

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

MATRIMONIAL APPEAL No. 06 OF 2023

(Arising from the decision of the District Court of Karagwe at Kayanga in Matrimonial Appeal No. 01 of 2023 and Originating from Matrimonial Cause No. 01 of 2022 in Bugene Primary Court)

ANASTERA RENATUS APPELLANT

VERSUS

RENATUS KANYANKOLE RESPONDENT

JUDGMENT

18th October & 17th November, 2023

OTARU, J.:

This is a second appeal by the Appellant, **Anastera Renatus**. The Appellant and the Respondent, **Renatus Kanyankole** were husband and wife. The Respondent filed for divorce and division of matrimonial assets in the Primary Court of Karagwe at Bugene. After hearing both sides, the trial court was satisfied that the marriage between the parties was broken down beyond repair and granted the decree of divorce. It was subsequently followed by division of assets that the couple acquired during subsistence of their union. The assets that were discussed at the trial included Ihanda farm and house as well as Omulusimbi farm. The court excluded the Omulusimbi farm from matrimonial assets due to the fact that it was not acquired by the parties during subsistence of their union. However, the Ihanda farm and house were divided equally among the parties. Aggrieved, the Appellant

appealed to the District Court of Karagwe at Kayanga with only one ground, *that the trial court unfairly distributed the assets jointly acquired by the couple during subsistence of their marriage*. After hearing both parties and re-analyzing the evidence on record, the 1st appellate court upheld the trial court's decision together with subsequent orders thereto and dismissed the Appeal. As her 1st Appeal was unsuccessful, she filed this Appeal.

In the Appeal at hand, the Appellant filed four (4) grounds. All four grounds relate to the Omulusimbi farm, that *the Omulusimbi farm is part of matrimonial assets and should have been divided among the parties*. Thus, specifically, the Appellant claims part of Omulusimbi farm.

When the matter was scheduled for hearing, the Appellant was represented by Ms. Byera Joanna Nilo, learned Advocate while the Respondent had no legal representation, thus he fended for himself. The Appeal was heard by way of oral submissions.

In arguing the Appeal, the Appellant through her learned Advocate submitted that the Omulusimbi farm was gifted to both of them by the Respondent's father in 1988. As the two were married in 1985, the farm should have been considered as matrimonial property and should have been divided accordingly. The learned advocate further argued that even if the same had been acquired before the marriage, the Appellant should get a share of it due to her part in developing it. She cited section 114(3) of the **Law of Marriage Act** (Cap.

29 R.E. 2019) in support of her arguments. She also argued that as per section 161(2) of the **Land Act** (Cap. 113 R.E. 2019) land acquired by one spouse becomes joint property due to contributions by another spouse. That in 2007 the land in question was divided between the parties and that the Respondent having sold his part has gripped the Appellant's. She thus claimed that the Appellant has a right to a share of that land. Ms. Nilo also prayed for maintenance of the issues of the marriage as well as the costs of the suit.

In response, the Respondent opposed the appeal and stated that both decisions of the courts below is correct, thus prayed for dismissal of the Appeal. he insisted that he was gifted the Omulusimbi farm by his father before he married the Appellant. He admits that the two were farming on it together. Whatever income they got from it was used to sustain the family. They also purchased another farm at Ihanda from part of the income generated from the farm (the new farm has been divided between the parties by the trial court). He further claimed that the Appellant dominates all farms such that it is difficult for him to even sustain himself. He prayed for the court's intervention.

Having heard the parties, perused the case files as well as the relevant law, the question for determination before this court is *whether the appeal has merits*.

The record of the trial court indicates that the Respondent (SU1) and his witnesses (SU3) clearly testified that the Omulusimbi farm was gifted to the

Respondent by his late father, before the parties were married. The Appellant did not cross examine any of them on that aspect. In addition, in her own testimony, the Appellant is recorder to have stated that;-

'Shamba la Omulusimbi ni la ukoo. Mdai alipewa na baba yake'.

Unofficially translated as *'the Omulusimbi farm belongs to the clan. It was given to the Respondent by his father'.* From the above evidence, I find it safe to conclude that Omulusimbi farm was acquired by the Respondent before he and the Appellant got married.

Concerning the argument that the land having been developed jointly becomes jointly owned thus should be divided accordingly. I have no quarry with the position of the law. The question is do the facts support that contention? The details of development of the farm are only provided by the Respondent who stated that the land was a farm. Income from the farm was used to sustain the family and part of it was used to purchase the Ihanda farm. As stated earlier, the Ihanda farm has been divided amongst the parties at the trial. That is about it. Having no other evidence to the contrary, it is my considered view that the division of matrimonial assets was done fairly and I have no reason to interfere in the decisions of both courts below.

In the final analysis, this Appeal lacks merits and it is hereby dismissed. The decision of the District Court of Karagwe at Kayanga in Matrimonial Appeal No. 06

of 2023 and that of the Primary Court of Bugene in Matrimonial Cause No. 01 of 2022 are upheld.

Considering the circumstances of the case, no order as to costs is given.

It is so ordered.

DATED at **BUKOBA** this 17th day of November, 2023.



M. P. Otaru
M.P. Otaru
Judge

Court: Judgement delivered in court in the presence of the Appellant and the Respondent, both in person.

The right of appeal is duly explained to the parties.

M. P. Otaru
M.P. Otaru
Judge
17/11/2023