

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

AT DODOMA

MATRIMONIAL APPEAL NO. 10 OF 2021

(Originating from Matrimonial Appeal No 5 of 2021 Kongwa District Court, Original
Matrimonial Cause No 6 of 2021 Kongwa Urban Primary Court)

JOYCE DANIEL DYABASONGI APPELLANT

VERSUS

BENJAMINI HARUN MKUNDA RESPONDENT

13/6/2022 & 12/7/2022

JUDGMENT

MASAJU, J

The Appellant, Joyce Daniel Dyabasongi, successfully petitioned the Respondent, Benjamini Harun Mkunda, for divorce, distribution of matrimonial properties and maintenance of their two issues in Kongwa Urban Primary Court. Aggrieved with the decision, the Respondent successfully appealed to the District Court of Kongwa, at Kongwa hence the appeal in the Court:

The Appellant's Petition of Appeal is made up of three (3) grounds of appeal, thus;

"1. That, the trial court erred in law and facts for departing the decision of Primary court on distribution of matrimonial

properties without any legal justification.

2. That, the trial erred in law and facts to lay upon on respondent's contradictory evidence to give decision on favour of respondent.

3. That, the trial court erred in law and facts to order the child under the age of four years and other child of eight years to be under the custody of the respondent without considering the social welfare and needs of that children"

The appeal was heard in the Court on the 13th day of June, 2022. Both parties appeared in persons and prayed to adopt their Memorandum of Appeal and Reply to Memorandum of Appeal respectively in support of, and against the appeal in the Court.

The Appellant challenges the distribution of Matrimonial properties and custody of the parties' two children by the 1st appellate court.

In the trial court, the parties testified that they contracted a Christian rites marriage in the year 2011. That, their marriage lasted for 10 years before they were legally divorced by the trial court. The parties have two issues the first born (9 years old) and the second born (4 years old) by the time of trial. The parties had acquired a number of properties. The Respondent sold some of the properties allegedly without the Appellant's consent.

Thus, the remaining properties being one house on Plot No. 409 at Mnyakongo, one Motorcycle, a 4½ acres farm and home utensils which were not contested in the trial court.

Section 114 (1) of the Law of Marriage Act [Cap 89] gives power to the matrimonial court to order for distribution of the matrimonial properties when divorce is granted. Section 114 (2) of the said Act gives the criteria to

be relied upon when dividing the matrimonial properties one of them being the extent of contributions made by each party. In the instant case, the Appellant was a house wife while the District council of Kongwa employed the Respondent during subsistence of their marriage. Hence the Appellant had contributed by doing home chores such as cooking, taking care of the two issues and her then husband while the Respondent contributed in monetary terms. The decision of the Court in **Bi Hawa Mohamed V. Ally Seif [1983] TLR 32** is that a spouse's domestic service during the subsistence of the Marriage amounts to an effort and contribution in acquisition of matrimonial properties. Thus, both parties contributed in the acquisition of matrimonial properties although the Appellant was a full time house wife.

That said, since the Respondent sold some properties without the consent of his then spouse contrary to section 59 (1) of the Law of Marriage Act [Cap. 89] let the properties be divided equally to each party as so rightly decided by the trial court. The Government valuer shall value the matrimonial house on Plot No. 409 Mnyakongo, within Kongwa Urban. The party interested in ownership of the property shall compensate the other party half of its value and retain the house. Otherwise, the property shall be sold at a public auction and the proceeds thereof shall be equally distributed between the parties.

As regards the custody of the two issues, both issues shall continue to be under the custody of the Respondent, for he has the love and economic means of taking care of them as per their welfare pursuant to section 125 (1) (3) of the Law of Marriage Act, [Cap. 29]. The Appellant, though loves the issues, she lacks the economic means. The Appellant shall have access

to the issues while at boarding school and during school leave because she has parental right and duty to access and take care of them.

That said, the appeal is hereby partly allowed to such extent. The parties shall bear their own costs.




GEORGE M. MASAJU

JUDGE

12/7/2022