

**IN THE HIGH COURT OF TANZANIA  
BUKOBA DISTRICT REGISTRY  
AT BUKOBA**

**CIVIL APPEAL NO. 10 OF 2023**

*(Arising from District Court of Bukoba Civil Appeal No. 57/2022 Originating from Muleba Urban Primary Court Divorce Case No. 13/2022)*

**SWAIBU SWEDI..... APPELLANTS**

**VERSUS**

**BEATA JASON..... RESPONDENT**

**JUDGMENT**

**K. T. R. MTEULE, J.**

**1<sup>st</sup> June 2023 & 26<sup>th</sup> June 2023**

**SWAIBU SWEDI**, the appellant, and **BEATA JASON**, the respondent respectively, lived together for over seven years under the same roof from 2015 to 2022. Their life was not always peaceful, but their dispute escalated gradually into a divorce petition preferred by the Appellant vide **Matrimonial Case No. 13 of 2022** lodged in Muleba Urban Primary Court seeking for divorce, division of matrimonial assets.

The Primary Court found that there was no marriage, hence divorce was not issued. However, the trial court issued an order to make division of the properties alleged to have been acquired jointly by the parties during their

relationship. Moreover, the appellant was ordered to pay the respondent **TZS 70000/=** every month for children's maintenances.

Being resentful with the decision of the Primary Court, the appellant challenged it vide **Civil Appeal No. 57 of 2022** in the District Court of Muleba at Muleba. Amongst the issues presented in the District Court on appeal included appellant's dissatisfaction with the findings of the Primary Court that the parties were a couple, granting of children's custody to the respondent, denial of right to be heard on the division of matrimonial assets to prove the mode of acquisition, and the order for maintenance.

The 1<sup>st</sup> appellate Court findings based on three questions; **Firstly**, as to whether there was a marriage or not and **secondly**, whether the trial Court was right in ruling that there was no marriage between the parties henceforth proceeded to distributing properties acquired by parties in the conjugal relationship and thirdly, the correctness of the order of custody and maintenance payment. The 1<sup>st</sup> appellate Court considered the record and submission made before it and decided to uphold the trial Court decision in all aspects against all what were challenged by the appellant.

The appellant is aggrieved by the decision of the first appellate Court, hence preferred this appeal encompasses with five grounds of appeal revolving around the following:- that the appellant was not served with

reply to the petition, that the evidence was not properly evaluated hence non issuing of separation order, lack of proof regarding joint efforts in acquisition of the properties distributed to the respondent and denial of right to be heard on the same, improper procurement of the order of custody and lastly wrongly issued order of custody of children.

The appeal was heard by oral submissions by parties themselves.

In his submission the Appellant narrated the story he gave in the primary court to explain the nature of relationship he had with the Respondent and how they started the dispute. He submitted the Primary Court Magistrate told him to give money to the respondent, while she gets everything and timely. He insisted that the Primary Court insisted that she is his wife. He further added that they forced him to state the properties they had he mentioned the few properties. According to appellant the respondent was asked about the properties, and she mentioned so many properties which did not belong to him. He lamented that in the District Court the Magistrate gave a judgment in her favor without considering his complaint.

Regarding properties the Appellant submitted that the Magistrate erred in law for not considering the evidence of the ownership of the properties mentioned by the Respondent. He stated that the respondent mentioned motor's for senene collection, generators, iron sheets for collecting senene,

2 televisions and dish which did not belong to him. He averred that they never married each other, but he has 4 children with the respondent, he wanted the custody of the children, but it was refused. He added that the Respondent mentioned even plots but she knows nothing about the ownership.

In reply, the Respondent being a lay person, could not address the grounds of appeal but she as well as the Appellant, continued to narrate how she met the appellant, how they lived and how their disputed started and escalated to the Matrimonial dispute. She submitted that she found the respondent with a house and two farms, other properties were acquired jointly, these were goats, chicken, iron sheets for "senene" traps and the generators and others. She further claimed that she wanted a place to live with her children and provision of subsistence money.

In rejoinder the Appellant continued to insist on some properties not belonging to him.

From the parties' submissions, this Court is called upon to determine **as to whether the Appeal has any merit.** Although the parties submissions did not address all the grounds of appeal, I took note of them being lay persons and as such, all the grounds of appeal will be considered.

Starting with the first ground, regarding the failure to have the reply to the petition served to the appellant and late issuance of copies of judgment. In this ground, the appellant, did not state how the failure to be served with the reply to appeal and the late issuance of the copies of judgment prejudiced his rights. The appellant had opportunity to ask the 1<sup>st</sup> Appellate Court to allow him to be served with the said reply and make a rejoinder if he so wished, before making his submission. It does not feature in the proceedings of the District Court if such a request was ever made but the appellant just proceeded with submissions. In my view since both parties were afforded with an opportunity to submit in the 1<sup>st</sup> appellate court, and that it was the appellant who commenced submission, then I find nothing to fault the proceedings of the 1<sup>st</sup> appellate court basing on this ground.

The second ground goes with the third ground as they both concern alleged improper evaluation of evidence and leading to lack of separation order and lack of observance of the right to be heard. I have to resolve these grounds by asking whether the evidence was properly evaluated with right to be heard properly observed. Submitting on proof of joint effort to the property distributed to the respondent, the 1<sup>st</sup> appellate court made a general observation that according to the record there was enough evidence to prove that the properties were jointly acquired and upheld the decision of the Trial court. The trial court was not specific as to which

grounds of appeal was it addressed. Although at the 3<sup>rd</sup> ground of appeal in the petition of appeal presented in the District Court the appellant raised the issue of failure to be given a right to be heard in the Primary Court concerning the matrimonial properties, the 1<sup>st</sup> appellate court did not consider it. My observations noted that the Appellant had 6 grounds of appeal, but the 1<sup>st</sup> appellate court addressed three issues without specifying by which grounds were the issues covered. In my view, this was an irregularity on the part of the 1<sup>st</sup> Appellate Court. An appellate court is enjoined to determine all the grounds of appeal presented to it. Failure to do so renders the matter a nullity. **(Mosi S/o Chacha @ Iranga & Another vs Republic (Criminal Appeal No. 508 of 2019) [2021] TZCA 598.**

From the foregoing, I the third ground of appeal constitutes merit, in that the 1<sup>st</sup> appellate court failed to consider whether right to be heard was properly afforded to the Appellant in the Primary Court.

Regrading the 4<sup>th</sup>, 5<sup>th</sup> grounds of appeal, on the order to the appellant to find a shelter for the respondent without considering the threatening situation amongst the two and failure to consider the best interest of the children, these grounds featured in grounds 5 and 3 of the Appeal. As found above, the judgment of the 1<sup>st</sup> Appellate Court did not state whether

these grounds were addressed. The findings in the third ground also applies in these two grounds of appeal which are grounds No 4 and 5.

Ground No. 5 concerning the misquotation of the words in the grounds of appeal, I would state that the above finding will have a effect of reverting the matter for the appeal to be heard afresh in the district court, for it to consider all the grounds of appeal. In the due course, if there are misquotations or typographical errors, they will be cured in the fresh hearing of the appeal in the District Court.

Basing on my findings in grounds No. 3, 4 and 5, this appeal has merit. The framed issue is therefore answered affirmatively.

Due to the above findings, the appeal is allowed. Consequently, I hereby quash and set aside the proceedings and the decision of the District Court and revert the matter to the District Court for hearing of the appeal to be done afresh before another magistrate. It is so ordered. No order as to costs. It is so ordered.

Dated at Bukoba this 26<sup>th</sup> Day of June 2023



  
**KATARINA REVOCATI MTEULE**  
**JUDGE**  
**26/06/2023**