

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**PC CIVIL APPEAL NO. 37 OF 2020**

(Arising from the decision of the (PC) Civil Appeal No. 54 of 2019 in the District Court of Dodoma at Dodoma delivered on 23<sup>rd</sup> October, 2020 Originating from Matrimonial Case No. 24 of 2019 in the Chamwino Primary Court at Dodoma before Hon. Matabwa, PGM dated on.....)

**JUMA KIKANYA..... APPELLANT**

**VERSUS**

**HADIKWA SERENE CHIDUMIZI ..... RESPONDENT**

*18/5/2022 & 7/6/2022*

**JUDGMENT**

**MASAJU, J**

The Respondent, Hadikwa Serene Chidumizi, successfully sued the Appellant, Juma Kikanya for divorce, maintenance and custody of their two (2) issues in the Chamwino Urban Primary Court. Aggrieved with the decision, the Appellant unsuccessfully appeal to the District Court of Dodoma, hence the appeal in the Court.

The Appellant's Petition of appeal is made up of seven (7) grounds of Appeal.

When the appeal was heard in the Court on the 18<sup>th</sup> day of May, 2022 the Appellant was represented by Mr. Lucas Komba, Advocate while the Respondent was in service of Mr. Onesrno David, Advocate.

The Appellant submitted in support of the appeal by consolidating the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal and added that the impugned house is a matrimonial house as testified by the Appellant and his two witnesses, Said Kasimu (DW1) and Esio Gurumo (DW2) who were masons. That, the Respondent's allegation that the impugned house was given to her by her father is questionable. The Appellant prayed the Court to hold that the impugned house is a matrimonial house and its division be for both parties accordingly.

The Appellant also consolidated the 5<sup>th</sup> and 6<sup>th</sup> grounds of appeal and argued that the trial Court granted the Respondent custody of the children and ordered the Appellant to maintain them at the rate of TZS 100,000/= monthly. That the amount was excessive to the Appellant. That, the Court should vary the amount up to half of it, that is TZS 50,000/= monthly. That, the Respondent should also be responsible for maintaining her children because she is employed as a teacher. That, the Appellant is also a teacher.

As regards the last ground (the 7<sup>th</sup>) the Appellant submitted that the matrimonial cause was entertained by the trial Court prematurely for the Marriage Conciliation Board had not been involved pursuant to section 101 of the Law of Marriage Act [Cap 89]. That, there was no evidence that the board involved in the dispute certifying that there had been failure of reconciliation of the parties. The Appellant prayed the Court to allow the appeal with no order as to costs.

On her part, the Respondent contested the appeal by submitting that the trial Court did not order for division of the matrimonial assets, if any, because the Appellant testified before the trial Court that there was no matrimonial assets for division.

The Respondent submitted against the 5<sup>th</sup> and 6<sup>th</sup> grounds of appeal that the TZS 100,000/= monthly maintenance sum should not be varied because the Appellant has other source of income even though he is retired from Civil Service. That, the Appellant should maintain his own children upon dissolution of marriage pursuant to section 129 of the Law of Marriage Act [Cap 89].

As regards the 7<sup>th</sup> ground of appeal the Respondent contested it by submitting that the parties were heard by the Marriage Conciliation Board where the reconciliation failed and the certificate of failure thereof was made available to the trial Court by the Respondent as per section 101 of the Law of Marriage Act [Cap 89]. The Respondent prayed the Court to dismiss the appeal for want of merit with no order as to costs.

That is what was shared by the parties in support of, and against the appeal in the Court.

The original record of the trial Court clearly shows that prior to the institution of the Matrimonial Cause, the parties complied with section 101 of the Law of Marriage Act [Cap 89] whereby they attended Chamwino Ward Conciliation Board where reconciliation failed thus the Board certified by issuing a certificate (Form No. 3) which can be traced in original record. Thus, the matrimonial cause was not instituted prematurely in the trial Court as alleged by the Appellant.

The Appellant conceded divorce to be granted in the trial Court. As regards the impugned matrimonial house, the Appellant himself testified the house to be the Respondent's property. That, the house was given to the Respondent by her father. The Appellant readily admitted that fact during cross examination by the Respondent. That, being the case it remains clear



that the impugned house belongs to the Respondent thus can not be subject to division since it is not a matrimonial property.

The Appellant alleged in the appellate Court that, he was denied by the trial court to produce some evidence and to call witnesses to build his case in the said court. Thus, the 1<sup>st</sup> appellate court ordered the trial Court to take additional evidence whereby the Appellant called two witnesses DW1 and DW2 to testify in his favour. The two witnesses' evidence did not prove the impugned house to be a matrimonial house but rather it was full of contradictions. However, the original record of proceedings of the trial court shows clearly that on the 26<sup>th</sup> day of June, 2019 the Appellant prayed to close his case thus;

*"Mdai- mimi sina lolote na ushahidi wangu unatosha kabisa*

*Mdaiwa- sina la kuongeza ushahidi unatosha.*

*Signed*

*26/6/2019*

**AMRI**

*Shauri tarehe 4/7/2019 uamuzi.*

*Signed*

*26/6/2019*

*Washauri: Kanemela*

*Olipa."*

It is clear that the Appellant closed his case in his own words saying that he had nothing to add, the evidence was enough. The record does not reveal the Appellant's prayer of adding other witnesses and the trial Court denying the prayer as he alleged in the 1<sup>st</sup> appellate Court. Thus, the 1<sup>st</sup> appellate Court misdirected itself in ordering the trial court to take additional evidence thus the proceedings of the trial Court starting from the 6<sup>th</sup> day of

April, 2020 in regards to the additional evidence is hereby nullified accordingly.

As regards to the issue of maintenance of the parties' two(2) issues the Court is of the considered position that TZS 100,000/= per month ordered by the trial Court is reasonable considering the current economic situation regardless of the Respondent's retirement status. There still are other basic needs to be contributed by her to the children on a daily basis such as shelter, food, academic needs, health services etc.

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



GEORGE M. MASAJU

JUDGE

7/6/2022

GEORGE M. MASAJU

JUDGE

7/6/2022