IN THE HIGH COURT OF TANZANIA

TEMEKE SUB – REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 28 OF 2023

(Originating from Matrimonial Cause No. 21 of 2017 at Kinondoni District Court)

REGINALD KIMAMBO .....APPELLANT

VERSUS

JOSEPHINE KATUNZI .....RESPONDENT

JUDGMENT

Date of last order: 21/11/2023
Date of Ruling: 27/11/2023

OMARI, J.

The Appellant, Reginald Kimambo being aggrieved by the decision of the District Court of Kinondoni in Matrimonial Cause No. 21 of 2017 preferred this appeal on four grounds to wit:

1. That the honorable Senior Resident Magistrate grossly erred both in law and in facts by her failure to consider legal principles regarding division of the assets between parties under the Law of Marriage Act (CAP 29 R.E.2019);
2. That, the honorable Senior Resident Magistrate grossly erred both in law and facts by ordering equal division of the properties listed in the

Petition of divorce by the Respondent herein based on assumptions and speculations;

3. That, the honorable Senior Resident Magistrate grossly erred in law and facts by ordering equal division of the properties listed in the Petition of divorce on the ground that, there is no proof of extent of contribution of each party towards acquisition of the said properties; and
4. That the honorable Senior Resident Magistrate grossly erred in law for failing to properly evaluate the testimony, submission and evidence adduced by the parties before the trial court hence reached a unfair decision.

It is on the basis of the four grounds that the Appellant is beseeching this court to re – evaluate the evidence, testimony and submission from the parties and come with its own decision and to make a declaration that there was no evidence(s) showing that all of the properties listed in the Petition of divorce by the Respondent exist and were acquired jointly by the parties or were substantially improved by the Respondent herein during their relationship. The Appellant is also praying that this court quashes the order of the trial court of equal division of the properties listed in the Petition of

divorce by the Respondent herein. Additionally, the Appellant is seeking for an order that this being a matrimonial matter each party hear his own costs and any other reliefs the honorable court thinks fit and just to grant. The Respondent, Josephine Katunzi contested the appeal.

On the date set for the hearing of this appeal the Appellant was represented by Mr. Hadson Mchau learned advocate while the Respondent appeared in person. Upon the Respondent's prayer that the appeal, be disposed by way of written submission to enable her to get legal assistance a scheduling order was entered, and the parties complied to the same.

Submitting in support of the appeal Mr. Mchau commenced with the first ground of appeal. He highlighted that a court has the power to order division of matrimonial assets where there is a decree of divorce and separation. He cited the case of **Marcel Kichumisa v. Mary Venant Kabirigi**, Civil Appeal No. 52 of 2020 where in the Court of Appeal emphasized this power and went on to provide that the powers extend to the context of presumption of marriage under section 160 of the Law of Marriage Act, CAP 29 R.E.2019 (the LMA). Counsel went on to point out that on page 16 of the trial court's typed judgment the trial court considered the relationship as a presumption of marriage. According to counsel, subsequently the court ordered for equal

division of the matrimonial assets without first satisfying itself that, they said presumption of marriage was irrebuttable or not in accordance to section 160(2) of the LMA and without issuing a decree of separation.

Therefore, counsel argued, it was wrong for the court to divide the assets as per section 114(2)(b) of the LMA because it never granted a decree of divorce or separation to the parties' counsel buttressed his argument by referring to the case of **Gabriel John Musa v. Voster Kimari,** Civil Appeal No. 344 of 2014 where in the Court of Appeal held that a trial court is supposed to satisfy itself if the presumption is rebuttable or not, grant a decree of separation or divorce then award the subsequent reliefs. Mr. Mchau also referred to the case of **Richard Majenga v. Specioza Sylivester**, Civil Appeal No. 208 of 2018 in which the Court of Appeal had the same stance that subsequent reliefs cannot be granted before a court has satisfied itself of the existence of the presumed marriage.

On the second ground of appeal, the Appellant's advocate submitted that during trial the Respondent produced documents concerning the plots in Madale and Kisukuru alleged to be acquired jointly by the parties but did not produce any document with regards to the other properties as listed in paragraph 9 of the Petition of divorce and her contribution to the same. Mr.

Mchau pointed out that page 71 through to 72 of the typed trial court's proceedings the Appellant testified that there are no properties bought jointly. He then went on to state that the burden of proof, in civil cases lies with the person who would fail if no evidence at all is given on either side. This, according to counsel is in accordance with section 111 of the Evidence Act, CAP 6, R.E. 2022 (the TEA) and as held in the case of **Neema Joseph Gesafi v. KOLI Finance Limited,** Civil Appeal No. 248 of 2020.

Counsel argued that on the basis of these principles in section 111 of the TEA and the **Neema Joseph Gesafi v. KOLI Finance Limited** *(supra)* case a party that is asserting the existence of matrimonial assets should substantiate so by providing proof of the existence of such assets and his or her contribution towards the acquisition of the said properties.

Mr. Mchau argued further that in the trial court the Respondent failed to do this, making it improper for the trial court to order equal division of properties listed in the Petition of divorce without satisfying itself of the existence of the said properties. He further averred that the Respondent in her final submission admitted that there were properties that she had no evidence of their existence. These, according to counsel, include the property in Maji Chumvi, Tabata Kisukuru and a house and shop at Old Moshi. He buttressed

his argument with reference to the case of **Mwajuma Omari Lusizi v. Seleman Kongembata,** PC Civil Appeal No. 129 of 2019 where this court dealt with a similar matter.

On the third ground, Mr. Mchau argued that the trial court erred to order an equal division of the jointly acquired properties without specifying properties which were acquired jointly and the Respondent's contribution to their acquisition. He argued that the Respondent did not testify of her contribution or provide any proof of the same for the court to make an assessment and decide the division of the said properties. He argued further that the trial court relied on assumptions and divided the properties as no material evidence was produced other than mere photocopies regarding the plots at Tabata Kisukuru and Madale which were admitted as Exhibit R-3 and Exhibit P-4. Both of the documents show that the Respondent was a witness and has nothing to do with the acquisition or development of the house at Tabata Kisukuru.

The Respondent's counsel cited the case of **Yesse Mrisho v. Samia Abdul,** Civil Appeal No. 147 of 2016 to buttress his contention that contribution of each party to the marriage need to be considered in the division of matrimonial properties. He went on to point out that the Respondent testified

that she had not contributed to acquisition of neither the house at Kisukuru nor the one at Madale for both of which she tendered sale agreements to which she was a witness. He referred this court to the case of **Paulina d/o Nereson v. Zawadi s/o Timoth**, PC Matrimonial Appeal No. 1 of 2019 in which this court dealt with an akin situation whereby an appellant tendered a photocopy of a sale agreement for a purchase of the land and later it found that in the absence of evidence of acquisition of property it would be difficult to find that the properties were acquired by joint efforts, thus, are not subject to division.

Arguing in support of the fourth and last ground of appeal, the Appellant's counsel stated that it is a settled principle of law that a judge or magistrate has to evaluate the whole evidence tendered before court before reaching a decision as was held in **James Bulow and others v. R** (1981) T. L. R 283 by the Court of Appeal. He went on to state that during trial some exhibits were tendered concerning the acquisition of the plot at Madale and at Kisukuru, yet the judgment did no show the exhibits evaluation. The said exhibits concerned the acquisition of the properties and not by the Respondent.

Counsel went on to argue that the Appellant denied all allegations from the Respondent during trial as regards her contribution towards the acquisition of the properties listed in paragraph 9 of the Petition stating some of them do not even exist, case in point being a house in Old Moshi and a grocery at Maji Chumvi. He argued that the trial magistrate summarized the testimonies and exhibits without evaluating them in the judgment. In his conclusion the Appellant's counsel prayed for the Appeal to be allowed by granting all the prayers in the memorandum of appeal.

The Respondent's submission was drawn and filed by Mr. Engelbert Boniphace who commenced his submission by pointing out what he referred to as an illegality that he found pertinent for this court to address before proceeding with the appeal. He submitted that the said illegality is the non-fulfilment of the requirements of section 80(2) of the LMA which provides for appeals to the High Court to be filed in the Magistrate's Court within 45 days. Furthermore, counsel cited Rule 37(1) of the Law of Marriage (Matrimonial Proceedings) Rules G.N. No. 136 of 1971 which provides that an appeal has to be filed in the subordinate court which made or passed the decision, order or decree appealed against. He argued that since those provisions are coached in mandatory terms then they cannot be avoided

thus, an appeal filed directly to the High Court cannot be left to stand for it then touches the jurisdiction of the court. He went on to cite the case of **Tanzania Revenue Authority v. Tango Transport Company Limited**, Civil Appeal No. 84 of 2009 as cited by the Court of Appeal in the case of **Said Mohamed Said v. Muhusin Amri and Another,** Civil Appeal No 110 of 2020 and section 53(2) of the Interpretation of Laws Act, CAP 1 R.E 2019 which provides that where in law the word 'shall' is used then that function has to be performed. Mr. Boniphace concluded by stating that there is no proof to ascertain the fact, the Appellant had in deed filed the memorandum appeal in the court which passed the decision; therefore, this appeal is improperly before this court.

Mr. Boniphace then shifted to the raised grounds of appeal as raised by the Appellant commencing with the first one. He submitted that on page 16 through to 17 of the trial court's judgment the court established that the relationship between the Appellant and Respondent constituted a presumption of marriage. Counsel submitted further that the trial magistrate did not conclude that the two were married in the customary form, but by concluding that there existed a presumption of marriage under section 160

of the LMA the magistrate had concluded on the first issue that was framed and went on to declare that the said relationship had ended.

Mr. Boniphace then went on to state that the case of **Marcel Kichumisa v. Mary Venant Kabirigi***(supra)* and that of **Gabriel John Musa v. Voster Kimari** *(supra)* cited by the Appellant's counsel as well as the others that he referred to are distinguishable as they are about situations where division of matrimonial assets was ordered without issuing orders for separation or divorce and concluded that the first ground of appeal is meritless.

On the second ground of appeal about the equal distribution of the properties based on assumptions and speculations. Counsel stated that the said assumptions and speculations have not been demonstrated by the Appellant's counsel and prayed that this court takes judicial notice of the same. He then went on to submit that in the trail court it was undisputed that the two lived together for more than 20 years and in that time, they acquired property; among other things they purchased land from one mama Mnyungile and to that effect she tendered payment receipts which the trial court admitted as Exhibit P3.

Mr. Boniphace went on to state that the records show no cross examination was made on the receipts and as far as her making the payments for the

sufficient to prove she has contributed to the jointly acquired properties mentioning the sale agreement and receipts of the Tabata properly that were never disputed by the Appellant who only said she the Respondent was a mere witness but did not dispute the installments she paid. Citing the case of **Nyerere Nyague v. Republic,** Criminal Appeal No. 67 of 2010(2012) TZCA 103 (21 May 2012) where it was held that a party who fails to cross examine a witness on a certain matter is deemed to have accepted and is estopped from expecting the trial court to disbelieve what the witness said counsel argued that it is an undisputed fact that the Tabata plot was jointly acquired thus, subject to division as matrimonial property. He went on to state that the Respondent testified and the same can be seen in the trial court's judgement that the two got properties and some of those properties are in their names because they were bought in happy times.

And, because the Appellant never denied the fact that the Respondent was working and was earning a salary thus contributed to purchase of the properties but instead the Appellant testified that the said properties do not exist, in a way hiding them and that is what caused the trial court to divide the properties in the manner it did. If the testimony is that the properties do not exist counsel argued the essence of appealing on the ground that the

Respondent has not proved the existence of those properties. He argued that the law requires one to prove contribution and the Respondent did as much, thus if the Appellants contention that they do not exist is such then the non – existent properties be declared of the Respondent distinguishing the **Mwajuma Omari Lusizi v. Seleman Kongembata** *(supra)* case that the Appellant's counsel cited is distinguishable as in the said case the properties were not pleaded nor mentioned in the defense while in the matter at hand the properties are pleaded and the Respondent testified that they are in the Appellant's names and during trial the Appellant merely stated they do not exist. Counsel reiterated the prayer that if they do not exist then they be declared lawful properties of the Respondent. He then prayed for this court not to allow the appeal for it lacks merit.

Submitting on the third ground of appeal which is premised on the aversion that the trial court erred in law and in fact by ordering division of jointly acquired properties without specifying the properties which were acquired jointly and how the Respondent contributed to their acquisition. Counsel argued that the Respondent testified on the properties as can be seen on page 6 of the trial court's judgment. This testimony was not disputed by the Appellant nor cross examined. Counsel referred to the **Nyerere Nyague v.**

Republic *(supra)* and argued that the said properties are subject to distribution. In addition, counsel argued that since the Appellant did not dispute that the Respondent was employed and earning a salary; he never provided evidence that the said properties do not belong to him or told the court which properties were owned separately then the two having lived together for more than 20 years it is not possible that the Respondent never contributed to acquisition of property. According to counsel this is what led the trial court to order equal division of the properties.

On the last ground of appeal, the Respondent's advocate began his submission by stating that the ground is a repetition of the first and second grounds of appeal thus, sought to submit only the issues not submitted in the first and second grounds. Counsel concurred with the Appellant's counsel that it is the duty of the trial court to evaluate the entire evidence as a whole before reaching at a verdict and conceded to the **James Bulow and others v. R** *(supra)*case the Appellant's counsel cited. He then went on to state that it should be noted that in evaluating the entire evidence the trial magistrate passes a decision basing on who has presented and proved his case on the balance of probability as observed in **Hemed Said v. Mohamed Mbilu** (1984) T.L.R 113 that the one whose evidence is heavier must win. Counsel

went on to argue that the Respondent managed to advance evidence and the record is clear the Appellant did not contest that the Respondent contributed to the purchase of the properties listed on paragraph 9 of the Petition in his pleadings or in this appeal. He concluded his submission by stating that the Respondent has managed to prove her case on the balance of convenience and the judgment and orders of the trail magistrate are viable and reasonable for both parties, thus the appeal be disallowed as it lacks merit.

In his rejoinder counsel for Appellant first dealt with the objection raised by counsel for the Respondent that the appeal is in contravention of section 80(2) of the LMA by arguing the same is misconceived stating that this appeal was filed in the district court of Kinondoni on 20 March, 2023 and not directly to the High Court as wrongly submitted by counsel. He then prayed for the objection to be disregarded for being misconceived.

On the first ground of appeal counsel argued that the Respondent has not shown anywhere in the judgment of the trial court where a decree of divorce or separation was issued for the trial to order division of the properties as emphasized in the **Gabriel John Musa v. Voster Kimari** *(supra)* case. On the contention raised in the second and third grounds of appeal that the

Respondent was not cross-examined, counsel argued that is not true since on 16 November,2018 the Respondent was cross examined on the receipts and her contribution to the properties listed in paragraph 9 of the Petition as can be seen in page 27 through to 28 of the typed proceedings of the trial court.

Regarding proof that the properties listed do not exist counsel provided that the evidence on the same is on pages 63, 70 through to 72 of the typed proceedings which show the Respondent also failed to produce material evidence on her contribution to the properties listed in paragraph 9. As regards to the respondent's employment status counsel stated that the Respondent had failed to submit how the Respondent's salaries were used in the acquisition of the matrimonial assets which the court ordered equal division.

On the fourth and last ground counsel submitted that the Respondent's counsel did not address to the issue as to whether the trial court did evaluate the evidence adduced by the Appellant, instead he submitted the evidence adduced by the Respondent. Thus, this ground according to him is uncontested. He ended his rejoinder by praying that the appeal be allowed and all prayers in the memorandum of appeal be granted.

Having considered the parties opposing submissions in support and against the appeal it is now opportune to determine whether the appeal is meritorious and if

so what be the way forward. Prior to doing so, I am expected to first deal with the preliminary objection raised by the Respondent's advocate albeit being raised in the submission, for the same touches on the jurisdiction of this court as regards the appeal.

The Respondent's counsel contends that this appeal has been brought to this court in contravention of section 80 (2) of the LMA as well as Rule 37 of the Law of Marriage (Matrimonial Proceedings) Rules, both of which require that an appeal be lodged in the subordinate court and not straight in this court. For clarity section 80(2) of the LMA provides:

> *'An appeal to the district court or to the High Court shall be filed, respectively, in the primary court or in the district court within forty-five days of the decision or order against which the appeal is brought.'*

For convenience I also reproduce Rule 37(1) and (3) hereunder: -

> *'(1) An appeal to the High Court under section 80 of the Act* ***shall be commenced by a memorandum of appeal filed in the subordinate court which made or passed the decision****, order, or decree appealed against. (2)….(3) Upon receipt of the memorandum of appeal the subordinate court* ***shall transmit to the High Court the memorandum of appeal together with a complete record of the matrimonial proceeding to which the appeal relates****.' (emphasis supplied)*

In essence the above provisions require that the Appellant should have filed his Memorandum of Appeal in the District Court within 45 days from that date of the decision he is seeking to appeal against. A glance at the record depicts that the judgment was passed on 09 March, 2023 and on 20 March, 2023 the Appellant filed his Memorandum of Appeal at the District Court of Kinondoni at Kinondoni. Which means the Appellant has not acted in contravention of section 80 (2) of the LMA and or Rule 37 of the Law of Marriage (Matrimonial Proceedings) Rules. This makes the objection meritless and as a result I overrule the same and continue to determine the appeal for no law or procedure has been violated.

Before I proceed to the grounds of appeal it would also be proper to state that I am alive to the principle that the first appellate court is obliged to re-evaluate the evidence adduced in the trail court and this has been the subject of many decisions see for instance; **Hassan Mohammed Mfaume v. Republic,** (1981) T.L.R 167 and **Rashid Abiki Nguwa v. Ramadhan Hassan Kuteya and Another,** Civil Appeal No. 421 of 2021. See also **Faki Said Mtanda v. Republic**, Criminal Application No.249 of 2014 (Unreported) where the Court of Appeal cited the decision of then East African Court of Appeal in the case of

R.D.Pandya v. Republic [1957]EA 336 quoting the same where it was stated that:

> *'It is a salutary principle of law that a first appeal is in the form re- hearing where the court is duty bound to re-evaluate the entire evidence on record by reading together and subjecting the same to a critical scrutiny and if warranted arrive to its own conclusion'*

This being a first appeal, I am therefore mandated to go back to the evidence that is available on the record and re-evaluate the same and arrive at a conclusion if need be.

On the first ground of appeal, which I must admit am inclined to agree with the Respondent's counsel that this ground is somewhat repeated as the fourth ground of appeal. In any case, the learned trial court magistrate on page 4 of the judgment stated that there were five issues that were framed for the court's determination. The first issue was whether the marriage between the parties has been broken down irreparably. As pointed out by the Appellant's counsel, on page 16 of the said judgment the learned trial magistrate observed:

> *'Upon going through the evidence both the petition(sic) and the respondent testified that, they had no formal marriage but they live under customary marriage in one roof for more than 20 years and they were also blessed with 3 children.'*

However, the learned magistrate then asked the question as to whether the relationship between the Petitioner and the Respondent qualified the criteria of a rebuttable presumption of marriage under the section 160 of the LMA. The learned magistrate then went on to state:

> *'Therefore, in absence of proof of marriage by tendering marriage certificate the status of the union of the two parties falls under the presumption of marriage the same (sic) when the relationship turns to be sour under no circumstances can it be said by the court to have been irreparably broken down but the parties can seek other reliefs in considering that, their relationship which they live and cohabit has broken down.'*

Thereafter, the learned trial magistrate went on to deal with the remaining four issues that had been framed and after the same she observed:

> *'Having disposed off this Petition this court do hereby orders as follows: 1. Declared the relationship which the petitioner and the respondent live together and cohabit has ended. 2. A decree of divorce cannot be granted where there is no valid marriage between the parties. 3. The petitioner will be entitled to 50% and the Respondent will be entitled 50% share of the jointly acquired properties. 4...'*

The Appellant's counsel is arguing that the trial court erred for it went on to grant subsequent reliefs by way of distribution of matrimonial properties while it had not granted any decree of divorce or separation between the parties. The

Respondent's counsel is contending the trial court magistrate did no wrong. Section 160 (1) of the LMA provides as follows:

> *'Where it is proved that a man and woman have lived together for two years or more, in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married.'*

Having gone through the trial court's record its undisputed that the parties lived together. However, it is not clear that they considered themselves as married and if so in what form. On page 27 of the typed proceedings the Respondent is quoted to have stated:

> *'The Respondent is my husband we lived under one roof we did not get married. Yes, we contracted a customary marriage. Our parents contracted us a marriage. I do not know what tribe the marriage was contracted. I do not have proof that we contracted a marriage'*

In my considered opinion when one scrutinizes the Petition for divorce and the ensuing testimony of the Respondent during trial it can clearly be seen she went to court pleading she has a marriage in the customary form and that is what she was seeking a decree of divorce for. When one goes through the judgment of the trial court it seems the learned trial magistrate realizing that the two have lived together in a relationship which is not a marriage resolved that because

there was no formal marriage as pleaded and testified by the Appellant went on to conclude that the parties' "union" falls under the presumption of marriage. The trial court then went on to declare the relationship as ended then refused to grant a decree of divorce due to the absence of a marriage. All the same the learned trial magistrate went ahead to divide the properties to the parties.

While section 160 of the LMA was meant to carter for situations needing a presumption of marriage where a couple has lived together for two or more years, however, the said couple needs to have acquired the status of husband and wife in addition to having lived together for the stated time which in my opinion both are matters that need to be proved.

Furthermore, section 160 of the LMA was not intended to be an afterthought or a 'on second thought' provision for situations where a party has failed to prove a marriage. It is not meant for persons who cannot prove that they were or were not married under customary law as the Respondent has pleaded and testified. It is in my opinion meant to cater for situations where two people who otherwise have capacity to marry each other have lived together for two or more years and within such time have acquired the status of being husband and wife; and being that the presumption is a rebuttable one then there would be need for evidence

in that regard in order for the court to satisfy itself of the existence or otherwise of the presumption.

The trial court albeit concluding the absence of proof of marriage went on to state the relationship falls under presumption of marriage.

Being that the issue of presumption has not been pleaded and the court not having primarily satisfied itself to the whether in fact the two were living under presumption of marriage and if so whether the same is rebuttable or otherwise. It is only after doing that, that a court can proceed to offer the reliefs in section 160 (2) of the LMA.

The Court of Appeal in **Gabriel John Musa v. Voster Kimati** *(supra)* observed as follows:

> *Following the above provisions, it is clear that* ***the court is empowered to make orders for division of matrimonial assets subsequent to granting of a decree of separation or divorce. Therefore, in the case at hand, it was improper for the trial court to frame and determine only two issues of (i) division of matrimonial property and (ii) the reliefs, while leaving apart a substantive issue of whether the presumption of marriage between the parties was rebuttable or not and whether their relationship was irreparably broken down or otherwise.'***

The above observation provides clarity that a court has the powers to make orders for division of matrimonial assets subsequent to granting of a decree of separation or divorce. Unlike in the **Gabriel John Musa v. Voster Kimati** *(supra) case* in the matter before me the trail court did frame an issue as regards the parties' status to the effect that whether the marriage between the parties has broken down irreparably, however, the learned trial magistrate never went ahead to establish whether the presumption of marriage which he had concluded the parties were living under without ascertaining the ingredients in section 160 (1) was rebuttable or otherwise. In the **Gabriel John Musa v. Voster Kimati** *(supra)* case the court went on to state:

> *At any rate, even if both parties' pleadings were not disputing that they were cohabiting as husband and wife,* ***the trial court was still required to satisfy itself if the said presumption was rebuttable or not, grant decree of separation or divorce then award those subsequent reliefs. Unfortunately, in this case, that was not done.*** (emphasis supplied)

Likewise, the trial court did not grant any decree of either divorce or separation stating that the same cannot be granted in the absence of a formal marriage; it merely declared the relationship to have ended. As already stated, the Respondent in the Petition had pleaded and testified to having a marriage in the customary form.

It is an is established principle that the parties are bound by their pleadings and a court's assessment of the matter before it should be confined to that principle of law as was held in the cases of **Joao Oliveira and Another v. Africa Limited and Another,** Civil Appeal No 186 of 2020, **Barclays Bank (T) Ltd v. Jacob Muro,** Civil Appeal No. 357 of 2019 and **James Funke Gwagilo v. Attorney General** [2004] T.L.R. 88.

The trial court should have confined itself to the reliefs prayed for; that is divorce from the parties' customary marriage and not go into pigeonholing the couple's marriage into section 160(1) of the LMA which was neither pleaded or testified. See the Court of Appeal of Tanzania decision in **Melchiades John Mwenda v Gizelle Mbaga (Administratrix of the Estate of John Japhet Mbaga - Deceased) & 2 Others**, Civil Appeal No. 57 of 2018 where it held that courts will only grant reliefs prayed for and **Salim Said Mtomekela v. Mohamed Abdallah Mohamed**, Civil Appeal No. 149 of 2019, **Barclays Bank (T) LTD v. Jacob Muro,** Civil Appeal No. 357 of 2019 among many others.

Having discussed as above, I find that the complaints of the Appellant in this court have merit and this ground alone suffices to dispose the Appeal.

Consequently, the judgment and orders of the trial court are quashed and set aside. This being a matrimonial matter I make no orders as to costs.

It is so ordered.

A.A. OMARI

JUDGE

27/11/2023

Judgment delivered and dated 27th day of November, 2023 via Virtual Court in the presence of Messrs. Hudson Mchau and Engelbart Boniphace, advocates for the Appellant and Respondent respectively, the Respondent and Ms. Theresia Sheshe-RMA.

A.A. OMARI

JUDGE

27/11/2023