

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

PC. CIVIL APPEAL NO.44 OF 2022

*(Originating from the decision in Matrimonial Appeal No.04 of 2022,
before Meatu District Court, the same originating from Matrimonial Cause
No.05 of 2022 before Imalaseko Primary Court)*

MASANJA TUNGUAPPELLANT

VERSUS

BUGUMBA GADINGURESPONDENT

19th July 2023 & 28 July 2023

JUDGEMENT

F.H. MAHIMBALI, J

The respondent filed Matrimonial Cause No. 5 of 2022 before Imalaseko Primary Court claiming against the Appellant a decree of divorce and division of matrimonial properties jointly acquired. It was alleged that the appellant deserted the respondent for longtime which anticipated her to institute claims against the appellant.

The matter was heard on merit and the trial Court issued decree of divorce and ordered for division of matrimonial properties.

The appellant faulted the trial Court judgment, he then appealed to Meatu District Court where the matter was heard inter parties and the

District Court did uphold the decision so reached by the trial Court. Thus this second appeal, with the limbs of three grounds of appeal namely;

- 1. That the trial Court erred in laws and in fact for ordering division of matrimonial properties without considering extent of contribution of each party toward acquisition of the properties.*
- 2. That the trial Court erred in law and in fact by distributing same assets which were acquired by the appellant and his other wife namely Nyamizi Mahona.*
- 3. That the trial Court erred in law and in fact for failure to consider evidence and testimony of the appellant hence improper distribution of matrimonial properties.*

During the hearing of this appeal, both parties appeared in person and unrepresented.

The appellant submitting on grounds of appeal prayed before this Court his grounds of appeal be adopted and form party of his submission. Likewise, the respondent prayed for adoption of reply to the petition to form party of her submission.

After a thorough reading of the appeal records, the Court first wanted the parties to address on the issue, as to whether is proper for the appellant to appeal to this Court against the decision of the trial Court (primary court).

Whereby the appellant admitted to have committed error, and the respondent stated that it was an error, instead the appellant was supposed to appeal against the decision of the 1st appellate Court.

Now, having heard both parties, I will now determine the appeal.

With respect to grounds of appeal, this Court has observed as follows: PW1, PW2, PW3 (Sm1, Sm2, Sm3) testified before the trial Court that the appellant had deserted the respondent for long time and left her without any service. It was also averred that the properties claimed by the respondent were jointly acquired by the parties, the appellant has manipulated some by selling and misused for his own benefit and others were sent to other women without a due consent from the respondent.

The trial Court records also provides that, the appellant has tortured much the respondent. They also testified before the Court that all properties mentioned were jointly acquired by the parties to wit; 66 heads of cattle and farms.

Meanwhile, the trial Court records reveals that the appellant denied to have deserted the respondent instead is the respondent herself who moved away from their home place in 1998 and came back in 2000. Whereby the bitter of matrimonial life proceeded as there was no peace between them, and so the appellant decided to vacate to other place.

With regards to the matrimonial properties the appellant did not resist anymore.

Having gone through the evidence of both parties preceded at the trial Court, I am canvassed with evidence that the respondent managed to prove case on balance of probabilities.

However, it is trite law that properties jointly acquired are subject for division whenever the marriage is irreparably broken (see section 114 of the Law of Marriage Act). It is also a settled principle that the extent of contribution of the parties is a paramount unit whenever comes to the order of division of matrimonial properties (see section 114(2)(d) of the Law of Marriage Act and the case of ***Bihawa Mohamed versus Ally Seif (1985) T.L.P. 32, Zawadi Abdallah versus Inrahim Idd, Civil Appeal No. 10 of 1980 and the case of Rukia Diwani Konzi versus Abdallah Issa Kihanya (1971) T. L. R 6***).

With all the above observations, since it was well proved that all the mentioned properties were jointly acquired, I find the grounds of appeal being devoid of any merit.

The above notwithstanding, in the course of studying the appeal by the appellant before me, I found it to be improperly and wrongly framed. The appellant's grounds of appeal to this Court, seem to be appealing against the decision of the trial court. It is settled law that, this being

second appeal, this Court only enjoys appellate jurisdiction for the decisions emanating from the first appellate court and not primary court (trial court) as preferred by the appellant. See the decisions of this Court in ***Pendo M. Iranga versus Kitama Elias, PC. Civil Appeal No. 44 of 2022 High Court at Musoma (unreported) and the case of: George Ntagera versus Shabani Madandi, Misc. Land Appeal No. 2 of 2022 High Court at Kigoma*** (unreported), whereby this court struck out the appeal of instant nature.

Therefore, it is thus obvious that the appeal was wrongly framed. With all these observations, I consequently dismiss the appeal founded on the concurrent findings of the two lower courts as I have no good reason to fault. It being a matrimonial cause, I order no costs.

It so ordered.



DATED at SHINYANGA this 28th day of July, 2023.

**F.H. MAHIMBALI
JUDGE**

Order: Judgment delivered in chamber this 28th day of July 2023 in presence of both parties. Right to appeal is explained.

**F.H. MAHIMBALI
JUDGE**