

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**PC CIVIL APPEAL No. 62 OF 2022**

(Arising from Nyamagana District Court in Matrimonial Appeal No. 18 of 2021;  
Original Matrimonial Cause No. 26 of 2021 at Mkuyuni Primary Court)

**JOSEPHINE DAMAS MAGANGA..... APPELLANT**

**VS**

**MECK MTETE WAMBURA ..... RESPONDENT**

**JUDGMENT**

7/2/2023 & 10/3/2023

**ROBERT, J:-**

This appeal originates from the decision of Mkuyuni Primary Court in Matrimonial Cause No. 26 of 2021 filed by the appellant, Josephine Damas Maganga, seeking an order for divorce, division of matrimonial property and maintenance of children against the respondent, Meck Mtete Wambura. The trial court decided that there was no marriage between parties and proceeded to give an order for maintenance of children only. Aggrieved with the decision of the trial court, the appellant filed an appeal at the District Court of Nyamagana challenging the decision of the trial Court. Having heard both parties, the district court

awarded the appellant 20% shares of the house built by the parties when they were living together and ordered the appellant to file appropriate application at the juvenile court to decide on the maintenance of children. The appellant contested the distribution of 20% shares awarded to her in the division of matrimonial property and preferred an appeal to this Court armed with two grounds, to wit:

- 1. That the appellate district court erred in law and in fact distributed 20% only of the whole matrimonial properties to the appellant without assigning a sufficient reason for doing so.*
- 2. That the first appellate court erred in law and in fact when it failed to subject the entire evidence to objective scrutiny and arrive at its own findings of facts.*

When this appeal came up for hearing before this Court, the appellant was represented by Mr Dutu Chebwe, learned counsel whereas the respondent and his representative were both absent without notice. The Court proceeded with the hearing in the absence of the respondent.

Highlighting on the grounds filed in support of this appeal, Mr. Chibwe opted to argue both grounds of appeal jointly as they are related. He submitted that, the trial court's decision to distribute only 20% of the shares of the matrimonial property to the appellant was not

based on the evidence on record and circumstances of the case but on estimation of entitlement.

He maintained that, the trial Court should have considered the requirement of section 114(2) of the Law of Marriage Act which requires the Court to take consideration of four things. First, the custom of the community to which the parties belong; secondly, the extent of contribution; thirdly, any debts owed by either party which were contracted for their joint benefit; and fourthly, the needs of infant children if any.

He contended that, in the present case there is no dispute on the appellant's contribution through supervision of construction of the matrimonial house and in the form of domestic service. However, in determining the division of matrimonial property, the trial court considered only the appellant's contribution without taking into consideration the needs of the infant children who needed a place to stay. To support her argument, she cited the case of **Daniel Msele Manyonyi Vs Prisca Mnyaga Nyansura**, PC Civil Appeal No. 87 of 2019 HCT (Unreported)

From the submissions above, it is obvious that the bone of contention in this matter boils down to division of matrimonial property.

Records indicate that, the District Court having made a finding that parties in this case lived under presumption of marriage for four years proceeded to decide on the division of matrimonial properties. The district court awarded the appellant 20% shares of the matrimonial house having considered her extent of contribution through supervision of construction of the said house and her domestic services. The appellant is not satisfied with the extent of distribution and prays for this Court to reverse the division of matrimonial property on grounds that the district court did not take into consideration the needs of infant children who are in custody of the appellant and needed a place to stay.

I am aware that, section 114 of the Law of Marriage Act, Cap. 29 (R.E. 2019) requires that, when determining the division of assets acquired by parties during their marriage, courts are required to take into consideration a range of factors including the needs of the children of the marriage, if any, and subject to those considerations, shall incline towards equality of division.

However, although the needs of infant children such as housing may impact on how the property is divided, generally, parties are required to prove the extent of their contributions to the acquisition or improvement of such property in order to receive a fair share in the division of such property as the property may include assets which were acquired before the marriage while some of the needs of the children may be considered and awarded in the maintenance of children. The aim is to ensure that the division of property is fair and just for both parties involved.

In the case of **Gabriel Nimrod Kurwijila vs Theresia Hassani Malongo**, Civil Appeal No. 102 of 2018, CAT, (unreported) the Court of Appeal observed that:

*"The extent of contribution is of utmost importance to be determined when the court is faced with a predicament of division of matrimonial property. In resolving the issue of extent of contribution, the court will **mostly rely on the evidence adduced by the parties to prove the extent of contribution.**"*

In the present case, the appellant stated at page 9 of the trial court proceedings that she contributed ideas for construction of the house and

buying of a car although she didn't remember the registration number of the car or prove its existence. Her words expressed as follows:

- *" Mchango kwa ujenzi na nyumba yetu, ulikuwa ni mawazo, mbinu, tunakaa kushauriana.*
- *Gari ni ya kwetu wote mimi na mume wangu*
- *Mchango wa kupata gari, nilikuwa nampa mawazo na kushauriana tutafute ushauri/usafiri.*
- *Sikumbuki namba ya gari."*

On the other hand, the respondent stated at page 20 to 21 of the trial court proceedings that he lived together with the appellant for four years which includes one year when the appellant was attending studies. He explained that, when he met the appellant the structure of the house in question was already erected but not roofed and the iron sheets were already bought and kept in the house. He also claimed that he has never bought a car. His testimony at page 21 reads as follows:-

*"...nyumba alikuta nimejenga boma na kulikuwa na mabati ndani, gari sijawahi kununua".*

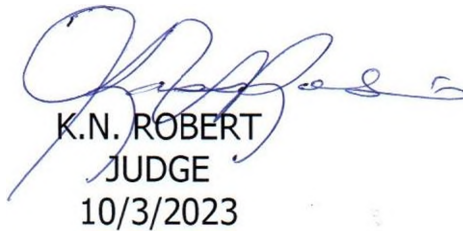
Considering the appellant's extent of contribution towards acquisition of the house in question as expressed above, the fact that parties in this case never lived in the divided matrimonial house, the duration of time spent under the presumption of marriage especially by the appellant who stayed at home to take care of the family and the fact that the needs of children can still be taken care of in an application for



maintenance of the children as decided by the district court, I find the 20% share of the house awarded to the appellant fair and just for both parties in the circumstances of this case. That said, I find no reason to fault the decision of the district court. Consequently, I dismiss this appeal without costs considering the circumstances of parties in this matrimonial dispute.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
10/3/2023