

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE –STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 27 OF 2023

ESTHER IGNAS DAUDI APPELLANT
VERSUS

GERALD JOHN LWAMBAGAZA RESPONDENT

CONSENT JUDGMENT

05th March, 2024 & 15th March, 2024

BARTHY, J:-

This consent judgment arises from a deed of settlement signed and registered by both parties on the 14th of March, 2024. It stems from a lawsuit initiated by the appellant against the respondent before this court, wherein the appellant sought several orders;

- a) Allowing the appeal.
- b) Dividing the matrimonial properties equally, with each party receiving 50%.
- c) Directing the respondent to bear the costs of the suit.
- d) Seeking any other reliefs that this Court may deem appropriate.



In this lawsuit, the appellant petitioned before the district court of Kinondoni, seeking a declaratory order stating that their marriage was irreparably broken down. Consequently, the appellant asked the court to divide the proceeds of the matrimonial house equally between the spouses after its sale, to divide three motor vehicles, and to award costs of the suit, among other reliefs deemed fit by the court.

Upon hearing the matter, the trial court decreed that the marriage between the spouses had indeed broken down irreparably. The court proceeded to distribute the jointly acquired assets and ordered the sale of the house in Kimara B. The proceeds were to be distributed with a 25% share to the appellant and a 75% share to the respondent. The Bajaj tricycle was to be divided equally between the parties, with no order as to the costs of the suit.

The appellant, dissatisfied with the trial court's decision, appealed to this court on five grounds of appeal. However, during the hearing of the appeal, the parties, by mutual consent, signed a deed of settlement, effectively resolving the dispute. In accordance with Order XXIII, Rule 3 of the Civil Procedure Code Cap 33 R.E 2022, as amended by G.N. 381 of 2021, this court produced a consent judgment.

Therefore, based on the deed of settlement duly signed by the parties and filed in this court, with the intention of fully settling the



matter, this court records the suit as settled, in accordance with the terms and conditions agreed upon in the deed of settlement as follows;

1. Both parties have agreed that, concerning the costs incurred in the house located at Kiomboi Singida, which is owned by the Appellant's mother, the Respondent shall surrender its contributions to the Appellant and hence shall not claim any share thereof.
2. Both parties agreed that, regarding the Vehicle Toyota RAV 4 T 670 DGK the Respondent will pay the purchases price of TZS Twenty Three Million (Tshs. 23,000,000/=) to the owner of the Vehicle and surrender sale agreement and other necessary documents if any to the Appellant. The remains motor Vehicle named RAV 4-T 885 DLH, IST- T820 DMY Appellant hence shall not claim any share thereto from Respondent.
3. Both parties agreed that, regarding the Tricycle worth 7,000,000/= whereas the court ordered for it to be equally divided to the parties and compensation of the costs for Appellant's education which were in the grounds of appeal the Respondent shall waive its contribution and shall not claim any share whatsoever.



4. Both parties agreed that, regarding the un-surveyed plots at Kinyerezi and Chalinze since those plots were invaded by other people, both parties agreed to surrender those plots and disregard them to the division of matrimonial properties. Hence un-surveyed plots at Kigamboni Mwasonga and Bukoba which was invaded the respondent may take an action to make sure those properties (plots) are returned to his ownership and the appellant will not claim any share whatsoever.

5. That, both parties agreed that, the Respondent will in regarding to the division of matrimonial house located at Kimara B Saranga offering Tanzania Shilling Thirty Million (Tshs. 30,000,000/=) to the Appellant and the Appellant agreed to receive the amount as her share to the division of those properties.

6. That, both parties agreed that, the above mentioned Thirty Million will be paid to the Appellant within nine months from 1st April, 2024 into three installments of Ten Million each (Tshs. 10,000,000/=) commencing from 1st April, 2024.

7. That both parties agreed that, the above mentioned three instalments shall be paid as follows, the first installment shall be paid on or before 1st July, 2024, second installment shall be paid



on or before 1st October, 2024, third installment shall be paid on or before 30th December, 2024.

8. The parties further agreed that, upon filing of this deed before the court the Appellant shall surrender all keys facilitating entrance and waive its access to the house located at Kimara B Saranga to the Respondent, and the Respondent shall have access to the above mentioned house but not to change ownership until the full installments has paid.

9. The parties have agreed that, this settlement is a full and final settlement of all claims concerning division of matrimonial properties subject to payments as per the agreed terms above.

10. That the parties further agreed that, upon payment of the amount mentioned in clause 1 above, parties shall have no claims against each other.

11. The amount mentioned amount in clause 1 above shall be paid by transfer money to the Appellant's **Postal Bank Account No. 170209014738 Account Name VIOLETH IGNAS**, which is the bank account of **ESTHER IGNAS DAUDI**, by the Respondent as per the installments within nine months (9) commencing from the 1st April, 2024 up to 30 December, 2024.



12. That in any installment paid the parties will make sure that the notice and photocopies of payments receipts are provided to their advocates.

13. That upon full payment of the amount mentioned in clause 1 above this matter (Dispute) shall be settled in full.

14. **NEITHER PART TO THIS DEED** shall not commence any other action against each other based on the same facts as those relevant to this matter (Disputes):

15. That both parties have read and understood the terms of this deed.

16. This settlement agreement be recorded as a judgment and decree of the court.

With this consent judgment, the matter is marked as settled based on the terms agreed upon by the parties.

It is so ordered.

Dated at Dar es Salaam this 15th day of March, 2024.


G. N. BARTHY



Delivered in the presence of the Appellant in person, Ms. Milca Misanya, holding brief of Mr. Geoffrey Luyanji Learned Advocate for the Appellant, Mr. Charles Ndaki Learned Advocate for the Respondent and in the absence of the Respondent in person.