

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

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**PC MATRIMONIAL APPEAL NO 6 OF 2021**

(Arising from the decision of Serengeti District Court, Hon Semkiwa J. G. – RM and  
Originating from Matrimonial Case no 53 of 2020 at Ngoreme Primary Court)

**MAKEMBA JUMANNE .....APPELLANT**

***VERSUS***

**RHOBI MANYENYI ..... RESPONDENT**

**JUDGEMENT**

4<sup>th</sup> August & 19<sup>th</sup> September, 2022

**F. H. Mahimbali, J.**

The appellant and the respondent are couples who were married by Christian rituals on 4<sup>th</sup> May, 2003. They are blessed with four issues. They have been living harmonious life until 2009 when the trouble between them started after the respondent was married to another woman unlawfully.

The appellant and the respondent have been living on and off the matrimonial home for quite some time as per troubles circumventing their marriage. Eventually, the matter pertaining their marriage was

addressed to the clan elders where the settlement proved futile. The dispute was further referred to the Marriage Reconciliation Board where there was no resolution.

Eventually, the dispute was filed at the trial court where it dissolved the marriage on ground that it was irreparably broken down. Along with the dissolution of their marriage, the trial court made the following orders consequent to the said dissolution:

- 1. Pursuant to section 110(1) (a) of the Law of Marriage Act, Cap 29, the marriage between the appellant and the respondent has broken down irreparably.*
- 2. The certificate of divorce be issued to the parties pursuant to section 112 of the Law of Marriage Act.*
- 3. The appellant to give the respondent the following division of matrimonial properties: 15 herds of cattle, one house by corrugated irons, one plot of land allocated at Iramba kibaoni, 130 blocks, one sewing machine and two hens.*
- 4. The appellant to pay maintenance costs of TZS: 50,000/= monthly as maintenance costs for the welfare of the four children.*

The orders issued by the trial court which were affirmed by the first appellate court, aggrieved the appellant, thus the basis of this current appeal to this court based on four grounds of appeal, namely:

- 1. That both the subordinate courts erred in law and facts for failure to determine that trial court had no jurisdiction to entertain the matrimonial cause of Christian marriage*
- 2. That both subordinate courts erred in law and in facts for failure to determine that the trial court had no jurisdiction to entertain the issue of juvenile.*
- 3. That both subordinate courts erred in law and in facts for failure to determine that the certificate of failure of reconciliation board of marriage cannot be considered not more than one matrimonial cause*
- 4. That both subordinate courts erred in law and in facts for failure to evaluate the evidence of appellant and his witnesses was heavier than the respondent's evidence.*

On these grounds of appeal, the appellant prays for orders that:

- a) The appeal be allowed with costs.
- b) Set aside and quash the proceedings and judgment of the trial court and that of the first appellate court.
- c) Declaration that Marriage of the appellant and respondent has not broken down irreparably.
- d) Any other relief this court may think fit and just to grant.

During the hearing of the appeal, the appellant was represented by Mr. Gervas Emmanuel learned advocate whereas the respondent represented himself.

In arguing the said appeal, the appellant's counsel abandoned the first two grounds of appeal (grounds 1 and 2 of the appeal), and thus argued only the remaining two ( the 3<sup>rd</sup> and 4<sup>th</sup>) grounds of appeal.

With the third ground of appeal, the concern is, there has been no compliance with section 101 of the Law of Marriage Act for failure to go to Marriage Reconciliation Board before instituting this suit. This issue was first raised at the District Court during appeal but it was disregarded. That though District Court ruled that as there was first conciliation, the same sufficed conciliation in the subsequent proceeding. Mr. Gervas contended that the first appellate court erred in law on that. Since Certificate of Marriage Conciliation Board (form 3) is important, absence of it vitiates the trial. He invited this court to be inspired by the decisions of the court as per the cases of **Atanas Makungwa vs Darini vs Hassani** (1983) TLR 132 and **Mariam Tumbo vs Hard Tumbo** TLR 293.

With the fourth ground of appeal, she argued that there was failure of evaluating the evidence of the case thoroughly. The issue is centred on the division of Matrimonial properties herds of cattle 60, Motorcycle 1, Bicycle 1 black bricks 400, 3 plots – Kilami Iramba, 6 hens. As regards to herds of cattle, the appellant counters the 60 herds of cattle belonged to their marriage but of his parents. Therefore, it was not proper for the said division of properties to cover non - Matrimonial properties.

On the other hand, the Respondent first prayed for the adoption of her reply to the grounds of appeal to form part of her submission. She added further that the said herds of cattle were theirs as they used to buy them from various people using family money.

As regards passing through the Conciliation Board, she submitted that she did but in vain. Thus, it is not true that there was no Marriage Reconciliation Certificate. She insisted that she was married in 2003 and are blessed with four children. The problem with him commenced when the appellant was married to another woman and deserted her. She prayed that the appeal be dismissed.

In his rejoinder submission, Mr. Gervas argued that whether the said herds of cattle were purchased by them jointly, there is no proof of that.

With the issue of certificate of Married Conciliation Board (Form 3), he submitted that it has not been disapproved. He therefore prayed that it be considered that this suit was not mature at the time of its institution. The appeal be allowed with costs, he concluded Mr. Gervas.

As per facts and evidence of the case, it is undisputed that the parties' relationship is at sour. It is true that as per trial court's findings that their marriage has been broken down irreparably.

The main concern by the appellant is two fold: First, that there was no marriage certificate issued prior to the institution of the second suit after the first one had posed for a while following their partial re-engagement. Secondly, that division of the called acquired matrimonial properties during their life time has not been established.

With the first issue, I agree with the submission by Mr. Gervas, that the requirement of divorce proceedings must be preceded by the issuance of Certificate of Marriage Conciliation Board (see **Altanas Makungwa vs Darini vs Hassani** (1983) TLR 132 and **Mariam**

**Tumbo vs Hard Tumbo** TLR 293) which is form No 3. In the absence of it, vitiates the trial. However, in the circumstances of this case, it is clear that there was such an attempt and the same was obtained and enabled the institution of Matrimonial Cause No. 17 of 2019. The proceedings there in dated **24<sup>th</sup> June, 2019** are recorded as follows:

***Mahakama:*** *Dai linasomwa mbele ya mdaiwa na kwa kinywa chake anajibu:*

***Mdaiwa:*** *Siko tayari kumpa mke wangu talaka. Naomba Mke wangu anisamehe na anipe muda wa miezi sita kwa ajili ya matazamio.*

***Mdai:*** *Sina pingamizi.*

***Mahakama:*** *Wadaawa wamekubaliana kurudiana na kuishi Pamoja na kupewa muda wa matazamio ya miezi sita ili kurekebisha tofauti zao kama walivokubaliana.*

According to trial court record, what followed after the issuance of the pose order by the trial court, instead of proceeding with the same file when the respondent reported the worse progress of their marriage relationship, the trial court opened a new matrimonial cause proceeding (Matrimonial No. 53 of 2020) instead of reviving the same. As there was no re-marriage between the parties, the subsequent proceeding were not for the new cause but the same one. Thus, the same certificate

sufficed the continuation of the subsequent proceedings as that former filed suit was not closed but just posed for a while.

That said, the third ground of appeal fails as it is not meritorious in the circumstances of this case.

As regards to the fourth ground of appeal which is contest on the distribution of matrimonial properties, seems to be the central of the issue. Whereas the respondent lists their marriage to have been blessed with a total of four issues, in the midst they have been able to acquire various matrimonial properties namely: Two houses, 60 herds of cattle, one sewing machine, 4 beds, and two hens.

The appellant disputes that the said herds of cattle belonged to their family but to his parents. I differ with him as there is no proof of the opposite assertion. He who alleges must prove.

As the said properties (cattle) are located at their family house, asserting them as belonging to his parents is a fact that needed proof (section 110, 111 and 112 of TEA, Cap 16 R. E. 2022).

In my assessment as to the evidence in record between the testimony of the appellant and the respondent, the scale of justice sides



with the respondent (**Hemed Said vs Mohamed Mbilu**, (1984) TLR 113).

All this said and done, the appeal is dismissed

This court confirms the findings and orders issued by the trial court.

This being a matrimonial case involving spouses, parties shall bear their own costs.

DATED at MUSOMA this 19<sup>th</sup> day of September, 2022.



F. H. Mahimbali  
**JUDGE**

**Court:** Judgment delivered 19<sup>th</sup> day of September, 2022 in the presence of Respondent, Mr. Gervas, advocate for the appellant and Mr. Gidion Mugo, RMA.

Right to appeal to any aggrieved party is explained.

F. H. Mahimbali  
**JUDGE**