

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

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**MATRIMONIAL APPEAL NO. 1 OF 2022**

*(Arising from Matrimonial Case No. 1 of 2019 of the Resident Magistrates Court of Tanga at Tanga)*

**LILIAN BAYONA.....APPELLANT**

**-VERSUS-**

**GOSBERT BAYONA.....RESPONDENT**

**JUDGMENT**

*Date of last order: 25/08/2022*

*Date of judgment: 19/10/2022*

**AGATHO, J.:**

On the 8<sup>th</sup> of October 1993, the Appellant and the Respondent contracted a civil marriage. On the 15<sup>th</sup> day of July, 2000, they blessed their marriage at the church. The parties were blessed with three issues, namely GODWIN GOSBERT BAYONA born in 1992, a pharmacist, VICTOR GOSBERT BAYONA born in 1996 who is in 3<sup>rd</sup> year at the Tax College in Dar es salaam and DAVID GOSBERT BAYONA born in 2004, the last child who is a secondary school student.



In 2019, the Appellant filed a matrimonial cause registered as Matrimonial Cause No. 1 of 2019 at the Resident Magistrate's Court petitioning for a declaratory judgment and decree that the marriage between her and the Respondent had been irreparably broken down, thus she was seeking for a divorce decree, an order for division of matrimonial properties acquired during their marriage, maintenance order, costs of the petition and any other reliefs that the court deemed fit and just to grant.

During hearing at the trial court, the Appellant/Petitioner (PW1) had no witnesses whereas the Respondent (DW1) had only one witness who is his co-parent one Scholastica Christian Mahundi (DW2).

According to the Petitioner's testimony, the reason for the breakage of the marriage was that while the marriage was subsisting, the Respondent had extra marital affairs with the other woman (DW2) and were blessed with four children. The Respondent on his part alleged that the Petitioner denied him conjugal rights and had some harassments against him and his family.

According to the testimony from both sides it appeared that both parties acquired the following properties; a house at Saruji, Plot

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No. 166 Block 10 House No. 8, a house at Pongwe, a house at Kilapula, a house and a farm in Bukoba Region at Mbale Village, a farm at Kisimatui, Tanga 1 and 1/2 acres, a plot at Bunju Plot No. 156 of which the Petitioner alleged that the Respondent transferred/ sold the same without her involvement, Mark II Grade T. 389 CVE, Mark II Grande T. 585 CKY, RAV 4T. 626 BYE, Hiace T. 685 BEW, Motor Cycle Toyo MC 696 ABL of which the Petitioner testified that it encountered an accident.

Another property was a plot with a constructed house at Pongwe, Kichangani, a motorcycle T. 282 BPD and a bajaj bought by the Petitioner and the other motorcycle bought by the Respondent.

When the Court heard both sides was satisfied that the marriage between the two irreparably broken down as per Section 107 (2) of the Law of Marriage Act [Cap 29 R.E 2019]. The ground for divorce was adultery since it was established that the Respondent had an extra marital affair while in marriage. The Court issued a divorce decree, maintenance order against the Respondent for their last child who was ordered to be in the custody of the Appellant/ Petitioner.



The court further distributed matrimonial assets in terms of Section 114 (1), (2) and (3) of the Law of Marriage Act [Cap 29 R.E 2019] as follows;

- (a) A house at Saruji was divided 75% to the Petitioner and 25% to the Respondent.*
- (b) The farm and a house at Mbale Village in Bukoba 75% to the Petitioner 25% to the Respondent.*
- (c) The motor vehicle Mark II Grand with Registration No. t. 389 CVE and T. 585 CKY Mark II were divided in a share of 50% each.*
- (d) The plot and a house at Kichangani, a farm at Kisimatui within Tanga, two motorcycles with registration No. T. 282 BPD and BPB and the Bajaj were divided to the Petitioner at 100%.*
- (e) The motor vehicle, make RAV 4 with registration No. T. 626 BYE, Hiace with Registration No. T. 685 BWE, and motorcycle with Registration No. Mc 696 ABL were distributed to the Respondent at 100%.*

The Appellant was aggrieved with the decision of the trial court, hence preferred an appeal based on the following grounds;

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1. *That the trial court erred in law in deciding that in matrimonial proceedings it is not necessary that assets acquired in the name of the spouse be considered as a matrimonial property.*
2. *That the trial Resident Magistrate Court erred in law and in fact in deciding that House No. 8 on Plot No. 166 Block 10 at Saruji, Tanga be divided in 75% to 25% shares in favour of the Respondent whereas there was ample evidence that the same formed a matrimonial property acquired through joint efforts of the Appellant and the Respondent.*
3. *That the Resident Magistrate Court erred in law and in fact in granting 75% to 25% share in favour of the Respondent in respect of the farm and a house at Mbale Village in Bukoba whereas there was ample evidence that the same formed a matrimonial property acquired through joint efforts of the Appellant and the Respondent.*
4. *That the trial Resident Magistrate Court erred in law and in fact in failure to determine and order as to the Petitioner's share in the proceeds of sale of matrimonial property at Bunju Dar es Salaam, which property was sold by the Respondent without any involvement of the Petitioner.*



5. *That the trial Resident Magistrates Court erred in law and in fact in granting in favour of the Respondent the vehicle, make RAV4 Reg. No. T 626 BYE, Toyota Hiace Reg. No. T 685 BEW and Motorcycle Reg. No. MC 696 ABL at a 100% whereas there was ample evidence that the same formed a matrimonial property acquired through joint efforts of the Appellant and the Respondent.*
6. *That the trial Court erred in law and in fact in deciding that the houses at Pongwe at Kilapula belonged to the Respondent's concubine whereas there was ample evidence the same were acquired through joint efforts of the Appellant and the Respondent.*
7. *That the trial Resident Magistrates Court erred in law and in fact in deciding that the houses at Pongwe and Kilapula were not matrimonial properties, whereas there was ample evidence that the same formed a matrimonial property acquired through joint efforts of the Appellant and the Respondent.*

The matter was disposed in form of written submissions. Whereas the Appellant was not under any legal representation, the Respondent was represented by Mr. Ngomela, learned Advocate.

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A thorough reading of the grounds of appeal, the instant appeal is entirely on the issue of distribution of matrimonial assets. Section 114 of the Law of Marriage Act [Cap 33 R.E 2019] imposes power to the after issuing a divorce decree to distribute the assets acquired by the parties during the marriage. The provision reads, I quote:

*"114.- (1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or to order the sale of any such asset and the division between the parties of the proceeds of sale.*

*(2) In exercising the power conferred by subsection (1), the court shall have regard to - (a) the customs of the community to which the parties belong; (b) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets; (c) any debts owing by either party which were contracted for their joint benefit; and (d) the needs of the children, if any, of the marriage, and subject to those considerations, shall incline towards equality of division.*

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*(3) For the purposes of this section, references to assets acquired during the marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.*

In the case of **National Bank of Commerce Limited vs Nurbano Abdallah Mulla [2020] T.L.R 531** it was held that;

*"(i) From the provisions of Section 2 of the Law of Marriage Act [ Cap 29 R.E 2002] a property will be termed as matrimonial home when the spouses ordinarily occupied it as their family residence.*

*(ii) The phrase matrimonial property has a similar meaning to what is referred as matrimonial asset, and it includes a matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during their marriage. The phrase matrimonial home therefore should confide to the house where the spouses ordinarily reside."*

Now, the question that is relevant here is whether all the properties acquired were matrimonial properties/assets. In the appeal, the Appellant regards the properties under the fourth, fifth

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sixth and seventh grounds of appeal namely a plot at Bunju, a motor vehicle make RAV4, T 626 BYE, Toyota Hiace Reg. No. T 685 BEW, a motorcycle, MC 696 ABL, a house at Kilapula, Pongwe acquired through joint efforts. There is no dispute that they are matrimonial properties, they were acquired during their subsistence of the marriage.

With regard to the second and the fourth ground of appeal, there is no dispute that the properties were in fact matrimonial properties. The Appellant merely dispute the ratio of 75% to 25% shares being inadequate. This is with respect to the house at Mbale Village in Bukoba and the House No. 8 on Plot No. 166 Block 10 at Saruji, Tanga.

In the case of **Bibie Maulid vs Mohamed Ibrahim [1989] TLR 162**, the court held that;

*"Among the factors to be considered in deciding how much parties should get from the matrimonial assets when the marriage is dissolved are the extent of the contribution by each party and debts owing as well as the customs of the community and needs of the infant children."*



Mark II Grand with registration No. T. 585 CKY at 50% each as decided by the trial court.

Regarding the house at Saruji, the same is divided 40% for the Appellant and 60% for the Respondent. Concerning the house at Kilapula and the house at Pongwe, the same is divided as follows: whereas the Respondent is awarded the house at Pongwe, the Appellant is awarded the house at Kilapula.

In the end, the appeal is allowed, and the decision of the Resident Magistrates' Court is varied to the extent elaborated herein above and in as far as the distribution of the matrimonial assets is concerned. This being the matrimonial cause each party shall bear its costs.

It is so ordered.



**DATED** at **TANGA** this 18<sup>th</sup> Day of October 2022.

A handwritten signature in blue ink, appearing to read 'U. J. Agatho'.

**U. J. AGATHO**

**JUDGE**

**19/10/2022**

**Date: 19/10/2022**

Coram: U. J. Agatho, Judge.

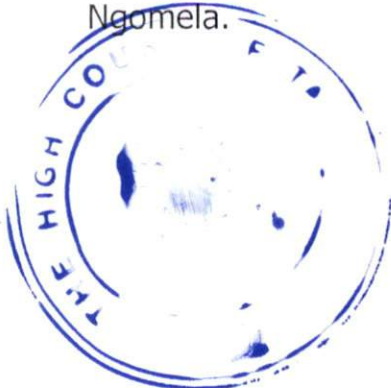
Appellant: Present

Respondent: Present with his Advocate Mr. Ngomela

A handwritten signature in blue ink, appearing to read 'U. J. Agatho'.

C/C: Zayumba

**Court:** Judgment delivered on this 19<sup>th</sup> day of October 2022 in the presence of the Appellant, the Respondent and his Advocate, Mr. Ngomela.



**U. J. AGATHO**

**JUDGE**

**19/10/2022**

**Court:** Right of Appeal fully explained.



**U. J. AGATHO**

**JUDGE**

**19/10/2022**

