

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

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**PC. CIVIL APPEAL NO. 42 OF 2023**

*(Originating from Shinyanga District Court in Civil Appeal No. 77 of 2022, the same arise from Matrimonial Cause No. 8 of 2022 before Ibadakuli Primary Court)*

**PETER PHILIPO.....APPELLANT**

**VERSUS**

**HAPPINESS JEREMIAH MICHAEL.....RESPONDENT**

**JUDGMENT**

***15<sup>th</sup> August & 11<sup>th</sup> September 2023***

**F.H. MAHIMBALI, J**

The Appellant herein successfully petitioned for divorce and division of matrimonial properties before Ibadakuli Primary Court. It was alleged that the parties had contracted their marriage under Civil form in the year 2017 and they were blessed with one issue. Similarly, during the subsistence of their marriage, they acquired properties like house, plots, and house utensils. Impingements occurred on the existence of their marriage which led to the occurrences of conflicts. Due to such wrangles existed between the two, they could not therefore stay in one roof, they

ultimately separated. Efforts to reconcile their marriage were done unsuccessfully. Being the case in 2022 the appellant decided to petition for divorce and division of matrimonial properties. The judgement was entered on the appellant's favor. The respondent was aggrieved by the decision of the trial court she then successfully appealed to Shinyanga District Court, whereby the 1<sup>st</sup> appellate Court reversed the decision of the trial court and re-ordered the division of matrimonial properties, to wit the matrimonial house located at Mwagala Ibadakuli be sold and the appellant be given 60% of the proceeds after sale of the house and the respondent be given 40% of the proceeds after the sale of the house.

The appellant was unhappy with the decision of 1<sup>st</sup> appellate Court he has then approached this Court with limbs of two grounds of appeal namely;

- 1. That the appellate Court erred in law and facts by concluding that the house at Ibadakuli was a matrimonial house subject to division of 60% to the appellant and 40% to the respondent herein while the same extends to a different plot which the appellant acquired it separately and by his own effort.*
- 2. That the appellate Court erred in law and facts by concluding that the respondent be given 40% of the proceeds of the house at*

*Ibadakuli while her contribution in the development of the said house was very little.*

During the hearing of this appeal, both parties appeared in person and unrepresented. The appellant arguing his appeal prayed for this Court to adopt his grounds of appeal and form part of his appeal submission. He further fortified that in essence the DC erred in law and fact in determining the division of matrimonial properties 60% and 40% respectively in respect of the house in which he had built it alone and that the respondent joined him while the house is already built. She has her own house, but the DC did not think it proper for her to get a share from it. He prayed that he gets full share of his house unless the house of the respondent is also equally divided.

On the side of the respondent, she argued that the appellant had been her husband. They are blessed with one child, when she joined him, he had already started building the said house. She joined her forces as he was her husband in order to make sure that they live at their own home. As she had an income higher than the appellant, she had to do all her best to make sure that the house is in order. The appellant's income was only 50,000/ while the respondent was more than 2,000,000. So, according to her, the District Court ruled rightly. The house which the



appellant is talking about that she owns it, she has built it after the divorce.

In rejoinder the appellant, submitted that he is an employee with the government (PCCB officer). He disputed to have an income of 50,000/= per month as alleged by the respondent. He further submitted that since the respondent has her own living house, he should remain with his house. He admitted that the respondent had been supervising the construction of his house when they were together. He then pressed for his appeal be allowed with costs.

Having heard both parties to the suit, I have now to determine the appeal and the major issue is whether this appeal has been brought with sufficient cause.

Mindful this appeal is centered on the division of matrimonial assets to wit the house located at Mwagala Ibadakuli. I have scanned the trial court's records, petition of appeal and the submission of the parties. And therefore being the case, the following are the thorough findings to the appeal preferred and argued.



During the trial, the appellant argued that in the subsistence of marriage they jointly acquired properties and some properties were not jointly acquired. At page 4 & 5 of the trial Court proceedings;

*"Kuhusu mali ni kwamba mali alizonikuta nazo ni nyumba katika maeneno ya mwagala – ibadakuli, shamba katika maeneno ya Dodoma. Mali tulizochuma pamoja ni nyumba – Busulwa na mimi sijachangia chochote na alijenga mdaiwa kwa juhudi zake hivyo naomba nibaki na nyumba aliyonikuta nayo na yeye abaki na nyumba yake Busulwa*

*Kuhusu mashamba Dodoma nilinunua peke yangu na mdaiwa hakuchangia chochote na naomba itambulike kama mali yangu*

*- Nyumba ya mwagala alinikuta nayo ikiwa haijakamilika na mpaka sasa haijakamilika...."*

Again, during the hearing of the appeal before this Court, the appellant had conceded that the respondent joined her efforts in building the house located at Ibadakuli. See at page 3 of this Court typed proceedings;

*" I admit that she had been supervising the construction of my house when we were together ...."*

At page 5 of the trial Court proceedings, the appellant stated that;

*"nyumba ya mwagala ulinikuta nayo ikiwa haijakamilika na mpaka sasa haijakamilika"*

At page 9 of the trial Court's proceedings, the respondent averred that, she joined her efforts in construction of the house located at Ibadkuli.

*"Kuhusu mali tulizochuma pamoja ni kiwanja ibadakuli, nyumba ibadakuli ambayo nilikuta boma na haikuwa na choo wala milango na tulivyohamia tulikubalina mimi kuweka wavu, vioo. 2021 tukiwa pamoja na hivyo tuliendeleza ujenzi wa pamoja na kwa kipindi hicho mdai hakuwa vizuri kiuchumi na mimi nilitoa pesa kwa kuwa nilikua namwamini kama mume na hivyo kuna nguvu zangu naomba iuzwe na tugawane, kuhusu viwanja tuna viwanja viwili kimoja kipo karibu na nyumba ya ibadakuli ndipo palijengwa choo, kiwanja katika maeneo ya kibondo – ibadakuli na nilitoa Tshs 900,000 na mdai akimalizia nyingine, pia kuna kiwanja Dodoma nilimkuta nacho lakini nilitoa hela akaenda kutatua mgogoro na hivyo naomba kiuzwe tugawane".*

DW2 and DW3, both testified that they were hired by the respondent to construct the house located at Ibadakuli and they were paid by the respondent herself.

From the above extracted piece of evidence, it is therefore clear that, the respondent had contributed towards the construction of the house located at Ibadakuli and so she is entitled for a share to that effect.

However, the appellant contended that, the house of Ibadakuli should not be divided on the incidence that the respondent has her own house. If this Court orders the division of the house of Ibadakuli, similarly it should order division of the house at Busulwa.

I disagree with the argument by the appellant, based on the grounds that; the appellant himself had admitted that he never contributed anything towards the acquisition of the house located at Busulwa. He admitted that the said house is due to the efforts of the respondent herself. At page 3 of the typed proceedings of this Court;

*"Since the respondent has her own living house, I should remain with my house. I admit that she had been supervision the construction of my house when we were together"*

At page 4 of the typed trial Court proceedings provides that;

*" mali tulizochuma ni nyumba -Busulwa na mimi sijachangia chochote na alijenga mdaiwa kwa juhudi zake....."*



With the above piece of evidence, it is clear that the house located at Busulwa, was constructed by the respondent herself and so it is not subject for division as it is not a matrimonial property. See section 60 of the Law of Marriage Act, Cap 29 R: E 2019 and the case of: **Hilda Rwejuna v. Philbert Mlaki, Matrimonial Appeal No.5 of 2018** to that effect.

However, Section 114 (1) of the LMA provides that: -

*"(1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or to order the sale of any such asset and the division between the parties of the proceeds of sale.*

*(2) In exercising the power conferred by subsection (1), the court shall have regard to : -*

*(a) the customs of the community to which the parties belong;*

*(b) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;*

*(c) not relevant;*

*(d) not relevant.*

***(3) For the purposes of this section, references to assets acquired during the marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts". (emphasizes is mine)***

According to the above extract, there is no dispute that section 114(1) vests powers to the court to order division of assets between the parties which were jointly acquired during subsistence of their marriage. Nonetheless, before exercising such powers, it must be established that, first, there are matrimonial assets, secondly, the assets must have been acquired by them during the marriage and thirdly, they must have been acquired by their joint efforts. **See Bi Hawa Mohamed v. Ally Sefu (1983) TLR 32 and Samwel Moyo v. Mary Cassian Kayombo [1999] T.L.R. 197.**

Though what constitutes matrimonial assets/properties for the purposes of section 114 has not been defined under the LMA, in **Gabriel Nimrod Kurwijila v. Theresia Hassani Malongo, Civil Appeal No. 102 of 2018** and **National Bank of Commerce Limited v. Nurbano Abdallah Mulla, Civil Appeal No. 283 of 2017** (both unreported), the Court of Appeal defined matrimonial properties as those properties acquired by one or the other spouse before or during their marriage, with the intention that there should be continuing provisions for them and their children during their joint lives. Likewise, the Court emphasized in **Yesse Mrisho v. Sania Abdul, Civil Appeal No. 147 of 2016** (unreported) that matrimonial properties are also those which may have been owned by one party but improved by the other party during the marriage on joint efforts.

Section 114 of the LMA has been a subject of interpretation by the Court in a number of cases, in particular, **Bi Hawa Mohamed v. Ally Sefu (supra)**. The Court has underscored the principle envisaged in section 114 of the LMA as compensation for the contribution towards acquisition of matrimonial property regardless whether the contribution is direct or otherwise see: **Mohamed Abdallah v. Halima Lisangwe [1988] T.L.R. 197.**



Further, the Court emphasized that services of a wife entitle her to division of matrimonial properties regardless of her direct contribution or otherwise. In the case of **Reginald Danda v. Felichina Wikesi, Civil Appel No. 265 of 2018** (unreported), it was held that a wife is entitled to division of matrimonial properties even if she had not made any direct contribution to their acquisition for, she has that entitlement so long as she was a wife who made indirect contribution through domestic chores.

In the instant appeal, the appellant did not dispute the contribution done by the respondent towards the improvements made to the house located at Ibadakuli which is a matrimonial house. Never the less the respondent had also involved in doing domestic activities during the existence of their marriage and therefore is entitled for the share. See section **114 (3) of the Law of Marriage Act(supra)** and the cases of: **Reginald Danda v. Felichina Wikesi, (supra), Mohamed Abdallah v. Halima Lisangwe(supra)** and **Yesse Mrisho v. Sania Abdul (supra)**.

Guided by the above principles and in the circumstances of this case in which Court while giving its verdicts must consider peculiar facts of each case, while I appreciate the little contribution of the spouse respondent to the acquisition of the matrimonial properties, and since

there is ample evidence the extent of contribution done by the respondent to the house at Ibadakuli being not beyond 900,000/=, I think there must be equitable consideration to the acquisition of the said house for her to get a share of 40% of the market value of the whole house.

In my considered view, since what the wife contributed to the acquisition of the said matrimonial house was not commercial banking that it should earn profit in future but intended for their joint life, in the event of dissolution of the said marriage, the extent of contribution is what matters. It is not only a question of being a spouse. In the current matter, there is no further evidence than monetary contribution of 900,000/= and such a supervision on it.

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 (See **Gabriel Nimrod Kurwijila v. Theresia Hassani Malongo – supra**). What I observed in the proceedings before the Primary Court is that, the respondent didn't testify anything further than saying that she had contributed more than 900,000/= regarding the extent of contribution when acquiring the matrimonial properties. The

respondent dwelt deeply in leading evidence for proving divorce. The only evidence as to properties as rightly pointed by the appellant ended up only mentioning the properties without more. It was expected for her to adduce evidence showing her extent of contribution on each and every property but such evidence was not forthwith coming.

I am aware that the issue of extent of contribution made by each party does not necessarily mean monetary contribution; it can either be property, or work or even advice towards the acquiring of the matrimonial property. In **Yesse Mrisho v. Sania Abdu**, Civil Appeal No. 147 of 2016 (unreported) this Court stated that,

*"There is no doubt that a court, when determining such contribution must also scrutinize the contribution or efforts of each party to the marriage in acquisition of matrimonial assets."*

In the current case, the respondent boasting herself as receiving more worth than the appellant, was expected to tell the court much how much further she had contributed than the 900,000/= and the supervisory duty she did.

All that taken as a whole, while appreciating that the spouse respondent did some contribution to the acquisition of the said house at



Ibadakuli, I wonder if there is any material contribution beyond the said 900,000/= for toilet and door making. While that is valued, I am persuaded that by the Court of Appeal's remarkable stand that the extent of contribution is question of fact which then must be established by evidence (see **Gabriel Nimrod Kurwijila v. Theresia Hassani Malongo (spra)**). There is no such evidence beyond the 900,000/= and some supervisory duty. In the circumstances of this case, I wonder if the same can be valued beyond 1,000,000/= if it is to be monetarily quantified.

Similarly, there has not been evidence by the respondent on how she contributed to the acquisition of properties situated at Dodoma other than a mere mentioning them.

To the extent of her contribution, the appeal is allowed by varying the 40% share of the value of the house only on consideration of the 900,000/= and supervisory duty. In its place, the respondent's contribution is in totality considered to be 2,000,000/= in the development of the said house and not more; in which the appellant is ordered to reimburse the respondent as her share. In the event of default, the appellant's salary or other known property be attached to compel this payment.

As the appeal arises from matrimonial proceedings, I make no order  
as to costs.

It so ordered.

DATED at SHINYANGA this 11<sup>th</sup> day of September, 2023.



**F.H. MAHIMBALI  
JUDGE**