

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(TEMEKE HIGH COURT SUB-REGISTRY)**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**CIVIL APPEAL NO.45 OF 2023**

*(originating from the judgment and decree of the District Court of Temeke at One Stop Judicial Centre in Matrimonial Cause No. 204/2022 before Hon. Sanga - SRM)*

**CATHERINE ANTONY .....APPELLANT**

**VERSUS**

**JACKSON WILLIAM SANGA .....RESPONDENT**

**JUDGEMENT**

**5/12/2023 & 22/12/2023**

**S.S. SARWATT, J.**

Catherine Antony and Jackson William Sanga, the appellant and the respondent respectively, were husband and wife from 1997 when they contracted a christian marriage. Their marriage ended on 16<sup>th</sup> May 2023 when the District Court of Temeke at One Stop Judicial Centre (the trial Court) dissolved it. Following the divorce, the matrimonial asset, a house

located at Tabata, was divided among them by the trial Court.

It is on record that the parties started living together in 1989, and in 1997, they contracted a christian marriage. Their marriage was blessed with two issues. The happy union turned sour when the appellant discovered the respondent was not faithful. He had love affairs with different women to the extent of having a child out of wedlock. This made the appellant petition for divorce and division of their matrimonial house. After a full trial, a divorce decree was granted by the trial Court. Their matrimonial house was divided, in which the respondent was given 80%, and the appellant got 20%. It is the division of the said matrimonial asset that triggered this appeal. The appellant is challenging the decision of the trial court with six grounds of appeal as follows;

*1. The trial court erred in Law and, in fact, decided that the appellant's contribution to the matrimonial house comes from performing domestic duties while there is evidence that the appellant contributed as she was employed at The National Milling Corporation and later, she was self-employed as a businesswoman.*

*2. The trial court erred in Law and, in fact, when it decided that the respondent had contributed more than the appellant*

*in constructing the house.*

*3. The trial court erred in Law and fact by deciding that the respondent's contribution to the improvement of the house was higher compared to the appellant's without considering that it's the respondent's cruel behavior and adulterous act that forced the appellant and the children to move out of the house thus prevented her from improving the house.*

*4. The trial court erred in Law and fact by failing to consider the evidence that when the respondent improved the house during their separation, the appellant was responsible for providing their children's basic needs.*

*5. The trial Court misdirected itself on the laws guiding the division of matrimonial assets during and after issuing the divorce decree.*

*6. The trial court erred in Law and fact for failing to evaluate all the evidence, thus reaching the decision favoring the respondent more than the appellant.*

The appellant further prayed for this Court to allow the appeal and quash the trial court's decision with cost and order equal division of matrimonial house and other reliefs this Court deemed fit and just to grant.

At the hearing, the appellant was represented by Lucas Charles Kamanija, learned advocate, and Kapufi Yusuph Ally, Advocate, appeared for the

respondent. Both counsels argued the appeal orally.

Supporting the appeal on the first and the second grounds, the learned counsel for the appellant submitted that it is on record that the house in issue was built from 1994 to 1995. The trial court erred by deciding that the appellant contributed to building the house by only performing domestic duties, while the evidence on record shows that from 1988 to 1991, the appellant was an employee of The National Milling Corporation(NMC) as an accountant. The appellant's counsel added, there is no evidence showing that the appellant was a housewife.

The counsel further submitted that it is also on record that in 1991, when the appellant received her terminal benefits, she gave them to the respondent to buy a plot of land used to build the house. She also purchased some iron sheets and blocks while the respondent was using his salary for alcohol. The counsel stated further, according to the evidence of SM2 the appellant contributed a total of Tsh. 300,000/= to buy iron sheets hence, the respondent and the appellant jointly participated in building the house and thus deserve equal shares.

On the third and the fourth grounds of appeal, it is the submission of the

appellant's counsel that it is because of the unfaithful and brutal habits of the respondent, the appellant, and the children left the matrimonial home, and this is why she was not able to do any improvement on the said house. He added, the respondent produced at the trial Court fabricated receipts showing he had renovated the house. It is the appellant counsel's prayer that this Court should give the said receipts zero weight. The counsel further argued that the appellant provided their children food, shelter, and education during their misunderstanding. Had the Court considered that it would not have reached the unfair division of the matrimonial property.

Regarding the 5<sup>th</sup> ground of appeal, the counsel for the appellant submitted that the trial Court erred in interpreting the Law on the division of matrimonial assets. He insisted since the appellant had contributed much to the acquisition of the house, the trial Court was to be guided by section 114(2) of The Law of Marriage Act (the Law), instead of section 114(1) of the Law by giving equal asset division to both parties. To cement his submission, he cited the cases of **Mwajuma Mohamed Njopeka V Juma Said Mkorogoro** Pc Civil no 6/2001, HC DSM, **Bi Hawa Mohamed vs Ally Seif** (1983) TLR 32, **Hussein Mohamed Shela Vs Neema Ally**

**Ugomba** Pc. Civil appeal no 144, HC DSM, **Seif Ally Makamula vs Happiness Xavier Asmani** Pc Civil Appeal no 20/2023 HC DSM and the **Mohamed Abdallah vs Halima Lisange** (1988) TLR 197.

On the 6th ground of appeal, the counsel for the appellant submitted that the trial Court failed to equally evaluate the evidence of both sides as it was unable to consider the contribution of the appellant on buying the land as well as building the house since she was an employee and later on self-employed. Hence, he prayed for this Court to re-evaluate the evidence tendered in terms of section 37(3) (b) of the Magistrates Court Act (Cap 11 R.E 2019).

The respondent's counsel countered the submission of the counsel for the appellant by stating that the trial Court distributed the said matrimonial asset based on the contribution given by each party. The counsel further submitted that the evidence on record shows that the land on which the matrimonial house was constructed had been purchased by the respondent alone without assistance from the appellant. Furthermore, the counsel for the respondent submitted that the appellant failed to establish the quantity of building materials such as cement, blocks and iron sheets she had contributed. He thus prayed for the appeal to be dismissed.

Having carefully considered grounds of appeal, evidence on record, and submissions of counsels, the issue for determination is whether this appeal has merits.

It is not in dispute that the house in question is a matrimonial property. What is in dispute is the extent of the division of the house as ordered by the trial Court. It is categorically settled that the division of matrimonial assets is guided by section 114 of the Law, which provides that properties subject to the division are those obtained during the time of marriage or were substantially improved during marriage by the joint efforts of the married couple. When dividing the same, the Law under section 114(2) directs the Court on which factors to look upon while effecting the division.

That is, in dividing matrimonial assets, among other things, the Court must consider the extent of each couple's contributions towards acquiring that asset. In the present appeal, the appellant is challenging the decision of the trial court on two folds: firstly, assessment of her contribution basing performing domestic activities only, and secondly, failure to consider that it is the respondent's behaviors that forced her and the children to leave the matrimonial home thus denied her the opportunity of developing it.

It is on record, in as far as the assessment of the contribution of each party towards acquiring the said matrimonial asset, that the trial Court, in its judgment, observed that the appellant contributed by performing domestic activities and buying some cement and iron sheets. Based on those findings, it is clear that the trial court did not assess the appellant's contribution as performing domestic duties alone, as argued by the learned counsel for the appellant. Thus, this ground of appeal fails.

At this juncture, the question left behind for this Court to determine is whether the trial court was fair in giving the appellant 20% of the matrimonial asset and the respondent 80%, especially after deciding the contribution made by each party.

The trial Court record shows that the appellant and the respondent separated in 2002, more than 20 years. Since then, the respondent has made some significant improvements to the said house. The Law under section 114(2) reads;

*In exercising the power conferred by subsection (1), the Court shall have regards;*

*a. to the customs of the community to which the parties belong*



***b. to the extent of the contributions made by each party in money, property, or work towards the acquiring of the assets,***

*c. to any debts owing by either party which were contracted for their joint benefit, and to the needs of the infant children, if any of the marriage and subjects to that consideration, shall incline towards equality in the division (emphasis is mine).*

From the above-quoted provision of the Law, it is clear that the division of matrimonial assets, among other things, depends on what married couple have contributed towards its acquisition. This is the Law's underlying principle. (see the case **of Hilda Rwejuna vs. Philbert Mlaki**, Matrimonial Cause no. 5 of 2018 HCT at Bukoba). Since the appellant did not get an opportunity to contribute to the improvements of the house, it goes without saying that the trial Court was correct in not giving her an equal share of the matrimonial property.

Considering the fact that the appellant, despite contributing in performing domestic activities, also contributed in monetary form during the construction of the house and considering further that the respondent substantially improved the house during the period of their separation

without any contribution from the appellant, I am of the view that the appellant is entitled to 30% and the respondent 70% of the matrimonial house. Therefore, the appeal succeeds to that extent. I make no order as to costs.

It is so ordered.

Right of appeal explained to the parties.



  
**S.S. SARWATT**

**JUDGE**

**22/12/2023**