

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

**LAND APPEAL NO. 69 OF 2021**

*(Arising from the Judgment of Kwimba District Court at Ngudu in Matrimonial cause No. 1 of 2021.)*

**SIRAJ IDRISA ADAM.....APPELLANT**

**VERSUS**

**LAURENSIA BUPAMBA IHEMA..... RESPONDENT**

**JUDGMENT**

*29<sup>th</sup> March & 6<sup>th</sup> May, 2022.*

**ITEMBA, J.**

This is an appeal arising from the decision of the District Court of Kwimba, in respect of Matrimonial Cause No. 1 of 2021, which found that there was no existence of marriage between the parties. The appeal has been preferred by way of a memorandum of appeal and it has set out three main grounds of contention in respect of the decision sought to be quashed. These are:

- 1. That, the trial magistrate erred in law and fact by declaring that there is no any marriage between the parties without considering the nature of the case and evidence adduced by both parties.*
- 2. That the trial magistrate erred in law and fact for failure to evaluate properly the evidence adduced by the appellant and*

*his witness (DW2) which was sufficient to prove that parties are spouses.*

*3. That the trial magistrate erred in law and fact for holding that the house located at Shirima Village is not matrimonial property.*

In consequence of the alleged errors, the applicant prays for orders as follows:

- 1. The appeal be allowed.*
- 2. The decision and orders of the District Court be quashed and set aside.*
- 3. Costs of this appeal to be borne by the respondent.*
- 4. Any other relief(s) that this honorable court may deem fit to grant.*

When the matter came for hearing, both parties were unrepresented they fended for themselves and the matter was argued orally.

Kicking off the ball was the appellant. Being a lay person, he argued all grounds of appeal collectively, he started by objecting the decision of Kwimba District Court. He argues that the trial court erred in holding that there was no existing marriage between them, while they have lived together for three years. He insists that even the village chairman knows that they have been living together as husband and

wife between 2018 and 2021. He further contended that, when the respondent filed the matrimonial cause on 17/3/2021 they were still living together. He alleged that the respondent ran away from their matrimonial house without being chased, hence he remained alone. He retaliated the prayers set out in the memorandum of appeal to be granted.

In rebuttal the respondent contended that, she was in relationship with the appellant since 2019. But it was just a mere cohabitation as he used to go and sleep at her place and leave in the morning. They never got married, the appellant did not pay any dowry, he does not know her relatives nor does she know his.

She alleged that, in 2020 the appellant started beating her, he beat her in her pharmacy and stole her money amounting to one million Tanzania Shillings and left for his village. She reported the incidence to the ward executive officer who did not go and thereafter she got sick. She went on stating that she stays with her niece, she stopped the appellant from contacting her but he kept on fighting her, that sometimes, he broke the padlock and entered the house. She was advised to go to police station and the police told her to take the matter

to the primary court and the primary court referred her to the district court because they have no lawful marriage.

She added that her husband died in 2009 and left her with three issues, one dwells with his aunt and she is living with the rest of them. She concluded her averments by stating that the appellant is stressing on her property, she asked the Court to dismiss the appeal and approve that the house belongs to her.

In his rejoinder, the appellant contended that, he met the respondent while she was working at someone's pharmacy. They both agreed that she quit the said job and they start up their own business. That the respondent had TZS 400,000/=, and he had TZS 500,000/= and through that money they were able to start up their own business. He further contended that at that time he was employed by the company called African Limited as an accountant. He alleged that the respondent suggested to him that they start constructing the house since she owns a plot of land and he agreed. In 2018 they started building. He came to Mwanza, bought roofing sheets and finishing, they finally moved in the house in 2021 and they kept on living as husband and wife. He added that, at some point, the respondent's sister moved in the said house with her children. They didn't have a kitchen yet, he

wanted to buy gas but the respondent wanted to use charcoal inside the house. To him, that was the source of fight between them. That it was the respondent who reported the matter to the police station and later on to the court because she owns the land. He insists that, they bought building materials together and he had receipts to that effect.

Since the appellant has come up with new issues in his rejoinder, the respondent was given an opportunity to reply on them. She contends that, the matter was heard, each party brought witnesses and the decision was made. As regards to the pharmacy, it still operates under her supervision, on the plot in question, she informed the court that she bought it in November, 2017, she was employed as a nurse in pharmacy since 2012, in early 2017 or late 2016 she started her business named Bupama pharmacy. She also stated that, in 2017 she started building her 3-bedroom house and she moved in July, 2020. In respect of the iron sheet, she contends that she bought them at ALAF by herself, and that the receipts issued by the appellant were fake ones.

While rejoicing on the new issues, the appellant stated that they started dating in 2016 while he was living at Hungumalwa. He saw the respondent's relatives at Nyashimo where they went to visit the respondent's sister and both her parents are deceased.

Having reviewed the parties' contending submissions, the profound and decisive question that calls for resolution is whether the trial Court was right to hold that the relationship between the parties was a mere concubinage and, if so, whether the trial court was right to declare the house at Shirima village belongs to the respondent. There is no dispute that the parties did not have any formal marriage. There is also no dispute that it was the respondent who bought the plot of land before meeting the appellant. The appellant is relying on presumption of marriage stating that he had lived with the respondent for more than two years between 2017 and 2020, *See* page 28 of the typed proceedings.

The respondent vehemently denies these facts stating that there is no evidence whatsoever tabled by the appellant to establish such a union. That, the appellant was just a boyfriend who would visit him frequently between 2019 and 2020.

Section 160(1) of the Law of Marriage Act [CAP. 29 R.E. 2019] requires that in order to rely on a presumption of marriage, it should be established that man and woman to (i) live together for two years or more and (ii) in such circumstances as to have acquired the reputation husband and wife. The records of the trial proceedings reveals that there was no official marriage between the parties in accordance with

provisions under Section 25 of the Law of Marriage Act, [Cap 29 R.E 2019]. Likewise, I find no evidence in the trial court's proceedings to support these conditions. The available are the mere words by the appellants which have been countered by the respondent. There is supporting evidence from any of the neighbors, relatives, or even co-workers as there is evidence that the appellant was working as an accountant and the respondent was working at a pharmacy. I totally join hands with the trial magistrate findings that, according to the evidence adduced by the parties, it has failed to prove that presumption of marriage really existed between the two and therefore their relationship was just a concubinage.

According to Section 114 (1) of the LMA, the Court is empowered to order division of matrimonial assets when granting or subsequent to the decree of separation or divorce. Equally, it is trite law that matrimonial properties or assets can only be divided between spouses upon the grant of either a decree of divorce or separation and the same was clearly stated in the case of **Richard Majenga vs Specioza Sylivester**, Civil Appeal No. 208 of 2018 where the Court of Appeal of Tanzania sitting at Tabora held that;

*"it is clear that the court is empowered to make orders for the division of matrimonial assets subsequent to granting of a decree of divorce or separation"*

As in this appeal there is neither proof of marriage nor order of separation or divorce it goes without saying that there are no matrimonial properties to be divided. The trial court was right to conclude the absence of the evidence which prove the existence of a valid union recognized by our law limited its powers to make orders for the division of the house located at Shirima area as a matrimonial asset. I find no reason to depart from that decision.


If the appellant still intends to pursue his alleged rights over the disputed house, he is advised to refer the matter to the court with jurisdiction over landed properties and related disputes.

Having said that, this appeal is found to have no merits and thus dismissed.

I make no order as to costs.

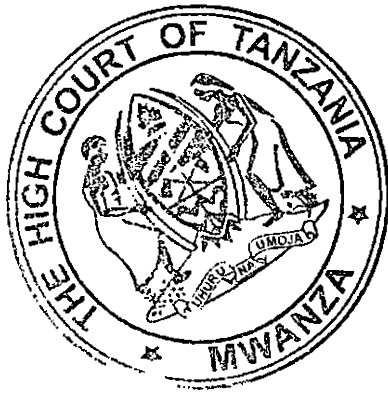
It is so ordered.

DATED at **MWANZA** this 6 day of May, 2022.

  
**L. J. ITEMBA**  
**JUDGE**  
**6/5/2022**



Judgment delivered today in the presence of both the applicant and the respondent and Mr. Ignas, RMA



  
**L. J. ITEMBA**  
**JUDGE**  
**6/5/2022**