

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**PC. MATRIMONIAL APPEAL NO. 4 OF 2021**

**ANTHONY FELIX KAVEJURU ..... APPELLANT**

**VERSUS**

**MAGRETH HAMZA YAHAYA ..... RESPONDENT**

(Appeal from the Judgment and decree of the District Court of Mpanda at Mpanda)

(R. M. Mwalusako, RM)

Dated 13<sup>th</sup> day of August 2021

In

(Matrimonial Appeal No. 1 of 2021)

**JUDGMENT**

Date: 12/05 & 20/07/2022

**NKWABI, J.:**

After having some relationship for some years, the parties in this Matrimonial Appeal, got married. They got married in the year 1996 in a civil marriage. They are blessed with four issues. After sometimes, the marriage got sour. A matrimonial cause was filed in the Mpanda urban Primary Court. A decree of divorce was issued by the trial court in respect of the parties in this appeal. Division of the matrimonial properties jointly acquired by the parties during the pendency of the hapless marriage was ordered too. Further the trial court ordered the custody of the infant child aged 7 years be in the appellant.

Parties are happy with the decree of divorce and the order of the custody of the last issue of the marriage. The controversy that makes the parties to this case currently to appear in court is the division of the matrimonial properties and what the appellant calls division of properties that were acquired prior to the marriage. The appellant's attempt to get satisfaction in the 1<sup>st</sup> appellate court proved futile. He therefore rushed to this Court in his quest to get redress.

Looking at the petition of appeal as a whole, starting with the grounds of appeal, the reliefs sought especially that is found at paragraph (d) *that the properties be divided anew with regard to their values and those not distributed be distributed with regard to the effort of contribution* and the reply to the petition of appeal, one can deduce one ground of appeal which disposes the appeal. That ground of appeal is that the distribution of the matrimonial properties was unfair and not based on evidence available.

I have deduced the ground of appeal because after going through the evidence in the trial court record, no witness testified as to the value of the

matrimonial properties. That definitely resulted into clear unfair distribution of the matrimonial assets especially to the appellant.

I appreciate that Ms. Amulike vibrantly submitted against the appeal stating categorically that:

*"there was no property left undistributed. Matrimonial properties which was mentioned in trial court by both parties were divided to the parties in accordance with section 114 of the Law of Marriage Act, Cap 29 R.E. 2019. The same was done after a clear presentation of evidence by both parties. Each party to the case provides his/her evidence regard accusation of the matrimonial property and shows his/her extent toward the acquisition. The court examine the evidence and came with the findings. ...*

*... for the above submission and demonstration its respondents humble pray that, this Court give Judgment in farvour of the Respondent with cost."*

With overwhelming respect to Ms. Amulike, I do not accept her assertions. This is because, proof of joint efforts towards the acquisition of the assets in dispute is very crucial. That was not done contrary to the decision of the Court of Appeal in the case of **Gabriel Nimrod Kurwijila v. Theresia Hassani Malongo, Civil Appeal No. 102 of 2018** (unreported).

I am satisfied that the decisions of the lower courts in respect of the division of the matrimonial assets were not based on evidence especially on the value of each of the assets mainly those which are hotly contested, as such their decisions in respect of the division of matrimonial assets cannot be rationally supported. See **Ibrahim Ahmed v. Halima Guleti [1968] HCD No. 76**.

I have noted that the appellant mentioned some value of some of the matrimonial assets in the petition of appeal or submissions in the District Court and this Court. That is not acceptable. Guidance on this approach of mine can be found in the case of **The Republic v. Donatus Dominic @ Ishengoma & 6 Others**, Criminal Appeal no. 262 of 2018, CAT, (unreported) which quoted with approval the case of **Transafrica Assurance Co. Ltd v. Cimbria (EA) Ltd [2002] 2 EA** where it was stated:

*"As is well known a statement of fact by counsel from the bar is not evidence and therefore, court cannot act on."*

See also **Registered Trustees of the Archdiocese of Dar-es-Salaam vs. The Chairman Bunju Village Government**, Civil Appeal No. 147 of 2006 where it was held:

*"With respect however, submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence."*

In the upshot, I allow the appeal. I quash the orders of division of matrimonial assets made by both lower courts. Consequently, since the appellant prayed for any other reliefs, this Court deems fit to grant for interest of justice, I order that the trial court should hear additional evidence in respect of the matrimonial assets, including but not limited to the value of the matrimonial assets and proceed to divide fairly the matrimonial assets

acquired by joint efforts by the parties to this appeal. Given the circumstances of this case, I order that each party to bear their own costs.

It is so ordered.

**DATED** at **SUMBAWANGA** this 20<sup>th</sup> day of July, 2022.



  
J. F. NKWABI  
**JUDGE**