggrieved by the decision of

Handeni District Court in Matrimonial Appeal No. 1 of 2020 which reversed that of Chanika Primary Court and ordered him to pay Tshs. 100,000/= being maintenance of the Child payable monthly and have 50% of the value of the house acquired by the joint efforts of the parties. The Court ordered for payment of the maintenance of the child at that tune despite the fact that he explained himself on his income and that he is depended by other children and his own mother. He further prayed the Court that since he is not capable of paying for the children maintenance, let the custody of the child evolves into him.

As regards to the house, the Appellant stated that, he built the same for his daughter. As such, the same should not been sold.

On the other hand, the Respondent just contended that she contributed more than the Appellant in acquisition of the same.

I have considered the submissions along with all what is in the records of the Courts below. It is important to note that an issue involving division of matrimonial properties and in particular, the portion of the property the divorced spouse is entitled to needs evidence to be adduced to justify the portion. A spouse has no automatic right to have a portion of

the matrimonial property when the same is to be distributed upon divorce. There must be evidence adduced by the spouse of his/her contribution towards acquisition of the properties. The contribution can be of the works done by the spouse in keeping the households or financial, actual efforts etc (See Bahamas cases). Throughout the evidence given by the Appellant before the Trial Magistrate/Court there is no mention by the Appellant of any property jointly acquired by the parties and what was his contribution towards its acquisition. In that premise, the appellant cannot be heard successfully challenging the amount he was awarded with which amount the Respondent sought not to challenge, and in fact she admitted in evidence of the Appellant's contribution towards acquisition of the house.

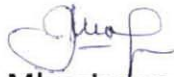
Regarding to the amount awarded by the Court as maintenance of the child, I fully agree with the first Appellate Court that in terms of Section 8 of the Child Act, No 21 of 2009, a child has a right to food, shelter, clothing, medical care, education etc. It is the duty of a parent to maintain and provide such right to his/her child. The appellate Court stated that a sum of Tshs. 30,000/= awarded by the Primary Court was not sufficient to provide the above requirements. The Court hence enhanced the amount to Tshs. 100,000/=. In my view, one may also wonder if the amount awarded

by the District Court was sufficient to cater for the rights the child has against the parent. It is important, that while we consider whether the amount awardable as maintenance of the child is sufficient or not, the Court considers the ability of the parent to provide sufficiently maintenance of the child. In the case at hand there is evidence that the appellant is a teacher. The evidence is silent as to what is his monthly earning. It is again silent whether or not the Appellant has other dependants. In that premise of the matter, the Court could not be in the position to hold a sum of Tshs. 100,000/= to be reasonable. I have considered the fact that the parties were all teachers and that the law imposes a duty on the parent to maintain the child. Indeed the father has primarily that duty, however where the parents possess same level of ability to maintain the child it will not be fair that only the father solely bears the duty to maintain the child. The Court found a sum of Tshs 100,000/= per month as maintenance of the child is reasonable. I find the same and that sum shall be equally shared by the parents in which case the sum imposed by the Court below on the appellant is reduced to Tshs 50,000/= per month.

In event the appeal is partly allowed. The amount ordered by the appellate court as maintenance is quashed/set aside and in lieu of it the

Appellant is ordered to pay Tshs 50,000/= per month being maintenance of the child Nasma Bakari Abdallah. No order as to costs is made.

DATED at **TANGA** this 15th of June, 2021.



E. J. Mkasimongwa

JUDGE

15/06/2021

Date: 15/06/2021

Coram: E. J. Mkasimongwa, J

For Appellant: Present in Person

For Respondent: Present in Person

C/C: Mr. Kamwaya

Court: Judgment delivered in Chambers this 15th day of June, 2021, in the personal presence of all parties.

Right of appeal is explained.




E. J. Mkasimongwa,

JUDGE

15/06/2021