IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

PC CIVIL APPEAL NO.16 OF 2021

(Arising from the District Court of Tandahimba at Tandahimba in Matrimonial Appeal No.14 of 2019, originating from Tandahimba Urban Primary Court in Matrimonial Cause No.46 of 2019)

SAIDI MFAUME MUNYEMU.....APPELLANT

VERSUS

SOFIA MOHAMEDI CHIHAKO.....RESPONDENT

JUDGEMENT

21/7/2022 & 18/10/2022

LALTAIKA, J;

This is the second appeal. The appellant herein **SAIDI MFAUME MUNYEMU** petitioned for decree of divorce and division of matrimonial assets against the respondent vide Matrimonial Cause No.46 of 2019 before the Tandahimba Urban Primary Court at Tandahimba. After a full trial, the trial court was convinced that the marriage between the parties was broken down irreparably. Consequently, the trial court issued a decree of divorce under section 107 (3)(a)(b)(c) of the Law of Marriage Act [Cap. 29 R.E. 2019]. Furthermore, the trial court divided the matrimonial assets to the parties and ordered the appellant to provide TZS 30,000/= per month for maintenance of his children. Dissatisfied, the respondent appealed to the

first appellate court. The appellate court re-distributed the matrimonial assets with some variation compared with the trial court's order. The appellate court, moreover, upheld the maintenance ordered.

The appellant is dissatisfied with the decision of the first appellate court hence this appeal which is premised on the following grounds:

(i) *That, the appellate Resident Magistrate erred in law and in fact in redistributing the farm which we bought during the subsistence of our marriage to the rate of ¼ to the appellant over ¾ to the respondent departing with the order of the trial magistrate who distributed the same to the appellant.*

(ii) *That, both lower courts erred in law and in fact for distributing the farm located at Luagala village with 41 cashew nut trees in the plot of inheritance without considering my efforts that we planted 41 cashew nuts trees together during the substance of our marriage.*

When the appeal was called on for hearing on 18/10/2022 the parties appeared in person, unrepresented. With the aid of this court, they constructively engaged the court on the nature of the appeal and the grounds of appeal thereof.

The appellant started off by an introduction that he is a resident of Tandahimba District. The respondent, Ms. Sophia Mohamed Chihako and himself were married "sometimes back" according to the Islamic Religion adding that they were not issued with any marriage certificate as it was uncommon those days.

The appellant stated further that as a couple, they lived together for ten years at Luagala Village in Tandahimba District. During that time, the

appellant narrated, they were blessed with two issues Shadina Saidi Mfaume Mnyemu and Warda Saidi Mfaume Mnyemu. The appellant was quick to point out that he is married to another woman named Sophia Stamili Kapilimba and they are blessed with three children.

It is the appellant's submission that the disputes with the respondent intensified when they got children, and he asked her to stop drinking alcohol. The respondent refused such advice and stated that she would rather get divorced than stop drinking alcohol. The appellant emphasized that such refusal to part with alcohol was the reason for their divorce.

The appellant recounted that in the attempt to serve their marriage, they went to the Reconciliation Board *Baraza la Ndoa* where the respondent was counseled to stop drinking but in vain. After the counselling, the appellant averred, the respondent went home and demanded that she is issued with her *talac* by the appellant.

It is the appellant's submission further that upon being issued with the *talac,* the respondent refused the division of property claiming that the property was inherited from her late mother. The appellant petitioned to Tandahimba Urban Primary Court which, upon visiting the property purported to have been acquired jointly, ordered that the same be divided follows: the respondent was given a 2.5 acres cashew nuts farm and the respondent a 3 acres farm that was bough jointly for TZS 800,000.

The respondent was aggrieved with that decision, so she appealed to the District Court. The DC decided that the 2.5 acres farm goes to respondent and the 3 acres farm jointly bought for TZS 800,000 be divided and the

appellant be issued with a quarter of it. The respondent would get three quarters.

It is the appellant's submission further that he is not satisfied with the decision of the District Court because he does not understand why the 2.5 acres farm where they jointly planted cashew nuts goes to the respondent alone without him. He is equally perplexed why he should get just a quarter out of the 3 acres farm. He finalized his submission by asking this court to rectify the errors of the appellate court because the property was acquired painfully.

The respondent, on her part, emphasized that the 2.5 acres farm is the proceeds of her later mother's estate. She averred that when they got married with the appellant, he found her working on that farm. She averred further that her father later sold that farm to her.

It is the respondent's submission that the reason she appealed against the decision of the Primary Court is that it wrongly decided that the appellant be given the three acres farm even though it was bought using proceeds of her mother's estate "mirathi"

On the order for child maintenance, the respondent averred that since they divorced in 2019, the appellant left her with the children. She reported to the Head Teacher that that the appellant should be contacted for the needs of the children in school, but he still refused to assist the children.

The respondent believes that the first appellate court made a correct decision because [property] acquired jointly during the marriage is what can

be divided. She averred that execution of the decree had stopped because of this appeal. She concluded her submission by calling upon this court to dismiss the appeal and uphold the District Court's decision.

In a brief rejoinder, the appellant reiterated his prayers in the submission in chief. He admitted that some of what the had said is correct and the rest is wrong because to err is human. It is true, the appellant stated, that the 2.5 acres farm belongs to the respondent from her mother's side. However, reasoned the appellant, when the respondent got the farm, it was just a bush. She invited him to work with her and they planted a total of 41 cashewnuts trees. The appellant reiterated that the 3 acres farm was bought by the couple jointly and it was not inherited. With regards to children, the appellant averred that it was the respondent who prevented him from visiting his own children.

I have dispassionately considered submissions by both parties. I am inclined to determine the merit of the appeal. In doing so, the issue for my determination is whether the first appellate/trial court considered the contribution made by the appellant in dividing the farm acquired during existence of their marriage.

It is trite law that division of matrimonial assets is vested in the courts of law and not parties to the marriage. See section **114(1) of the Law of Marriage Act [Cap. 29 R.E. 2019]**. In carrying out their duty under sub section (1) of section 114, courts are required to take into cognizance the factors enshrined under subsection (2) of section 114. These factors include customs of the community to which parties belong, the extent of contribution

made by each party in money, property, or work toward acquisition of the assets, any debts owing by either party which were contracted for their joint benefit and the needs of the children of marriage. See, among other Court of Appeal of Tanzania's landmark cases; **Bi Hawa Mohamed vs Ally Sefu** [1983] TLR 32 and **Bibie Mauridi vs Mohamed Ibrahim** [1989] TLR 162.

In the instant matter, things started to go wrong when the appellant decided to divide the property after issuing a *talac* to the respondent. The respondent was justified to suspect that it was not proper for the appellant to be a judge of his own cause as the tenets of the **rule against** bias dictate. However, when she petitioned to the trial court, she felt the court added salt into injury. It ordered the 2.5 acres that was inherited from her mother to be divided as other properties. As I could learn from the conversation I had with the parties, this was not right. Apparently unlike many if not most Tanzanian ethnic groups who are patrilineal, the parties to this appeal are matrilineal. The appellant who was the husband, was "invited" by the respondent his ex-wife, to work with him in her parent's farm. The farm, however, remained the property of the wife's clan.

The first appellate court in my opinion considered the cultural aspect as well as the contributions of both parties. The act of ordering the respondent to pay the appellant ¼ of the value of the cashew farm acquired by joint efforts symbolizes that it considered the efforts of the appellant of planting 17 cashew trees in the jointly owned farm of the respondent.

The three-acre farm which has 106 cashews trees is bigger than the one which is divided to the respondent and in which the respondent is required to pay the appellant ¼ of the value of the farm after evaluation.

Based on the above observation, I find that this appellant is devoid of merit and the same is hereby dismissed. I make no order as to costs.

It is so ordered

E.I. LALTAIKA

JUDGE
18.10.2022

Court

This Judgement is delivered under my hand and the seal of this court today on the 18th day of October 2022 in the presence of both parties who have appeared in person, unrepresented.

E.I. LALTAIKA

JUDGE
18.10.2022

Court

The right to appeal to the Court of Appeal is fully explained.

E.I. LALTAIKA

JUDGE
18.10.2022