

**IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**PC MATRIMONIAL APPEAL NO.25 OF 2021**

*(Arising from the District Court of Masasi at Masasi in Matrimonial Appeal No.5 of 2020, originating from Lukuledi Primary Court in Matrimonial Cause No.1 of 2021 before Hon. R. Yunus, RM.)*

**OTMARY SIMON..... APPELLANT**

**VERSUS**

**DESTERIA JOHN CHILEDI.....RESPONDENT**

**JUDGMENT**

*Date of Last Order: 27/4/2022  
Date of Ruling: 21/7/2022*

**LALTAIKA, J.:**

This appeal originates from the Lukuledi Primary Court in Matrimonial Cause No.1 of 2021. In that case, the respondent herein **DESTERIA JOHN CHILEDI**, petitioned for a decree of divorce and division of matrimonial properties/assets against the appellant, **OTMARY SIMON** after the Lukuledi Ward Tribunal had failed to reconcile them.

The brief background of the matter is as follows: The parties got 28/12/2013. Their marriage was celebrated at the Roman Catholic Church situated at Lukuledi in Mtwara Region before The Reverend Father Paskal B. Mteka and witnessed by Erasmos John and Eles Mayaye. Pursuant to the Law of Marriage Act 1971, the parties were issued with a valid Certificate of Marriage. In the course of their joint matrimonial union, the

parties were blessed with two issues: Benadeta Otmary (born on 31/12/2011) and Joel Otmary (born on 18/11/2016). It is also in the court records that the appellant found the respondent with other three children from a previous relationship. The parties had also managed to jointly acquire several matrimonial assets as will be apparent in this judgement.

The trial court, having been convinced that the marriage of the parties was broken down irreparably as per section 107(2)(c) of the Law of Marriage Act [Cap 29 R.E. 2019], it issued a decree of divorce under section 110(1)(a) of the Law of Marriage Act. It further ordered the division of matrimonial assets between the parties at different percentages.

Dissatisfied, the appellant appealed to the District Court of Masasi where he presented five grounds of appeal. After the first appellate court had heard the parties, it dismissed the appeal in its entirety. Dissatisfied once again, the appellant has lodged his appeal to this court by way of a petition of appeal comprised of five grounds of appeal as follows:-

- 1. That, the learned trial Magistrate erred in law and fact by including some of the assets to be among the matrimonial properties. Meanwhile the said some of the assets it belongs to the appellant only.*
- 2. That, the learned trial Magistrate erred in law and in fact by failure to consider, analyse and weight the evidence of the appellant that was strong and is established his case on a balance of probabilities, that some of the assets is not matrimonial properties.*
- 3. That, the learned Magistrate seriously erred in law and in fact by order the division of the said some of the assets, while some of the assets were already divided before the parties had appeared at the trial court.*

4. *That, the learned Magistrate erred in law and in fact for holding in favour of the respondent despite the respondent failure to produce any strong evidence to prove that she has contributed more to the acquisition of the matrimonial assets.*
5. *That, the learned Magistrate erred in law and in fact by holding that the respondent should get 50% of some matrimonial properties while she did not contribute the same and the division of matrimonial assets was not done properly.*

This matter was called for hearing on the 27<sup>th</sup> April 2022. Both parties appeared in person and unrepresented. Arguing for the appeal, the appellant submitted that he appealed against the decision of the first appellate court and he insisted that he does not agree that he acquired the properties jointly with the respondent. He went further and argued that the trial court and first appellate court unfairly treated him in deciding that all the properties were acquired during the matrimonial life time. The appellant argued that some of the properties were there before their matrimonial life had ensued. To this end, the appellant prayed that this court disregards and quashes the judgments of the lower courts.

The appellant contended that he brought witnesses whose testimonies were not considered seriously by the lower courts. He also argued that they had a family meeting where they had divided the properties. The appellant further stressed that the courts below did not respect the way they divided the properties among themselves instead they ordered the redistribution of the same. Furthermore, the appellant submitted that the respondent and her witnesses contradicted themselves in their testimonies but the courts below did act against such contradiction. The

appellant stressed that he is the one who spent more energy than the respondent.

It is the appellant's submission further that the respondent had three children before they got married. The appellant asserts that he took care of all of them including provision of education. He further argued that the courts did not consider his efforts since he managed to bring one of the respondent's children to the University in Mbeya. On his children with the respondent, the appellant argued that the courts bellow ordered him to take care of them. Regarding the division of matrimonial assets at the 50/50 arrangement, the appellant submitted that it was not just since he had exerted more efforts hence, he was entitled to a bigger share.

The appellant submitted that what prompted him to appeal is that whereas there was no any query when they shared the properties between them at family level, when the respondent went to court the court divided the properties at the share of 50/50. The appellant stressed that he told the court about the previous division but was told that it was against the government rules.

In reply, the respondent submitted on the type of their marriage and how they celebrated it. She further submitted on the number of children she and the appellant had been blessed with as well as the number of children the appellant had found with her with. In addition, she submitted on the reason which led to divorce.

With regards to how the matrimonial property was jointly acquired, the respondent argued that she is a seasoned tailor "fundi cherehani". She contended that she also used to sell local fabrics "vitenge" adding that at the trial court produced an identification card to that effect

commonly known as the "Kitambulisho cha Mjasiriamali" as her exhibit. The respondent stated further that at some point she registered her three children with the Tanzania Social Action Fund (TASAF) and they daily needed were catered for.

She stressed that it was TASAF that took care of her three children but later, the appellant decided to deduct Tshs. 4,401,000/= from her part of the matrimonial property claiming that he had used the same to support the children of the respondent from a previous relationship.

In a rejoinder, the appellant submitted that he had a wife whom he lived with for for 18 years but they had no children. The appellant submitted further that he had inherited from his late wife the shop mentioned by the respondent. He stressed the same had not been a part of the matrimonial property lined up for distribution.

Having dispassionately considered rival submissions by both parties and having gone through the records of the lower courts, I am inclined to decide mainly on whether or not the appeal is meritorious. The contentious matter as alluded above, is centred on division of matrimonial assets. To this end, my deliberation will be cantered on the same issue namely matrimonial assets.

In our jurisdiction section 114(1) of the **Law of the Marriage Act [Cap. 29 R.E. 2019]** has empowered the courts to divide any assets acquired by parties during their marriage by their joint efforts or order the sale of any such asset and divide between the parties the proceeds of sale. This order may be implemented by the court when granting or subsequent to the grant of a decree of separation or divorce.

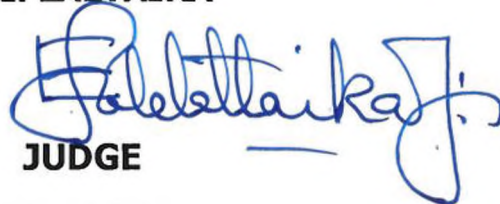
Whenever a court of law in our jurisdiction is called upon to exercise its powers under section 114(1) of the Law of Marriage Act, it is obliged to observe the factors enshrined under subsection 2 of section 114 of the Act. These factors include **one**, the customs of the community to which the parties belong. **Two**, the extent of the contribution made by each party in money, property or work towards the acquiring of the assets. **Three**, any debt owing by either party which were contracted for their joint benefit. **Four**, the needs of the children, if any, of the marriage, and subject to those considerations, shall incline towards equality of division.

Having thoroughly read the judgment of the trial court, I am fortified that the division of the matrimonial assets to the parties observed all the important factors outlined by the Law of Marriage Act including the extent of contribution or joint efforts made by each party be it in monetary form, work or property towards the acquisition of the assets. This is neatly provided for in Kiswahili at page 9 and 10 of the trial court's judgement.

In the line of the above observation, I am convinced that the appeal is devoid of merits. Thus, I dismiss it in its entirety. I emphasize that the all orders of the trial court are hereby upheld. Since this is a matrimonial matter, I make no order as to costs.

It is so ordered.

**E.I. LALTAIKA**



**JUDGE**

**21.7.2022**

**Court:**

This Judgment is delivered under my hand and the seal of this Court on this 21<sup>th</sup> day of July, 2022 in the presence of both parties.



**E. I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E. I. Laltaika", written over a horizontal line.

**JUDGE**

**21.7.2022**

**Court**

The right to appeal to the Court of Appeal of Tanzania fully explained



**E. I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E. I. Laltaika", written over a horizontal line.

**JUDGE**

**21.7.2022**