

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

PC MATRIMONIAL APPEAL NO. 06 OF 2021

(Appeal from the District Court of Mbeya at Mbeya in Matrimonial Appeal No. 13 of 2020, J. C. Msafiri, SRM. Originating from Mbeya Urban Primary Court in Matrimonial Cause No. 31 of 2020)

CHARLES MWANJOKA.....APPELLANT

VERSUS

CLEMENTINA KYANDO.....RESPONDENT

JUDGEMENT

Date of Last Order: 20/10/2021

Date of Judgment: 08/12/2021

MONGELLA, J.

The parties in this appeal cohabited under the same roof from 2015 to 2019 when their relationship went sour. Given the situation, the appellant filed for divorce and division of matrimonial assets in Mbeya Urban primary court. Erroneously, the primary court issued a decree for divorce while noting that the parties were not legally married. Luckily the district court rectified the anomaly by setting aside the decree for divorce. The primary court as well divided the matrimonial properties at 60% to 40% percent for the parties. It however located both shares to the respondent. On appeal to the district court, the Hon. District court Magistrate appears to have



blessed the division made by the trial court. It however stated that 60% was for the appellant and 40% was for the respondent. Still aggrieved, the appellant has preferred this second appeal.

His memorandum of appeal contained three grounds, however I shall only deal with the first ground in which the appellant asserts that the first appellate court erred in law and facts by relying on uncertain findings of the trial primary court as to who got 60% and who got 40%.

The respondent never entered appearance in court. The affidavit of the process server reveals that she refused service effected on 01st October 2021. In the premises, the matter proceeded *ex parte* against her. The appeal was argued by the appellant by written submission following his prayer before the Court as he was unrepresented.

Arguing on the first ground, the appellant, while referring to the case of **Anuary Ismail vs. Reginal** and that of **Rashid Nkungu vs. Ally Mohamed** [1984] TLR 46, submitted that a judgment is supposed to be precise, specific, clear, systematic and straight forward. He referred the Court to page 13 of the trial court judgment whereby the Hon. trial Magistrate appears to have granted all the shares to the respondent. He concluded that it is unclear as to what the trial court intended to direct.

I have gone through the trial court judgment and I agree with the appellant that it is not clear as to the division of the shares in the matrimonial assets. After ruling that the respondent also had a share to the matrimonial assets the Hon. Magistrate wrote:

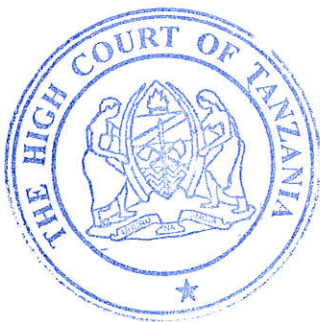


"Hivyo basi **mdaiwa** atapata 60% ya thamani ya nyumba hiyo na **mdaiwa** atapata 40% ya thamani ya nyumba hiyo au mmoja amfidie mwenzake thamani ya fedha hiyo."

Translated into English it reads "therefore the respondent shall get 60% of the value of the house and the respondent shall get 40% of the value of the house or one of them should compensate the other the monetary value."

It should be noted that the house in question is the centre of the dispute between the parties. The district court while upholding the trial court decision stated that 60% goes to the appellant and 40% goes to the respondent as set out by the trial court. Given the decision of the trial court as stated above, I find the district court on appeal incorrectly blessed the decision of the trial court. It ought to have ordered the trial court to rectify the anomaly before proceeding with entertaining the appeal. In the premises, I quash the decision of the district court and remit the case file to the trial court for it to compose a clear judgement, particularly on the rights of the parties. Thereafter, an aggrieved party shall take necessary steps.

Dated at Mbeya on this 08th day of December 2021.




L. M. MONGELLA
JUDGE

Court: Judgement delivered at Mbeya in Chambers on this 08th day of December 2021 in the presence of the appellant appearing in person.


L. M. MONGELLA
JUDGE