

IN THE HIGH COURT OF TANZANIA

[DODOMA DISTRICT REGISTRY]

AT DODOMA

PC MATRIMONIAL APPEAL NO. 6 OF 2019

[Arising from Matrimonial Appeal No. 2 of 2019, Iramba District Court which originated from Matrimonial Cause No. 3 of 2019, Iguguno Primary Court]

JUSTINE KIJU APPELLANT

VERSUS

AGNESS POLYA RESPONDENT

JUDGMENT

27th September, 2021 & 3^d March, 2022

M.M. SIYANI, J.

The respondent sued the appellant at the primary court for orders of divorce and division of matrimonial properties. They contracted a Christian marriage in 2007 and acquired several properties. The cause of their quarrel seems to be the appellant's barrenness as their holy matrimony was not blessed with any issue. Consequently, according to the respondent's evidence, the appellant engaged himself in an amorous relationship with other women and got two children. The trial court granted an order of divorce and ordered equal division of the matrimonial properties which are the house on plot number 81, Block LL located at Unyankindi, Singida Municipality, plot of land located at Nduguti, motorcycle and domestic utensils. Further, it ordered that the respondent

be provided with quarter share of the house rent collected from 2014 to 2019.

The appellant was satisfied with the order of divorce but not with division of matrimonial properties. He appealed to the District Court faulting the division of matrimonial assets. The District Court confirmed the decision of the trial court. It went further and banned the appellant from collecting rent from the house at plot number 81 Block LL, Unyankindi area in Singida town until division of matrimonial properties is executed. The appellant has again preferred this appeal advancing three grounds of appeals as follows:

- 1. That the 1st appellate court erred in law and in fact for uphold trial court's decision in favour of the respondent who failed to prove her case in the balance of probability.*
- 2. That the 1st appellate court erred in law and in fact erred in fact to decide in favour of the respondent without regarding submission by the appellant that the trial court was incorrect to divide personal properties of the appellant as matrimonial assets.*
- 3. That the 1st appellate court erred in law and in fact to uphold trial court's decision which delt with registered land without jurisdiction.*

In this Court, the appellant enjoyed the legal services of Ms. Zahara Chuma, learned advocate and the respondent appeared in person. The appeal was heard by way of filing written submissions. Through the filed written submission, the appellant opted to abandon the third ground of appeal. He therefore argued the first and second grounds separately but I find that the same can conveniently be dealt with jointly under one complaint. This is that the trial court divided the assets equally and the first appellate court approved it while some properties are not matrimonial assets. Counsel for the appellant submitted that the plot No. 81, block LL, Ulyankindi was bought before marriage and it is co-owned by the appellant and his brother whom he did not mention. He submitted further that the respondent contributed nothing towards construction of the houses on that land. That the same applies to the plot at nduguti, Mkalama District and the motorcycle. These properties, he argued, were bought by the appellant and the respondent contributed nothing. Regarding house rent, he argued that the respondent neither proved existence of lessees who leased the house nor tendered documentary evidence corroborating her oral evidence.

Responding to the 1st ground of appeal, the respondent stated that Justine Shaaban Kijiu and and Jumanne Shabaan Kijiu refers to the same person. That is why the picture affixed on documents with the name Jumanne like the certificate of title is that of the appellant. With regard to the leased house plot No.81 Block LL, he submitted that there is no written agreement as the lease is oral one. She further argued that she contributed toward acquisition and the development of the said properties through her salary as she is employed.

The issue for my determination is whether the distributed properties are not matrimonial assets. This is a second appeal against a concurrent finding of two lower courts. In the case of **Mussa Mwaikunda Vs Republic** [2006] T.L.R 387 it was held:

On second appeal, the court rarely interferes with concurrent findings of fact by the courts below, because an appeal lies to the court on a point or points of law; however, in cases in which there are misdirection or non-direction on the evidence, the court is entitled to look at the relevant evidence and make its own findings of fact.

In this case both courts held that the parties equally contributed towards the acquisition of the matrimonial assets and ordered their equal division. My only task is to assess if, considering the evidence on record, the lower courts misdirected themselves. The complaint by the appellant is that he acquired the plot at Unyankindi before marriage jointly with his brother. The sale agreement is dated 23rd February, 2007 and shows the buyers are one person named Musa and the appellant. However, the ownership transfer documents which are land form No. 35 (transfer of a right of occupancy), land form No. 29 (notification of disposition) and land form No. 30 (application for approval of a disposition) shows that the title was to be transferred to Jumanne Shabani Kijiu who is the appellant. These forms were executed in January 2009 long after the parties married. I find that by executing the transfer documents solely in the appellant's name he became exclusive owner of the land which makes it a matrimonial asset.

The evidence on record shows that the dispute properties were acquired during subsistence of the marriage. The fact that they are registered in the appellant's name does not provide him right of ownership in exclusion of the respondent considering that they lived together as husband and wife for 11 years and both of them earned income from their respective employment. The appellant did not tender evidence that the respondent's income was personal to herself. To the contrary, it is on records that from 2015 and 2018 the appellant was attending his studies and the respondent was taking care of the family including the appellant. She even sent money to the appellant from her earnings to sustain his living at the university. I therefore find that all the distributed properties are matrimonial assets.

For the foregoing, I find no reason to disturb the concurrent finding of the lower courts. In the end, this appeal held to have no merits. It is hereby dismissed with no orders as to costs.

DATED at **DODOMA** this 3rd day of March, 2022



M. M. SIYANI
JUDGE