

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPL. NO. 137 OF 2021

(Arising from Misc. Matrimonial Application No. 3 of 2021 – Misungwi District Court and Matrimonial Cause No. 2 of 2021, Originating from Matrimonial Cause No. 3 of 2019 in Bukumbi Primary Court at

Misungwi)

AGNESS CHACHA.....APPLICANT

versus

PATRICK MURIMI..... RESPONDENT

RULING

23th Nov, 2021 & 19th January, 2022

RUMANYIKA, J.:

The two, having had married and enjoyed it, according to records for eleven (11) years, for some reasons not subject of this ruling it turned out sour and bitter then Bukumbi Primary Court resolved the marriage on 27/05/2019 much as today Agness Chacha (the applicant) had no issue with custody of the children but for the order, and Misungwi district court affirmed it on 02/06/2021, that the matrimonial assets go to the children (not even any one of the spouses). Here is the application for extension of time with a view to one lodging an appeal.

Messrs U. Kabisa and Machere learned counsel appeared for the applicant and Patrick Murimi (the respondent). Through mobile numbers 0788611865 and 0782150805 respectively, by way of audio teleconference I heard them on 23/11/2021.

Mr. U. Kabisa learned counsel submitted that with respect to an order and division of the matrimonial property the impugned judgment was tainted with illegality; namely the court's failure to exercise revisional jurisdiction under S. 21(1) (a) (b) (d) and S. 22 of the Magistrate's Court Act Cap 11 RE. 2019. Also, the case of **Mary Rwabigi t/a Amuga Enterprises v. NMB PLC**, Civil Application No. 378/01 of 2019 (CA) unreported referred. That sufficed the point.

In reply, Mr. Machere learned counsel submitted that with respect to division of matrimonial assets, vide Matrimonial Cause No. 2/2021 of Bukumbi primary court, the issue was res judicata upon dissolution of marriage the parties having had long time ago agreed and they gave the whole property to their issues of marriage. That is all.

The central issue and bottom line is whether the applicant has assigned a sufficient ground for extension of time much as it is settled law

that in order to keep the court's records right, once a point of illegality was established, the applicant's failure to account for each day of the delay it was immaterial (see the case of **The Ps Ministry of Defence and National Service v. Devram Valamlia (1992) TLR 387**).

At least the records of Bukumbi primary court (at page 2 of the typed judgment) spoke louder:-

... Na kuhusu mali za ndoa wadaawa wamekubaliana mali hizo ziwe za watoto wao wanne ambao tumekwisha wataja katika hukumu hii. Ikiwa ni hivyo basi nasi hatuoni haja ya kuingilia maamuzi yao hayo...

Literally meaning, given the parties' consensus and the children took all the matrimonial property, the trial court had no basis upon which to reverse it.

For whatever reasons the parties may have had so agreed yes, but it was in contravention of provisions of S. 114 of the Law of Marriage Act Cap 29 RE. 2019 much as it was both common sense and knowledge that matrimonial property belonged to spouses only in this case the parties and not the issues of marriage. It sounds to me clearly that the parties consented to abrogating mandatory provisions of the law. There is no

Date: 19/01/2022

Coram: A.W. Mmbando – DR


Applicant: Giguna Kalelema legal officer, also Applicant present

Respondent: Absent

B/C: Martina R. Nelei – RMA

Court: Ruling delivered this 19th January, 2022 in the presence of Applicant and Mr. Giguna Kalelema legal officer for the Applicant and in the absence of the Respondent.




A.W. MMBANDO
DEPUTY REGISTRAR
19/01/2022