

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

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**DC. CIVIL APPEAL NO. 9 OF 2022**

*(Originating from Matrimonial cause No. 1 of 2022 of the District Court of Kongwa at  
Kongwa)*

**WILSON WINYASAA MURO .....APPELLANT**

**VERSUS**

**STAMILI LESUDAY ..... RESPONDENT**

28/5/2022

**JUDGMENT**

**MASAJU, J.**

The Respondent, Stamili Lesuday, successfully petitioned the Appellant, Wilson Winyasaa Muro for divorce, distribution of matrimonial property, custody and maintainance of their three(3) issues in the District Court of Kongwa at Kongwa. Aggrieved with the decision, the Appellant has come to the Court by way of an appeal.

The Appellant's Petition of Appeal is made up of four (4) grounds of appeal, thus;

- i. *" That, the trial District Court Magistrate erroneously erred in law and fact while ordered unfairly division of matrimonial property without taking into account that the Appellant bought a plot of Land and used his own money to build the matrimonial home house.*
- ii. *That, the trial District Court Magistrate erroneously erred in law and facts relied on weak evidence and contradictory evidence from the Respondent and her witnesses to determine the matter.*
- iii. *That, the trial District court Magistrate erroneously erred in law and fact by failing to examine the granty of evidence adduced by the Appellant*
- iv. *That, trial District Court Magistrate erroneously erred in law and facts to order custody of three children to be under Respondent and monthly payment of Tanzania shillings of one Hundred Thousands while previously more than twelve years ago all the children were under the custody of the Appellant without any problem.*

*WHEREFORE, The Appellant prays from this Court to allow the appeal with costs"*

The Respondent contests the appeal, she filed her Reply against the appeal in the Court.

When the appeal was heard in the Court on the 30<sup>th</sup> day of May, 2022 both parties appeared unrepresented and adopted the Memorandum of Appeal and Reply to the Memorandum of Appeal respectively in support of, and against the appeal in the Court.

The background of this matter is that the parties got married in 2009 under Christianity Rites. That, their marriage lasted for twelve (12) years up to 2021 when the Respondent successfully petitioned for divorce. The parties are blessed with three issues who were aged, Gloria (10), Onesmo (6) and Ebenezer ( 1½) during trial in the trial Court.

The Respondent alleged to have petitioned for divorce due to Appellant's cruelty physically, mentally and emotionally. The Appellant conceded to the divorce prayer in the trial Court. The Respondent also alleged that they had acquired a matrimonial house they used to live in during subsistence of their marriage.

That, they also bought two plots which were registered in the Appellant's name but the Appellant sold the two plots without the Respondent's consent. The Appellant did not dispute that fact.

The only property in issue is the matrimonial house which the Appellant alleges to be his own personal property. That, he used his own money to buy the plot and build the house. In the trial Court, the Appellant took no issues with the alleged house as he did not dispute the fact that it is a matrimonial house as testified by the Respondent. Thus, the Court finds the Appellant's first ground of appeal regarding the house as an afterthought.

The trial Court rightly decided on distribution of the matrimonial house, 30% to the Appellant and 70% to the Respondent since the Appellant sold the other matrimonial properties and benefited himself without involving the Respondent, the then spouse.

As regards the issue of custody of the children, section 125(3) of the Law of marriage Act, [ Cap 29] provides that it is for the good of a child below the age of seven (7) years to be with his or her mother.

In the instant case, two among the children, Onesmo (6) and Ebenezer (1 ½ ) were below seven (7) years of age during trial thus the trial court rightly placed them to the Respondent's custody. The 1<sup>st</sup> born Glory was ten (10) years old during the trial, hence the Court finds that since she is still a girl child of tender age who still needs her mother's guidance and protection it is for her good welfare and wellbeing to place her to her mother/Respondent's custody.

As regards the maintenance order is TZS 100,000/= per month, the trial Court rightly ordered the Appellant to maintain his issues as a mandatory requirement of the law as per section 129(1) of the Law of Marriage Act [ Cap 29].

That said, the appeal is hereby dismissed for want of merit. The parties shall bear their own costs.



GEORGE M. MASAJU

**JUDGE**

28/6/2022