

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

MATRIMONIAL APPEAL NO 01 OF 2022

(Arising from Civil Appeal No 13 of 2021 of the District Court of Handeni, originating from Civil Case No 21 of 2021 of Kabuku Primary Court)

ADAM MOHAMED NDAGO.....APPELLANT

VERSUS

MWAJABU BAKARI MSONGOLO.....RESPONDENT

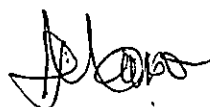
JUDGEMENT

Mansoor J

Date of Judgement: 13 May 2022

This cause originated as Matrimonial Cause No 19 of 2019 of Kabuku Primary Court between these same parties. Its appeal at the District Court of Handeni was Matrimonial Appeal No 05 of 2019. A subsequent appeal in this court was (Pc) Matrimonial Appeal No 08 of 2020.

In that appeal, this court, (Mtulya, J) after having found that the distribution of matrimonial properties was not reflected in the primary court record, it quashed orders emanating from decisions



of the primary and district courts relating to the division of matrimonial properties but upheld the order of divorce and ordered that any interested party may initiate a proper suit on division of matrimonial properties in a competent forum. This was on 05th August 2021.

Adhering to the orders of the High Court, on 11th August 2021, the respondent instituted a regular Civil Case at Kabuku Primary Court which was registered as Civil Case No 21 of 2021. The particulars of the claim as registered in that civil case institution form was that

"Mdai anaeleza kuwa niliachana na mdaiwa 12/09/2018 kwa kuwa tuna mali zetu tulizochuma ndani ya ndoa ambazo ni nyumba mbili zilizopo Kwamkonga, viwanja, 1 Kwamkonga, viwili Luye na mashamba na vyombo vya ndani na pikipiki naomba mahakama tugawane mali hizo".

After the case ended, its appeal was registered in the District Court of Handeni registry as Civil Appeal No 13 of 2021. In that sense the case shifted from a Matrimonial cause to a normal civil case. The first paragraph of the District Court Judgment states

*"This appeal originates from Civil Case No 21 of 2021 instituted at Kabuku Primary Court concerning division of matrimonial properties **after the marriage between parties to have (sic) been broken and divorce to have been issued by the same court.**"*

Wonderful enough, when this matter reached this registry by way of an appeal, it was filed and registered as Pc Matrimonial Appeal No 01 of 2022. Before embarking into the merit of this case, the issue is whether this court can safely preside over as a matrimonial appellate court from records of a normal civil case.

Division of matrimonial properties is an ancillary order to an order of divorce or separation. Section 108 (b) of the Law of Marriage Act, Cap 29 R.E 2019, confers a duty on the court hearing a petition for a decree of separation or divorce. It provides; -

It shall be the duty of a court hearing a petition for a decree of separation or divorce-

(b) to inquire into the arrangements made or proposed as regards maintenance and the division of any matrimonial

property and to satisfy itself that such arrangements are reasonable.

Further, section 114 of the same Act gives power to determine the issue of division of matrimonial properties to the court hearing a divorce petition. The section states;-

(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.

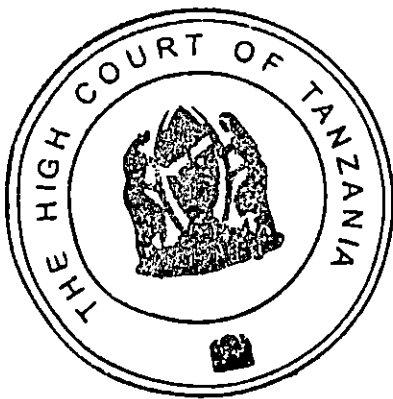
Having so observed, since there is obviously a serious mishandling of the case from its root at Kabuku Primary Court in Civil Case No 21 of 2021 to Handeni District Court vide Civil Appeal No 13 of 2021, this court cannot suddenly change its course and sit as a matrimonial court at the appellate stage. All this seems to have happened because the primary court magistrate misconstrued the orders of this court and registered a fresh civil case instead of determining the issue division of



properties in the very file which granted orders of divorce i.e.,
Matrimonial Cause No 19 of 2019 of Kabuku Primary Court.

In the circumstances, all proceedings and orders rendered in the
Civil Case No 21 of 2021 of Kabuku Primary Court and Civil
Appeal No 13 of 2021 of The District Court of Handeni are
quashed. It is ordered that the issue of division of matrimonial
properties be determined in Matrimonial Cause No 19 of 2019 of
Kabuku Primary Court as per dictates of law as cited above.

DATED AND DELIVERED AT TANGA THIS 13TH DAY OF MAY 2022



Latifa Mansoor
LATIFA MANSOOR

13TH MAY 2022