

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

**MATRIMONIAL APPEAL CASE No. 9 OF 2021**

*(Arising from Bunda District Court at Bunda in Matrimonial  
Cause No. 1 of 2021)*

**STEPHANO CHRISTOPHER ..... APPELLANT**

***Versus***

**VERONICA MARWA ..... RESPONDENT**

**EX-PARTE JUDGMENT**

**13.12.2022 & 13.12.2022**

**Mtulya, J.:**

**Veronica Marwa** (the respondent) had approached the **District Court of Bunda at Bunda** (the district court) on 11<sup>th</sup> January 2021 and preferred **Matrimonial Cause No. 1 of 2021** (the case) complaining that **Mr. Stephano Christopher** (the appellant) has been frequently beating, torturing, using abusive language and had permanently and willingly refused to enjoy love affairs with her. Finally, the respondent prayed for decree of divorce and distribution of matrimonial properties acquired during their joint lives.

During the hearing of the case at the district court, on 14<sup>th</sup> April 2021, as reflected at page 3 of the typed proceedings, the respondent testified that:

*We contracted Christian marriage in 2002 and blessed with four (4) issues...from 2012, our marriage became bitter...the respondent decided to marry another woman. In 2019, the respondent started to live with another woman in our house...He used to beat me and use abusive language.*

In reply of the allegations against him, the appellant had testified, at page 6 of the typed proceedings, that:

*I have never beaten her. The petitioner started to be unfaithful to our marriage and I went and checked her health...she was HIV positive. She continued with her bad behaviors. She did not look after our children. I told her that I want to marry another woman. She started to threaten me.*

After the registration of all relevant materials, the district court decided to resolve the matter in favour of the

respondent and held at page 4 of the judgment that: there is no doubt that this marriage has broken down irreparable and taking into consideration that they have consulted the reconciliation board, but the board failed to resolve their differences and Form No. 3 was produced as exhibit P.2 in the case.

Regarding the matrimonial properties, the parties had several properties, but only one (1) real property located at Nyasura C Street within Bunda District in Mara Region and the district court ordered it be sold and the money obtained from the sale be equally distributed between the appellant and respondent.

This decision on equal distribution of matrimonial properties aggrieved the appellant hence preferred **Matrimonial Appeal Case No. 09 of 2021** (the appeal) lodged in this court and listed a total of seven (7) reasons of appeal complaining on the interpretation of section 107 (1) (a) of the **Law of Marriage Act [Cap. 29 R.E. 2019]** (the Law of Marriage); application of section 110 and 111 of the **Evidence Act [Cap. 6 R.E. 2019]** (the Evidence Act); and the distribution of the matrimonial properties.

When the respondent was summoned to reply the appellant's complaints, she declined appearance in court despite her presence in this court on 30<sup>th</sup> May 2022. Following the decline of the respondent, on 6<sup>th</sup> September 2022, the appellant prayed for *ex-parte* hearing and was granted on 12<sup>th</sup> September 2022 hence the appeal was scheduled for the hearing on 13<sup>th</sup> December 2022. During the submission in favour of the appeal, the appellant had brief submission stating that he has no dispute with the divorce order, but sale and distribution of the matrimonial house.

In his opinion, the appellant contended that the matrimonial house belongs to his family and intend to use it for the family and their four (4) children who are currently raised by the new mother in the same house, hence if the house is sold the children will be in jeopardy situations. Finally, the appellant prayed this court to dismiss the order on selling of the matrimonial house in favour of his family and children.

I have perused the record and submission of the appellant. From the record, it is obvious that there are serious allegations which erased love between the parties. Love is key in any matrimonial life. It is fortunate that there is already

decision of this court on the subject of love and marriage in the precedent of **John David Mayengo v. Catherina Malembeka**, (PC) Civil Appeal No. 32 of 2003 supported by the decision in **Boniphace Abel Mwachipindi v. Winney Martiney Obwobwe**, Matrimonial Appeal Case No. 7 of 2021.

This court can no longer be detained on similar complaints of: beatings, torture, uttering abusive statements, loss of love, HIV positive and having new lover of heart. These are obvious signs that the marriage has broken down irreparably. The current trend in our courts is in favour of granting divorce when it appears one of the parties in marriage has lost interest in joint lives and that love between the parties has already disappeared (see: **John David Mayengo v. Catherina Malembeka** (supra) and **Boniphace Abel Mwachipindi v. Winney Martiney Obwobwe** (supra)).

It has been said in a number of occasions that it is the parties themselves who are the best judges on what is going on in their joint lives. Once they think they have lost a crucial part of joint life, love, this court has no magic it can do rather than to order for divorce. In that case, I am moved to uphold the decision of the district court on the interpretation of

section 107 (1) of the Law of Marriage. Similarly, the district court was right in distributing the matrimonial properties and application of section 110 and 111 of the Evidence Act as the appellant did not dispute the facts registered by the respondent in the district court and this court. He is only praying this court to quash the decision of the district court on sale and distribution of proceeds of the matrimonial house. I will explain.

The appellant submitted in this court that he has no problems with any other order, save for the sale and distribution of the sale proceeds of the matrimonial house. In his opinion, the matrimonial house has to remain in the custody of the family and their four (4) children. This is a good prayer for the best interest of the family children. However, the appellant remained silent on the meaning of family and four (4) children.

In any case, practice of this court and Court of Appeal discourages orders of that species (see: **Isidori Balaga v. Chezalina Balaga**, Civil Appeal No. 41 of 1995; **Alfred Kinunda v. Maria Kumburu**, Matrimonial Appeal No. 2 of 2019; **Pulcheria Pundugu v. Samwel Huma Pundugu** [1985] TLR 7; and



**Mohamed Abdallah v. Halima Lisangwe** [1988] TLR 197. There is no family property when it comes to a dissolved marriage. Parties have to distribute the property. There are two (2) reasons which are brought forward in favour of the position, *viz*: first, division of matrimonial properties is associated with compensation to the parties themselves in their joint efforts; and second, in deciding the distribution of matrimonial properties, the concern is on the spouses and not children's interest (see: **Isidori Balaga v. Chezalina Balaga** (supra) and **Alfred Kinunda v. Maria Kumburu** (supra)).


Having said so, I am moved to sustain decision of the district court save for a little alteration in the sale and equal distribution of monies emanated from sale of matrimonial house. I order the house be sold, but proceeds from the sale be distributed in sixty percent (60%) shares to the appellant and forty percent (40%) to the respondent. The record shows that the respondent had only contributed bricks and iron sheet during construction of the house.

In the end, I partly allow the appeal without any costs. The reasons are obvious that the respondent had declined

appearance to protest the appeal and in any case this is a matrimonial dispute of the former husband and wife.

Ordered accordingly.



  
F. H. Mtulya

**Judge**

13.12.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, **Mr. Stephano Christopher** and in absence of the respondent, **Veronica Marwa.**

  
F. H. Mtulya

**Judge**

13.12.2022