IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)
AT DODOMA

DC. CIVIL APPEAL NO. 10 OF 2021

(Originating from Matrimonial Cause No. 3/2019 of the Resident Magistrate's Court of Singida at Singida)

YUSUFU MWANDAMI GWAYAKA..... APPELLANT

VERSUS

SHEMSA HAMISI SAIDI.....RESPONDENT

JUDGMENT

22/03/2022 & 14/06/2022

KAGOMBA, J

The appellant herein YUSUFU MWANDAMI GWAYAKA seeks to fault the decision of the Resident Magistrate's Court of Singida at Singida (the trial Court), in Matrimonial Cause No. 3 of 2019 where his wife SHEMSA HAMIS SAIDI (the respondent herein) had successfully petitioned for decree of divorce, division of matrimonial properties and maintenance of five children who were under her custody.

The Memorandum of Appeal filed by the appellant caries the following grounds of appeal:

1. That, the trial Court erred in law and fact for deciding that the marriage between the parties was broken down irreparably, based on the unproven allegations.
2. That, the trial Court erred in law and fact when it decided that the marriage between the parties was broken down irreparably while

the appellant has done no wrong, both in Islamic Law and the Law of Marriage in our jurisdiction.

3. That, the trial Court erred in law and fact for denying the appellant to add documentary evidence even after seeking the leave of the Court.
4. That, the trial Court erred in law and fact while distributing the matrimonial properties. It failed to consider what are the matrimonial properties acquired by the parties, the contribution of the respondent versus other wives of the appellant to the said properties and existence of other wives who contributed and depend on the existed properties between the parties.
5. That, the trial Court erred in law and fact for failure to evaluate properly the evidence tendered before it in its totality.
6. That, the trial Court erred for failure to observe the law while determining the matter before it.

The trial Court heard the matter in full and determined each of the three issues which were framed, to wit, (1) whether there was marriage between the parties (2) whether the marriage has broken down irreparably and (3) if the second issue is answered in the affirmative, what are the reliefs the parties are entitled to.

In determining the first issue above, the trial Court relied on the testimony of the respondent herein who testified as PW1. She told the trial Court that she contracted an Islamic marriage with the appellant on 10/2/2005 and the marriage was blessed with five issues. PW1 produced a marriage certificate that was admitted as exhibit P1. Hence the trial

Court established existence of marriage and answered the first issue accordingly.

As to whether the marriage between the parties was broken down irreparably, the trial Court sought guidance from section 99 and 107 (2) of the Law of Marriage Act [Cap 29 RE 2019] (hereinafter "LMA") and in light of the evidence adduced, found the marriage irreparably broken down. The trial Court relied on the testimony of PW1, as key witness, that the appellant refused to provide conjugal right to her and was insulting her whenever he was back home while drunk. PW1 also told the trial Court that the said acts of the appellant were repeated several times. That, the appellant was also repeating that he will marry another wife. All these brought her psychological torture.

The trial Court also considered the testimony of the appellant who denied the allegation of refusing to provide conjugal rights to the respondent. The appellant had told the trial Court that it was the respondent who was not ready to be visited by the appellant in accordance with a new schedule after he had married another wife.

Having heard the evidence by both parties, the trial Court found merit in the testimony of PW1 that the denial of conjugal right started even before the appellant had married one Lulua in September, 2018. As such based on denial of "consummation" as the trial Court referred to it and the alleged mental torture inflicted to the respondent by the appellant, the trial Court was satisfied, in terms of section 107 (3) of LMA that the marriage had broken down irreparably. In deciding so, the trial Court observed that the acts of the appellant amounted to "cruelty" which

is among the grounds for finding that the marriage has irreparably broken down. It referred to **Mwinyi Hamisi V. Zainabu Bakari** TLR 1985 (sic), which interpreted S. 107 (3) of LMA to the effect that subsequent to the granting by the Board of a certificate that parties have failed to reconcile, for what was done by either party, the Court shall make a finding that the marriage has irreparably broken down and shall proceed to grant a decree of divorce.

The trial Court further considered that before dissolving an Islamic marriage there must be a certificate from the Board that one of the couples had done an act which under Islamic law is sufficient to terminate the marriage. In this connection two acts came into consideration. One is the act of denying "consummation" and second is the psychological torture alleged to be inflicted by the appellant to the respondent.

It is was after consideration of the act of denial of "consummation" where the trial Court found the marriage was no longer reparable stating that there is no marriage in whichever faith without "consummation".

The trial Court also considered the appellant's defence and the appellant's assertion that the respondent being a petitioner was required to "kuthuli" by returning the bride price. The trial Court found it "illogical" as the procedures and rights of parties married under any faith in Tanzania is governed by the LMA. The trial Court then cited section 114 (4) of the Judicature and Application of Laws Act [Cap 358 RE 2019] (hence forth 'JALA') as an authority for prohibition of the use of customary law and Islamic law to any matter provided in the LMA. Hence the trial Court determined that the respondent was not bound to 'kuthuli'.

On the fact that the appellant had married the second wife, the trial Court found it not a factor for dissolving the marriage, the parties are muslim. The trial Court also found that the appellant's new wife Lulua was not too close a sister to the respondent to prohibit her marriage with the appellant.

The trial Court also considered the appellant's allegations that the respondent had committed extra marital affairs in 2009 leading to the birth of a daughter one Samira, but dismissed the allegation for lack of evidence.

Having made all the above considerations, the trial Court concluded that the marriage between the parties was irreparably broken down.

Regarding remedies to the parties, the trial Court considered S. 114 (1) of LMA and the evidence adduced and ordered the respondent to take Nissan Murano, another motor vehicle with Registration No. AGT, a house situated at Kirumba – Mwanza Plot No. 23 (gorofa), a residential house situated at Mkolani – Mwanza, one plot situated near police central Singida, a plot at Nyakato, plot No. 141 which is situated at Unyankumi Singida and a plot situated at Utemini in Singida. The rest of the assets were given to the appellant. For purpose of this judgment, it is immaterial to mention them here.

The trial Court turned to the issue of custody of children. Section 125 (2) of LMA on welfare of children was considered in light of evidence adduced that the children were residing with their mother in Mwanza even before the matrimonial misunderstanding begun.

The Court considered that the appellant was residing in Singida for work purposes. For this reason, the Court found it as undeniable fact that the children had built close attachment with their mother compared to the appellant, who had also married a third wife. For these reasons the custody of all the five children were placed under their mother, the respondent, until when they will attain the age of majority and become capable of making their own choice for their residence. The trial Court further ordered the respondent to be responsible for the food of the children while the appellant was given the obligation to care for school fees and other school needs.

It is the above decision which has prompted the appellant to file this appeal based on the grounds earlier stated.

On the date set for hearing of appeal, the appellant was represented by Mr. Thadei Lister, learned advocate while the respondent was represented by Mr. Godwell Lawrence, learned advocate. Mr. Lister prayed to submit on 1st, 2nd and 5th grounds jointly and the rest of the grounds separately.

Submitting on 1st, 2nd and 5th grounds of appeal, Mr. Lister had the following arguments to make: One, the Court erred to grant divorce based on matters that were not proved, which are physiological torture and denial of conjugal right. He said denial of conjugal right is not one of the circumstances or condition under S. 107 of LMA to make a marriage irreparably broken. He submitted further that the respondent alleged that the appellant refused to consummate and when cross-examined she said

that the appellant did not erect. The learned advocate submitted that the two are different matters which the trial Court did address them properly.

Mr. Lister argued that the respondent could not alleged lack of consummation after such a long time of marriage and after having five children together. He said consummation is tested during the first six (6) months of marriage. For this reason, he said, the Court should have known whether there was denial of conjugal right or inability to erect.

Mr. Lister submitted further that the second reason for holding the marriage irreparably broken down was psychological torture. He said the proceedings don't show where the respondent explained about the torture, apart from the complaint of being insulted or abused by the appellant. He said, however, that such allegations of abuse were connected with the appellant's marriage to a third wife who the respondent claimed to be her sister but evidence revealed she wasn't.

The learned advocate argued that there is no evidence of the respondent seeking medical support or being diagnosed with a medical problem. He also argued that the respondent didn't adduce evidence on the words showing that she was insulted. For all the above reasons the learned advocate submitted that the allegation of the marriage being irreparably broken down was not proved but the respondent was just not happy with the appellant marrying the third wife.

On the third ground of appeal, Mr. Lister lamented about the denial of the appellant's prayer to add documentary evidence before the start of defence case. He argued that the trial Court erred to deny the appellant

a chance to produce additional documents because; One; the spirit of the legislature is to allow such additional evidence at any stage once reasonable cause to do so is shown. Two; the oxygen principle was already in place. He argued that since there was a substantive right which was denied by the procedural law the oxygen principle should have been invoked. He added that marriage and matrimonial properties are issues of substantiative rights.

On the fourth ground of appeal, the learned advocate challenged the distribution of matrimonial assets for reasons that the trial Court erred in determining what is matrimonial property, the contribution of the respondent vis-a-vis other wives of the appellant and in distributing properties not proved to exist.

He argued that under Section 114 of LMA what is distributed are matrimonial assets and properties developed or acquired by the parties during subsistence of their marriage. He said in this case some properties were listed for distribution while they were obtained before marriage, a fact which the respondent does not object. He gave the example of a trailer registered in the name of Mgeni Makoye and a house at Kirumba area in Mwanza. He also added that there were no proof of existence of the plots.

It was Mr. Lister's submission that the respondent in her evidence confessed that she found the appellant with three issues, adding that the said matrimonial properties had the contribution of all three (3) wives of the appellant, a fact which was not considered in the distribution of the assets. He argued that Section 57 of LMA provides about equality

between wives, adding that the wives should enjoy equal right, equal liabilities and equal status in law but the same, was denied to the other wives in the distribution of the matrimonial properties. In this connection, he referred to the case of **Mwamoi Shahe vs Issa Matala Mduma,** Civil Appeal No. 72 of 2020 High Court of Dar es Salaam.

On the sixth ground of appeal, the learned advocate submitted that in interpretation of Section 107 (3) of LMA, the trial Court used section 11 (11) of JALA while that section of JALA does not erase section 107 of LMA as the latter is specific law while the former is a general provision.

He added that the appellant had done nothing wrong under Islamic law and the LMA. He urged this Court to give much weight to section 107 (3) of LMA.

The other provision of the law which the trial Court did not observe according to the learned advocate, is section 108 (a) of LMA. He said the said section requires the Court to inquire into the facts alleged before deciding to break the marriage. He added that an inquiry was important due to sensitivity of the marriage institution. For all these reasons the advocate prayed the appeal be allowed.

Mr. Lawrence responded vehemently on all the grounds of appeal as submitted by Mr. Lister. With regard to the 1st, 2nd and 5th grounds of appeal, Mr. Lawrence submitted that the respondent had two or three grounds for divorce which are stated in the judgment of the trial Court. He mentioned those grounds as denial of conjugal right, physiological torture and insults from the appellant.

Mr. Lawrence further submitted that the respondent reported the matter to *Baraza Kuu la Waislam Tanzania* (BAKWATA) but having failed to reconcile it, she went to Court. He added that the respondent did all what she could to rescue her marriage, in vain.

Mr. Lawrence argued that due to the reasons for divorce stated above, the trial Court guided itself well by observing section 107 (2) (b) and (c) as well as section 107 (3) of LMA, which mentions sexual perversion, cruelty, psychological torture as reasons for the Court to invoke section 107 (3) of LMA to make a finding that the marriage has broken down irreparably and proceed to issue divorce. He added that there is a *hadith* narrated by Ahmad Majar to the effect that a woman under Islamic law can demand divorce if denied conjugal right.

On the third ground of appeal, Mr. Lawrence conceded to the fact that the learned advocate for the appellant prayed the trial Court to allow him produce additional documentary evidence under Order XIII Rule 2 of the Civil Procedure Code, [Cap 33 R.E 2019] (hereforth 'CPC') after the respondent/petitioner had closed her case. He mentioned the documents as marriage certificates, birth certificates for the children of the appellant and property ownership documents.

Mr. Lawrence submitted further that on page 40 of the typed proceedings of the trial Court the advocate for the appellant said that he believed the respondent had knowledge of existence of other wives. He challenged the appellant for not mentioning his other wives in his reply to amended petition. The learned advocate argued that the appellant had an opportunity to show those documents when he was replying to the

petition but opted not to show them. He said, in so doing, the appellant breached his duty under section 110 of the Evidence Act [Cap 6 R.E 2019] to prove existence of other children and wives.

It was Mr. Lawrence's further submission that under Order XIII Rule 2 of the CPC, the appellant had to adduce good cause for filing additional documentary evidence. He said, since he didn't show good cause, the Court was right to object that prayer and that it was not proper for the appellant to seek sympathy of this Court at this stage.

Regarding the fourth ground of appeal on distribution of matrimonial properties, Mr. Lawrence had a submission to make to counter what was stated by the appellant's advocate. He said that the respondent gave good evidence on the properties and her contribution to their acquisition. He added that such evidence is recorded from page 7 to 10 of the typed proceedings of the trial Court stating clearly her contribution to the Nyakato house and the mine which she helped so much to improve.

Mr. Lawrence further submitted that from page 29 to 30 of the typed proceedings, the respondent gave testimony to show that the properties in question belonged to the appellant and were obtained during subsistence of their marriage, with her contribution. He concluded that the trial Court was therefore right in the distribution of the properties in view of the evidence adduced.

Addressing the issue of right to equality of wives, Mr. Lawrence submitted that it was the duty on the appellant to submit marriage

certificates of other wives issued under section 33 (1) of LMA. He added that section 55 (a) provides that a marriage certificate shall be admissible as *prima facie* evidence of facts recorded therein. It was his argument that in absence of such proof of marriage, the trial Court could not know the existence of the other marriages.

On the fifth ground of appeal, Mr. Lawrence submitted that the trial Court guided itself properly by evaluating the evidence adduced in Court, considering the three issues which were framed and did evaluate the evidence as shown from page 5 to 13 of the typed judgment.

With regard to the sixth ground of appeal, Mr. Lawrence submitted that section 107 (3) of LMA was duly interpreted by the trial Court. He said, on page 6 of the proceedings it shown that a marriage certificate was produced; on page 13 of the proceedings, it is shown that BAKWATA as a reconciliatory Board failed to reconcile the matter and the denial of conjugal right is shown to be the gist of the marriage woes.

Mr. Lawrence further replied that section 108 (a) of LMA was also duly observed according to the evidence that was available to the trial Court in deciding that the marriage was irreparably broken down. He categorically denied the allegation that it was the anticipation of property that drove the respondent to seek divorce. He emphasized that there were pertinent issues raised. He added that section 125 of LMA was also duly addressed on page 12 of the typed judgment and thus section 125 (4) was duly considered. Having replied as above, Mr. Lawrence prayed the Court to dismiss the appeal.

In his rejoinder, Mr. Thadei reiterated that there are two grounds which were relied upon in granting the divorce, being denial of conjugal right and psychological torture. He emphasized that the trial Court relied on allegations rather than proof. He left it to this Court to see if the respondent proved her allegations.

On the *hadith* cited by Mr. Lawrence on the position of denial of conjugal right under Islamic law, Mr. Thadei urged the Court to disregard it because neither the appellant nor the Court was supplied with its copy.

With regard to proof of other wives, Mr. Lister submitted that on page 14 of the typed proceedings, PW1 the respondent is on record saying that she knows Swaumu and her mother. He added that on page 53 of the typed proceedings DW2, the first wife of the appellant testified that she had two children with the appellant one of whom is Swaumu who is known to the respondent.

Mr. Lister concluded his rejoinder by asserting that even if the trial Court denied the appellant a chance to adduce additional documentary evidence, the fact of existence of the first wife of the appellant is not objected by the respondent. He reiterated his prayer to the Court to allow the appeal.

I have carefully considered the submissions by both parties in light of the judgment and proceedings of the trial Court, guided by the law. There are three issues which have to be determined by this Court. These are:

1) Whether the trial Court was legally justified to determine that the marriage between the parties had irreparably broken down?

2) Whether the decision of the trial Court to deny the appellant to adduce additional documentary evidence was legally justified?
3) Whether the division of matrimonial property was proper in law.

In the outset, I commend the trial Magistrate for his effort to understand the case and provide a reasoned judgment. The learned Magistrate has provided candid reason or reasons for almost every decision on all the three issues framed for determination before the trial Court. I thought this was exemplary and deserves a special mention, whether or not he was right in his decisions.

Turning to the first issue on whether there were legal justifications for the trial Court to determine that the marriage had irreparably broken down, it is true as submitted by Mr. Lister that the Court considered allegations of denial of conjugal right and mental torture raised by the respondent as the main basis for deciding that the marriage in question had irreparably broken down. This can be seen from page 7 to 8 of the typed judgment of the trial Court. Two questions have been raised by the learned advocate for the appellant. Firstly, he says that the denial of conjugal right is not one of conditions mentioned under section 107 of LMA to imply that a marriage has irreparably broken down. Secondly, he says that the allegation of denial of conjugal right and even psychological torture have not been proved.

On page 6 of the typed judgment of the trial Court, the learned trial Magistrate found guidance in section 107 of LMA for factors which the Court would consider as evidence that a marriage has broken down. He quoted section 107 *in extenso*, save for paragraphs which are not

relevant. I am interested in the opening paragraph of section 107 (1) LMA, which states as follows;

> *"107 – (1) In deciding whether or not a marriage has broken down,* ***the Court shall have regard to all relevant evidence regarding the conduct and circumstances of the parties*** *and, in particular shall ....."* [Emphasis supplied].

While the above cited provision goes on to mention specific reasons, the fact of the matter is that such specific reasons are considered in the minds of the trial Magistrate or Judge in the wider context of the relevant evidence adduced regarding the conduct and circumstances of the parties. As such, while the specific reasons mentioned in evidence are denial of conjugal right and psychological torture, the allegation raised by the appellant that the respondent was not faithful as well as the allegation by the respondent that the newly wedded wife of the appellant is her sister, the allegation by the appellant that Samira, their daughter is of a doubtful paternal parentage and all that made this marriage sour come into play. Such factors may not be recorded as the basis of the judgment, nonetheless are not deleted in the minds of the trial Magistrate. I should hasten to say that for the trial Magistrate or Judge to consider such other factors in the back of his mind is not illegal but perfectly right in terms of the provision of section 107 (1) of LMA quoted above.

That said, it was sufficient for the trial magistrate to show even one specific reason recognized under subsection (2) of section 107 of the LMA. This provision clearly states:

> *" (2)* ***Without prejudice to the generality of subsection (1), the Court may accept any one or more of the following matters*** *as evidence that a*

marriage has broken down but proof of any such matter shall not entitle a party as of right to a decree.
[Emphasis added]

The other requirements for a decree to be issued include a certificate that conciliation which was duly done has failed. In this case a conciliation certificate from BAKWATA (Exhibit P6) is such evidence.

Under the above circumstances, I am settled in my mind that the trial Court was legally justified to determine, as it did, that the marriage between the parties had irreparably broken down. As regards an inquiry under section 108 of LMA, I am of the view that the same is limited to the extent where evidence produced sufficiently enable the Court to determine the matter. As such the first issue is answered in the affirmative.

On the second issue that pertains to the denial of submission of additional documentary evidence, the answer is in the provisions of the law governing additional evidence. Order XIII rule 1 of the CPC mandatorily requires parties or their advocates to produce **all the documentary evidence at the first hearing of the suit.** This means a party should seize the earliest opportunity to produce all the documentary evidence he needs to substantiate his claims.

Order XIII rule 2 provides that a document which ought to be produced as per rule 1 is not produced, **SHALL not be received at any subsequent stage of the proceedings UNLESS good cause is shown to the satisfaction of the Court for non- production thereof.** This provision emphatically requires a Magistrate or Judge to

record the reason for accepting such documents. The intention of the law here is to enjoin parties and their advocate to produce all their documentary evidence without delay at the earliest opportunity where the matter is called for hearing. The second objective of the law is to **restrict** acceptance of such documentary evidence once delayed. Therefore, it was a duty of the appellant to show good reason as to why he did not produce the same at the earliest opportunity. The learned advocate for the appellant has not told this Court what was that good cause which the trial Court was informed about yet denied them access to produce. It is not enough for the learned advocate to say that the documentary evidence was important.

Also, in a situation like this where there is a mandatory provision of the law calling for an action by a party or his advocate, the overriding objective or oxygen principle cannot be invoked to circumvent a mandatory provision of the law. This was held by the Court of Appeal in **Martin D. Kumalija & others vs. Iron and Steel Ltd** (Civil Application 70 of 2018) [2019] TZCA 542 (27 February 2019). The Court of Appeal responding to the call to invoke the overriding objective principle, on page 9 of the typed ruling stated;

> *"While this principle is a vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court".*

I think the same is true with mandatory provisions of other laws too. For the above reasons, I find no merit in this ground of appeal. The second issue is therefore answered in the affirmative.

The last issue is on the division of matrimonial property. The learned advocate for the appellant has pointed out three areas of discontents with regards to the division of property. He submitted that the trial Court erred in determining what is matrimonial property, in gauging the contribution of the respondent vis-à-vis other wives and for distributing property not proved to exist. In his submission to the Court however the learned advocate referred to section 114 of LMA to cement his argument that what should be distributed is matrimonial property developed or acquired during substance of the marriage. However, save for a trailer registered in the name of Mgeni Makoye, nothing else was particularly stated as regards to other property which the trial Court erred in its distribution.

The learned advocate has mentioned of the plots distributed without proof of their existence. He did not bother to let this Court know which are those plots whose proof of existence was not shown. The position of the law is that a case is decided according to its facts and circumstances as per evidence tendered in Court.

According to the testimony of DW2, Hadija Adam Shamira, read together with the testimony of PW1, (the respondent) the houses at Nyakato in Mwanza were obtained before the marriage between the parties. PW1 testified that after their marriage in 2015 she was taken to a site where her husband had previously bought two houses which were incomplete, at Nyakato street and that she was left in Mwanza to administer the building activities at that place.

On page 9 of the typed proceedings of the trial Court, PW1 mentioned several properties acquired by the parties and produced the Title Deeds for plots No. 22972 and 24481 at Nyakato Mwanza, (Exhibit P3). It is true that some of the properties listed by PW1 (the respondent) on page 9 and 10 of the typed proceedings have no title deeds. However, she managed to produce a few title deeds and sale agreements (Exhibit P4) to prove existence of the same.

What baffles this Court is the fact that when such evidence was being adduced, there was no objection from the appellant's side. Worse still while one would expect the defence to come up with stronger evidence to counter what was adduced in evidence by the respondent, the testimony of the appellant's side was relatively weak. I shall demonstrate:-

On 2/7/2020 when the case was set for defence hearing, it is when the appellant's advocate told the Court that the appellant's side found it necessary to produce documentary exhibits which were not part of the appellant's WSD. He mentioned such documents as Marriage Certificate to prove existence of previous marriage, documents regarding children and documents related to matrimonial assets. We have already explained the requirement of Order XIII rule 1 and 2 of CPC and the decision of the trial Court to reject the prayer to produce such documents for lack of good cause.

There are common things/issues that should be anticipated by all those in legal practice when a petition for divorce has been filed. I shall waste no time to mention all of them. Order XIII Rule 1 enjoins all parties and advocates to produce all documents they shall need for their cases.

The appellant adduced evidence as DW1. He told the trial Court that he married the respondent in 2005 as a second wife. He testified further that the respondent married him while he had three houses namely; on Plot 360 at Nyakato, Plot No. 358 at Nyakato and Plot No, 123 at Kirumba, all acquired in 2004. He said that made payment for plot No. 123 in 2004 even though the transfer was recorded in 2016. He also stated that most of the assets have similar character. That is all about his defence on the properties. This is not the proper way to counter evidence adduced by the respondent, as in Civil Cases the evidence is gauged on balance of probabilities.

In his other testimony as captured on page 48 to 50 of the typed proceedings of the trial Court, nowhere the appellant raised the issue of a trailer registered in the name of Mgeni Makoye and neither did he remark that plots mentioned by the respondent were non- existent.

Likewise, the testimony of DW2 Hadija Adam did not mention the trailer or plots which were non-existent yet on 25/11/2020 despite the gaps in appellant's evidence, his advocate praved to close the case.

The appellant's case was closed without tangible proof of existence of marriage of the first wife. Section 55 of LMA provides for evidence of marriage. Para (a) of the said section mentions a marriage certificate.

Para (b) mentions a copy of such marriage certificate. Other options are mentioned under para (c) to (g) inclusive, but none was produced as if the hearing of the petition came by surprise to the appellant. I should also state here that the mere fact the respondent mentioned appellant's daughter and the fact that she knew the mother of Swaumu does not prove existence of marriage between the appellant and the said mother of Swaumu. It should not be taken to be the law that whenever two people have had a child, they're married. A marriage has to be specifically proved according to how it was contracted.

Under such circumstances, I am inclined to hold that the trial Court did its best to consider the law and factual matters presented in the evidence made available by the parties.

Section 114 of LMA cited by Mr. Lister provides for powers of the Court to order division of matrimonial assets "between the parties". Subsection (2) of section 114 of LMA provides for matters to be considered by the Court in exercising its powers conferred under subsection (1). These are the customs of the community to which the parties belong the extent of contributions of each party, any debts owing by either party contracted for their joint effort, and the needs of children. The law in this connection enjoins Courts to incline towards equality of division.

In my view all the above have been duly considered by the trial Court in so far as the evidence was made available to the Court by the parties.

In final analysis, I find no merit in the appeal. Accordingly, I dismiss it, with no order as to costs.

Dated at Dodoma this 14th June, 2022.

ABDI S. KAGOMBA
JUDGE