IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

PC. MATRIMONIAL APPEAL No. 28 OF 2021

(Arising from the decision of Ilemela District Court in Matrimonial Appeal No. 12 of 2021 Originating from Ilemela Primary Court in Matrimonial Cause No. 01 of 2021)

FABIAN DEOGRATIUS MASAGE----------APPELLANT

VERSUS

MARTHA JOSEPH MTUI---------- RESPONDENT

JUDGEMENT

Last Order: 30.03.2022

Judgement date: 11.04.2022

M. MNYUKWA, J.

This is a second appeal against the Judgement of the District Court of Ilemela in Matrimonial Cause No. 12 of 2021. The background to this appeal is briefly that, the respondent in this appeal Martha Joseph Mtui approached Ilemela Primary court praying for judgement and decree that the court to give orders as to.

i. A decree of divorce

ii. Custody of the three children

iii. Maintenance of the Children.

iv. Division of the matrimonial properties.

On the determination of the petition, the decree of divorce was issued, the custody of the children was placed to the respondent (the petitioner in the trial court), the maintenance was left to the respondent and the matrimonial properties were divided according to the findings of the trial magistrate. The respondent was dissatisfied with the order of maintenance of the children and division of matrimonial properties and appealed to Ilemela District Court vide Matrimonial Appeal No. 03 of 2021.

The District Court partly faulted the findings of the trial court and decided in favour of the respondent on the issue of the maintenance of the children and division of matrimonial properties. The appellant (respondent in the trial court) sored and appealed before this court with four grounds of appeal thus: -

1. *The trial magistrate erred in law and in fact by entertaining the matter without jurisdiction.*
2. *That the trial magistrate erred in law and in fact by granting a decree of divorce while the matter was not held at the Marriage Conciliation Board as the respondent was not well served.*

3. *That the magistrate erred in law and in fact for dividing matrimonial properties- without considering the efforts of the appellant towards the acquisition of the properties.*
4. *That the trial magistrate erred in law and in fact by ordering the appellant to pay the amount of 200,000/= monthly for maintenance of the children without explaining the reasons for his decision and disregarding the source of the income of the appellant per month.*

The appeal was argued orally where both parties afforded the service of the learned counsel as the appellant has the service of Monica Kabadi learned advocate while the respondent enjoys the service of Masoud Mwanaupanga, learned advocate.

The appellant's learned advocate was the first to submit on the 4 grounds of appeal and prays to abandon the 1st ground and submitted on the 2nd, 3rd and 4th grounds and choose to start with the last ground of appeal.

On the 4th ground of appeal Ms. Monica referring to section 129(1) of the Law of Mariage Act (LMA) Cap 29 Re: 2019, enlightens that it is a duty of a man to maintain his children whether in his custody or custody of other persons according to his means. She avers that the first appellate court erred requiring the appellant to pay monthly maintenance of Tshs

200,000/= for the infant children without enquire as to his means of life. She went on that the appellant cannot afford a payment of the ordered sum of Tsh 200,00/= monthly because he is a pastor who earns Tshs. 300,000/= monthly compared to the respondent who collects rent from the matrimonial properties.

She went on to refer to section 129(2) of the Law of marriage Act, Cap 29 R.E 2019 claiming that the law is clear that the respondent is also responsible to maintain the children in the circumstance that the man cannot afford. She prays this court for an order that both parties to contribute equally for the respondent is also a businesswoman. Insisting, she referred this court to the case of **Aloyce Masalu Mapembe vs Paulina Romanus Masonga,** PC Matrimonial Appeal No. 03 of 2021, HC, she prayed the respondent to contribute Tsh 100,000/= for maintenance.

On the 3rd ground of appeal, she claims that the trial court and the first appellate court erred for the effort of the appellant in the acquisition of the matrimonial assets was not considered. Referring to page 27 of the trial court proceedings, she avers that the appellant submitted that they contracted marriage on 17.12.2005 and found respondent owning a plot at Busenga which they have constructed on the particular plot 3 houses

where he admitted that he did not contribute financially but indeed he supervised the construction but his contribution was not considered by both the trial court and the first appellate court.

He went on to refer to page 27 of the trial court's proceedings that the appellant testified that they were owning stationary which was supervised by the appellant and according to the earnings, they managed to buy a plot and build a house at Bwiru by the name of the appellant and they lived on that house and later on it was rented. He claims that the first appellate court erred to order the house to be given to the respondent without considering the contribution of the appellant.

She also disputed on the plot located at Buswelu as it was given to the respondent by the trial court insisted that the plot was bought by both the appellant and respondent and that the sale agreement which was witnessed by the street chairman the said plot bears the name of the respondent and the trial court ordered the same to be distributed equally. She claims that the first appellate court erred by departing from the trial court findings when deciding that the plot to be given to the respondent without considering the evidence on the record as to the contribution of the appellant.

On the plot allocated at Mahina Nyangulugulu, she avers that the trial court ordered the same to be given to the appellant as the respondent failed to prove her contribution. Referring this court to page 36 of the trial court's proceedings, she also cited section 114 of LMA Cap 29 RE 2019 and the case of **Bi Hawa Mohamed vs Ally Seif** and the case of **Bibie Mauridi vs Mohamed Ibrahim** 1989 TLR 162 and prays the appellant's contribution to be considered.

On the 2nd ground of appeal, she claims that the appellant was not called before the reconciliation body to be heard. Insisting she referred to section 101 of the Law of Marriage Act, Cap 29 RE: 2019 and it was the respondent's testimony that the whereabouts of the appellant could not be traced as he deserted her for 8 years. She claims that the appellant was not called to the board and he stated the same in the trial court and the respondent only procured a certificate from the board without notifying the appellant. She avers that the respondent failed to exhibit that she was deserted for 8 years for they have a child who is below 8 years of age. Disputing on the conciliatory board, she avers that the opinion of the board was misleading for they opined to having heard both parties while the appellant was not called to be heard. citing section 101 of the Law of Marriage Act, Cap 29 RE 2019, he acknowledges that

desertion is one of the circumstances that the court may hear the case without reference to the board but the situation in this case was different. She insisted that section 104 was not complied with and referred this court to the case of **Ali Hasan Sandali vs Asha Ali,** Civil Appeal No. 246 of 2019 which she claims that the same circumstances are covered.

She finally retires and prays this court to quash the proceedings and set aside the judgment of the lower court.

Responding to the appellant's submissions, Mr. Masoud Mwanaupanga on the 4th ground of appeal, avers that, the amount of Tshs 200,000/= as monthly maintenance ordered to the appellant to maintain his 3 children is reasonable. Insisting he cited section 129 of the Law of Marriage Act, Cap 29 RE: 2019 and claims that the argument that the appellant lacks means is an afterthought for it is reflected on the proceedings that the appellant is a pastor and the fact that the appellant earns Tsh 300,000/= monthly is a piece of new evidence which should not be considered at this stage. He insisted that the fact that one parent has more income than the other does not outer the responsibility of a parent to maintain a child. Insisting he refers to the case of **Aloyce Masalu Mapembe** cited by the appellant learned counsel supporting that the duty for the maintenance is of both parents.

On the second ground of appeal, he refuted the appellant's submissions that the appellant was not first referred to the conciliation board before the matter was instituted at the trial court. He avers that the appellant deserted the respondent for 8 years. He referred to this court on page 4 of the trial proceedings that when the matter was referred to the marriage reconciliation board, the appellant's whereabouts was not known and the board issued a certificate that they failed to reconcile the parties and the same was instituted before the trial court. Insisting, he cited section 101 of the Law of Marriage Act, Cap 29 RE: 2019 that courts have the power to hear matrimonial disputes where it is evidenced that there is desertion by either party. He went on to dispute the cited case of **Hassan Ally Sandali** (supra) which is not relevant to the circumstance of the instant case.

On the third ground, he encounters the appellant's submissions referring to the property located at Busenga, he avers that the plot was bought by the respondent in 2003 and the same was developed by the respondent in 2017 and 2018 where the appellant had deserted the respondent. Insisting, he refers to page 27 of the trial proceedings claiming that the same evidence was given before the trial court and the

same was not disputed in cross-examination. He insisted that it was proper for the plot to be awarded to the respondent.

On the house located at Bwiru he avers that it was right for the trial court to allocate the house to the respondent for the plot was purchased by the sister of the respondent and the evidence was not cross-examined. That the allegation that the same house was acquired through the stationary business was not true as the records are clear on how the house was acquired as reflected on page 6 of the trial court proceedings and the appellant failed to show the extent of his contribution to that house.

On the plot located at Mahina Nyangulukulu, he referred to page 7 of the trial court proceedings insisting that it was the respondent who issued money for the purchase of the plot and it was not challenged on the cross-examination. Referring to page 31 of the trial court's proceedings, he enlightens that the appellant claimed that the plot was bought by a Ugandan Citizen which is not true for the documents show that the plot is in the name of the appellant which makes his evidence to be full of contradictions. He went on that the decision of the trial court was right holding that the plot was developed by the joint efforts of the parties as shown on page 7 of the trial court's proceedings that the contribution of the respondent was greater than that of the appellant.

Insisting he cited page 12 of the case of **Gabriel Nimrod Kariwija vs Theresia Hassan Mulongo** Civil appeal No. 102 of 2018 CAT Tanga which held that the division of matrimonial assets is according to the contribution of each party.

He went further that according to the case of **Bi Hawa Mohamed** (Supra), the issue of misconduct of either party affects the division of matrimonial properties. He further stated that the trial court at page 44 is evident that the respondent sold the matrimonial properties in order to set free the appellant who was in custody.

He retires and praying this court to dismiss the appeal.

Re-joining, the appellant learned counsel avers that the 1st appellate court arrived at the conclusion awarding the appellant 30% and 70% to the respondent on the plot at Nyangulugulu while on page 9 of the judgment of the trial court shows how the trial court magistrate arrived at her decision on the plot at Busenga and Bwiru. She remarked that there is no evidence to show the extent of contribution of each party.

She went on to refer to page 30 of the trial court proceedings shows how the respondent changed the name of the motor vehicle while it was the source of income to the appellant. She went on to reiterate what she

submitted on the maintenance of the children and prays the appeal to be allowed.

Before I embark to determine the grounds of appeal, I noticed some mistakes on the appellant's grounds of appeal as they were written as if the appellant is appealing against the decision of the trial court while this is the second appeal as the appeal is originated from the decision of the first appellate court which is Ilemela District Court. Therefore, it was expected for the grounds of appeal to clearly state that the first appellate court erred in law and fact on a certain issue instead of the trial court since the decision which is challenged by the appellant is the decision of the first appellate court. Despite that anomaly, I have the view that the same is the typing error since the petition of appeal that was filed in the district court was addressed to this court and the submissions of the appellant challenged the decision of the first appellate court and therefore, I proceed to determine the appeal on merit.

After the consideration of the rival submissions by both parties, and having in mind that this is a second appeal where parties who were dully married with an established family as an institution, approached the court to have it dissolved taking into consideration that at a time of union and before the relationship sours, the parties were blessed with three issues

whereas at the time the matter was instituted, the 1st born was aged 13 years, 12 years and 7 years to the second and third born respectively. The parties also acquired properties that require division in accordance with the law.

From the inert of the matter, and as to the ground of appeal fronted by the appellant, three major issues are the centre for a determination that includes: -

I. *Whether the lower court properly administered the application and ordered the decree of divorce without the matter being first referred to the reconciliation board.*

II. *Whether it was proper for the 1st appellate court to order the appellant to pay Tsh 200,000/= monthly as maintenance of the children.*

III. *Whether the trial court and the 1st appellate court erred in the division of matrimonial properties without considering the effort of the appellant in the acquisition.*

Before I embark on the determination of the first issue, which is covered in the 2nd ground of appeal, I see it wanting to make some remarks based on the counsels' submissions. first, the appellant did not dispute the decree of divorce that it was not proper for the trial court to annul the

union and second, the appellant also acknowledges that there are circumstances that the application for divorce that can be referred to the court without the matter being referred to the reconciliation board.

It goes that, under section 101 of the LMA Cap 29 RE: 2019, the law is clear as it provides that: -

101. *"No person shall petition for divorce unless he or she has first referred the matrimonial dispute or matter to a Board and the Board has certified that it has failed to reconcile the parties"*

The same law has provided for circumstances in which the matter can be petitioned without the same be referred to the board. It goes under section 101 (a) where the applicant alleged desertion by the other party, and section 101(b) where the other party cannot be procured for attendance by his failure to do so or refusal to attend.

In this appeal at hand, first, the respondent did refer the matter to the reconciliation board as it is evidenced in the trial court record that the certificate issued by the board is appended in the trial court record. The appellant's learned counsel disputed that the appellant was not called to the board as stated the same in the trial court and the respondent only procure a certificate from the board without

notifying the appellant. The claim by the appellant was disputed by the respondent who avers that the appellant deserted her and his whereabouts were not known so the appellant could not attend to the board.

In determining this issue, I am alive with the provision of section 104 of the Law of Marriage Act, Cap 29 R.E 2019 that parties have the right to have their cause to be heard at the reconciliation board before the matter is instituted to the court of law but again the law provides with exceptional circumstances where the matter can be instituted without being referred to the board.

In this appeal at hand, the respondent referred the matter to the reconciliation board and the board issued a certificate that they failed to reconcile the matter. That alone disputed the claim by the appellant's learned counsel that the matter was not referred for her allegation that the respondent went to collect the certificate from the board without having the matter determined is unfounded and an afterthought. The respondent further testified before the trial court that the appellant did not attend the reconciliation board and she gave reasons for his non attendance that the appellant abandoned the matrimonial house and deserted the respondent and at a time the

respondent referred the matter to the reconciliation board, the appellant whereabouts could not be traced.

The appellant conceded to the respondent's allegation that from 2015, he vacated the matrimonial home. The evidence on record and proof that the appellant deserted the respondent, negate the claims that the matter was not properly before the trial court for the reason that it falls on the exceptional circumstances that the matter can be referred without the same be referred to the reconciliation board. The section provides that;

101. No person shall petition for divorce unless he or she has first referred the matrimonial dispute or matter to a Board and the Board has certified that it has failed to reconcile the parties: Provided that, this requirement shall not apply in any case-

(a) where the petitioner alleges that he or she has been deserted by, and does not know the whereabouts of, his or her spouse;

I agree with the respondent's counsel that at a trial court, the matter was properly filed, for the same was referred to the Conciliation board and the board could not hear the appellant and the respondent

managed to establish that the matter falls under section 101(a) of the Law of Marriage Act, Cap 29 R.E 2019 for the appellant had deserted the respondent and his whereabouts could at that time not be traced.

Again, this shows the good intention of the respondent to refer the matter to the matter to the marriage conciliation board before she could have resorted to use section 101 (a) of the Law of Marriage Act cited above to petition for a decree of divorce without referring the matter to the marriage conciliation board.

Therefore, the circumstances in our case is clear that getting the appellant to attend the board was impracticable as he deserted the respondent and there was no expectation to get him as his whereabouts was not known that's why the reconciliation board certified that it has failed to reconcile the parties.

The averment of the appellant's counsel that section 104 of the Law of Marriage Act, Cap 29 R.E 2019 was not complied with is distinguishable in our case at hand because the same shows the procedure of conducting proceedings in the board and they are applicable if the appellant was served. Thus, that was not a position to our case as the appellant was not served and his whereabouts was not known.

In the final analysis, I find no merit in this ground.

On the second issue as to whether it was proper for the first appellate court to order the appellant to pay Tshs. 200,000/= monthly as maintenance of the children. It is settled that maintenance is support for needy children and is both a social and a legal requirement for the parents. The maintenance of children, therefore, covers the essentials or necessities for their survival and development which include the provision of food, clothes, shelter, education, medical care, fees for education development and any other necessary or important need for the development of the children. Despite a social duty placed to parents and in special circumstances to the guardians, our legal system placed a legal responsibility to a parent to provide maintenance to children regardless to the status of their union as to whether they are married or not. The primary point is to build up a society that protects, maintains and promotes the welfare of the child. The duty of the parents in the maintenance of the children without consideration of the marriage as an attributing factor is governed by the Law of the Child Act.

The Law of Marriage Act, Cap 29 R.E 2019 specifically provides for the maintenance of the children born in wedlock even after the decree of divorce or separation is granted. It is therefore prime to note that, in any

circumstance, whether there is an existence of a marriage or not, the law provides the duty to maintain children.

In our appeal at hand, in which the maintenance is claimed particularly after the decree of divorce was issued, it is therefore governed by the Law of Marriage Act, Cap 29 RE: 2019. The appellant disputed the first appellate court order for maintenance that for the 3 children, the appellant should maintain them at a tune of Tshs. 200,000/= monthly. The appellant's learned counsel gave reasons that the appellant is a pastor who earns Tshs. 300,000/= monthly and made him incapable of maintaining the children at a rate of Tshs. 200,000/= as ordered. The respondent's learned counsel objected as to the reason given by the appellant.

Section 129 of the Law of Marriage Act, [Cap. 29 R. E. 2019] placed the primary duty of the maintenance of the children to the father. It provides that: -

> 129 *... it shall be a duty of" a man to maintain his children whether they are in his custody or the custody of any person, either by providing them with such accommodation, clothing, food and education as may be reasonable having*

regards to his means and station in life or by paying the cost thereof.

In the construction of the wording of section 129 as referred to above, it is my opinion that, it is the primary duty of a father to maintain the children according to his means, but if the means of the father is insufficient, it does not exclude the mother to contribute.

In this appeal at hand, it is on record that the trial court did not order maintenance and the order was that of the first appellate court that the appellant is legally required to maintain his children at a tune of Tsh 200,000/= monthly. I am alive with the provision of section 129(1) of the Law of Marriage Act Cap 29 RE: 2019 as quoted above and the wording of section 44(a) of the Law of the Child Act Cap 13 RE 2019 that: -

"The court shall consider the following matters when making a maintenance order: -

(a) The income and wealth of both parents of the child or any of the person legally liable to maintain the child."

Going to the first appellate court records, the appellant claims that the task for maintaining the children was left to the respondent alone and on the submissions by the appellant at the first appellate court was

that the trial court was proper for excluding the appellant from maintenance for the reasons that the respondent was awarded properties more than the appellant. At this instant appeal, I find that the reasons changed where the appellant claimed that he is a pastor and he earns only Tsh 300,000/= and could not maintain his children at the tune of 200,000/= monthly as ordered.

Based on what is on record, and as the prime duty of both parents to maintain their children, it is undisputed that after the appellant vacated the matrimonial home, the custody and maintenance were left to the respondent alone and even if the appellant was maintaining the children, he did not exhibit the same to both the trial court and the first appellate court. Based on the decision of the first appellate court though I find no reasons on the judgment of the first appellate court as to the sum ordered, but going to the submissions by the appellant, I did not agree with his assertions that the appellant was precluded from maintenance for the reasons that the respondent was given more properties than that of the appellant in the division at a trial court. As I proceed to go through the evidence by both the trial court and the first appellate court, I also disregard the reasons that the appellant is a pastor who earns

Tsh.300,000/= for at a trial court he testified that he receives money from the congregation and provides for his children.

Based on the circumstances of this instant appeal, and maintenance being both social and legal duty to parents, I find that both parents are obliged to maintain their children of which to the part of the respondent who is the custodian to date, and with the proof that the appellant vacated the matrimonial home, the respondent did discharge her duties as a parent in maintenance. On the part of the appellant, there is no proof as to the extent he discharged his duties in the maintenance of his own three children. Parental responsibility is a shared responsibility. This was in the Republic of Kenya as it was rightly observed in the case of **S.A.K - Vs- Z.D.N.P (2019) eKLR** in which the court held that;

> *" The duties referred to above include inter alia the duty of a parent to maintain the child and in particular to provide him with food, shelter, clothing, medical care, education and guidance. Parental responsibility falls on both parents and no parent has a superior right or claim against the other in exercise of parental responsibility".*

The above decision reflects this appeal at hand for the reasons that, if the respondent had been and in fact is discharging her duties of

maintaining the children, why not the appellant who also has the duty to do so. As stated, the appellant prays the maintenance to be shared, and in the analysis that the children to be maintained are three who are supposed to be maintained in all aspects that may contribute to the development and upbringing in terms of biological, psychological and emotional, I find the amount ordered to the appellant to be reasonable.

The appellant's counsel submissions on the duty of the woman to maintain her children as provided under section 129(2) of the Law of Marriage Act, Cap 29 R.E 2019 is well noted but as I have earlier noted maintenance is a shared responsibility to both parents. The above section cited by the appellant's counsel is applicable if the father is dead, his whereabouts are unknown and if he is unable to maintain his children. This is not the situation in our case at hand as the father is alive, his whereabouts is now known as he appeared to prosecute his case and he is able to provide maintenance since he testified at the trial court that he used to maintain his children. In the find analysis, I find the ordered amount to be reasonable and thus this ground of appeal has no merit.

On the 3rd issue as to whether the trial court and the first appellate court erred in the division of matrimonial properties without considering the effort of the appellant in the acquisition. In the provisions of section

114 of the Law of Marriage Act Cap 29 RE: 2019, courts are empowered to order the division of matrimonial assets when granting or after the grant of a decree of separation or divorce.

The relevant part of the section is the legal interpretation of the term "joint efforts" which the spouses pull together towards the acquisition of assets. According to subsection 2(b) of section 114, it includes a spouse's contribution toward the acquisition of such assets. This was the early decision in the case of **Zawadi Abdallah v. Ibrahim Iddi** [1980] TLR 311. And to calculate the effort of such spouse if is entitled to a share corresponds to the extent of that spouse's contribution toward the acquisition of that particular asset.

Again, before I proceed to determine the matter, I take caution and be guided by the principle stated in the case of **John Mkorongo James vs Republic,** Crim. Appeal No. 498 of 2020 that this is the second appeal court and my powers are limited in interfering with the concurrent findings of the courts below and doing so is possible only when the decision is based on a misapprehension of evidence causing the miscarriage of justice. In line with what is stated, I am also aware that this court being the second appellate court can only deal with the matters which were the subject of appeal at the 1st appellate court.

Going to the records, the appellant as I noted on his cross-appeal at the first appellate court, he appealed against the division of the houses located at Busenga and that which is located at Bwiru. Before this court, the appellant learned counsel also submitted on the two properties. Going to the records, considering the house at Busenga, the evidence is clear that the said plot was obtained before the parties contracted the marriage and it is the evidence of the appellant that he contributed by supervising the construction but since the respondent claimed that she was deserted by the appellant at a time the same home was constructed, the appellant failed to challenge the evidence of the respondent to prove the extent of his contribution to the house. In that regard, I find no reason to fault the findings of the lower courts.

On the other property which is a house located at Bwiru, it is reflected on page 6 of the trial court proceedings, and as reflected on evidence of the first appellate court, it is clear that the plot was purchased by the respondent assisted by her sister the evidence which was not denied by the appellant. The appellant's claim that the house was built by their joint efforts was not substantiated in evidence for though he established that they had a stationery business which was the sole income that led to the construction of the house. His evidence was a

mere assertion for he was not able to prove as it was clearly determined by the trial court and the same upheld for by the first appellate court. To that end, it is my finding that the property which is located at Bwiru is the sole property of the respondent for the failure of the appellant to exhibit his extent of contribution.

On the property located at Buswelu "B", the appellant's learned counsel avers that the trial court decided right that the property be divided to parties equally and the first appellate court erred departing from the trial court findings deciding that the plot to be given to the respondent without considering the evidence on the record as to the contribution of the appellant. The respondent learned counsel denied the claims. Going to the records, there is evidence of the respondent showing that he bought the plot in 2004 before their formal marriage was contracted. The appellant denied though he testified that he did not remember the date and year they bought the plot, his witness at the trial court SU2 testified that both the appellant and the respondent approached him and the appellant bought the plot at the time he was a street chairman and he witnessed. The respondent also exhibited the trial court with exhibit P74 which was then disputed for by the trial court for being stamped 2021.

From the piece of evidence of the respondent and SU2 gathered, it is clear that it was the respondent who bought the piece of land and it required the appellant's proof of his extent in the development of the plot for the plot to qualify to be a matrimonial property subject to distribution. Based on the evidence on record that the appellant tendered before the trial court photos of the disputed plot taken in 2021, do not stand as proof of his contribution to the development of the area for the evidence is clear that the parties were not living together as the respondent claimed to be deserted for 8 years. In the fine, I agree with the first appellate court that the failure of the appellant to exhibit that the property acquired before marriage was developed through the joint effort with the other spouse and the degree of his contribution could as well qualify the same to be matrimonial property.

The other property determined by the trial court and the first appellate court was the property at Mahina Nyanguruguru where the appellant claims that the court erred awarding the respondent 70% as against the appellant who was awarded 30%. The respondent learned counsel submitted that the respondent managed to prove her effort on the property for she was the one who bought the plot and build a residential house and the appellant contributed in developing the area by

building two classrooms on the plot. It is on record that sometimes before the appellant was arrested for running the unregistered college, he used the buildings in the plot to run the college. As to the evidence in the record, it is evident that both the appellant and the respondent managed to establish their involvement in the property in dispute. What is important is the assessment of the degree of contribution by either party to the division.

Going into the records, I find the reasoning by the first appellate court that the respondent used to bail out the appellant and paid 9 million and that was a misuse by the appellant. I agree with the first appellate court but without further evidence on how it affected the other party acting upon it will not be right. In the final analysis, I agree with the first appellate findings that the property was indeed a matrimonial property.

On the issue of division, as it was rightly held by the first appellate court that the respondent be awarded 70% and the appellant to be awarded 30% since the respondent contributed more than the appellant. This is due to the fact that the extent of the respondent's contribution is greater compared to the appellant on the property of Mahina Nyangurunguru as it is on record that the respondent purchased the plot and built the residential house while the appellant built classrooms.

Therefore, I find this ground of appeal also lacks merit and it is hereby dismissed.

In the upshot, the appeal is dismissed in its entirely.

Right of appeal explained to the parties.

M.MNYUKWA
JUDGE
11/04/2022

Court: Judgment delivered today 11th April, 2022 in the presence of the parties' advocates.

M.MNYUKWA
JUDGE
11/04/2022