

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MUSOMA SUB-REGISTRY**

**AT MUSOMA**

**PC CIVIL APPEAL NO. 1840 OF 2024**

**BETWEEN**

**PHILLIP NYANCHINI MOGENDI.....APPELLANT**

**AND**

**MONICA ANICET MAGUTU..... RESPONDENT**

**JUDGMENT OF THE COURT**

*14/05/2024 & 29/05/2024*

**Kafanabo, J.:**

This is a second matrimonial Appeal arising from a decision of the District Court of Tarime in Matrimonial Appeal No. 03 of 2023, which also originated from Matrimonial Cause No. 66/2022 of the Tarime Urban Primary Court.

The parties herein contracted a civil marriage on 26<sup>th</sup> April 2014 in the Tarime District and have been blessed with two issues of the marriage. The relationship between the parties herein was calm until sometime in 2022 when the marriage turned sour and the Respondent decided to petition for divorce in the Tarime Urban Primary Court (hereinafter the 'trial court') vide Matrimonial Cause No. 66/2023. The reasons for divorce as advanced by the Respondent were, one, the Appellant married another woman by the name of Hawa Haji Kabala whilst their marriage was subsisting. Two, the Appellant was not providing maintenance for the two issues of the marriage. Three,

the Appellant has been cheating on the Respondent. The fourth reason that made the Respondent petition for divorce will not be reproduced here for purposes of protecting the privacy, image, and dignity of the parties.

The matter was heard *ex parte* by the trial court because the Appellant failed to enter an appearance despite being properly served. The trial court was satisfied that the parties herein were lawfully married, but the marriage between them had irreparably broken down and thus proceeded to grant divorce. The trial court also ordered the Appellant to pay the Respondent TZS 500,000/= monthly as maintenance for the issues of the marriage whose custody was given to the Respondent. The trial court also distributed matrimonial properties to the parties as it deemed appropriate under the circumstances of the case.

The Appellant was dissatisfied with the decision of the trial court, and thus preferred an appeal to the District Court of Tarime marshaling four grounds of appeal as follows:

- 1. That the trial court erred in law to grant a divorce based on incurably defective Form No. 3 from the Marriage Conciliation Board dated 26/08/2022.*
- 2. That the trial court erred in law and in fact for ordering the Appellant to pay TZS 500,000/= per month as maintenance of his child(sic) without considering the earnings of the Appellant per month.*
- 3. That the trial court erred in law and fact to award the Bar for 100% to the respondent which located(sic) at Bunju, Kinondoni District, whose contribution was nothing towards its acquisition.*

*4. That the trial court erred in law to grant divorce knowingly(sic) that the coram(sic) of Marriage Conciliation Board exceeded the number of members required by law.*

During the hearing of the appeal before the District Court, the Appellant dropped the 2<sup>nd</sup> ground of appeal and argued the other remaining grounds of appeal. The appeal was duly heard by the District Court and at the end, on 27<sup>th</sup> December 2023, the Appeal was dismissed for want of merits.

The Appellant, undeterred, appealed to this court advancing the following grounds of appeal:

- 1. That first appellate court erred in law for holding that the trial court was right to grant divorce basing(sic) on incurably defective Form No. 3 from the marriage conciliation board dated 26/08/2023.*
- 2. That the first appellate court erred in law and fact for(sic) holding that, the trial court was right to award the Bar for 100% to the respondent which located(sic) at Bunju, Kinondoni District, whose contribution was nothing towards its acquisition.*
- 3. That the first appellate court grossly erred in law for(sic) holding that the coram(sic) of the marriage conciliation board did not exceed the number of members required by law.*

During the hearing of the Appeal, both parties had the services of the learned advocates. Mr. Mdimi Thomas Ilanga, Advocate represented the Appellant, and Mr. Juma David Mwita, Advocate represented the Respondent. The Appellant's counsel argued the 1<sup>st</sup> ground of appeal, then

the third ground of appeal as they relate with the first ground, and finalized his submissions with the 2<sup>nd</sup> ground of appeal.

Commencing with the first ground of appeal, Mr. Ilanga submitted that section 101 of the **Law of Marriage Act, Cap. 29 R.E. 2019** (hereinafter the '**LMA**'), provides for prior reference of the matrimonial dispute to the Marriage Conciliation Board, read together with section 104(5) of the LMA. The later section is about the Marriage Conciliation Board issuing a certificate and its contents should be proper, otherwise the decision of the Board will be invalid. He further submitted that the relevant certificate should be issued according to the Law.

Moreover, the learned counsel for the Appellant submitted that regulation 9(2) of the **Marriage Conciliation Board (Procedure) Regulations GN. 240/1971** provides for the issuance of the certificate of the decision of the Board in the prescribed form. However, he submitted, that the certificate issued by the Nyandoto Marriage Conciliation Board (hereinafter 'the Board'), dated 26/08/2022 is not proper. The findings of the Board as indicated in the certificate are one-sided, based on the Respondent's side only. There is no finding on the part of the Appellant, the certificate does not constitute what the Appellant said before the Board.

It was also submitted that the said Form No. 03 has to be signed by either a chairman, vice-chairman, or a member of the Board. In the present case, the form was signed by one person, but his title is unknown because he did not indicate his position. The learned advocate further submitted that the manner in which the said form was prepared is improper and unlawful

as it violates Rule 9(2) of the **Marriage Conciliation Board (Procedure) Regulations** (supra). The case of **Hassani Ally Sandali vs Asha Ally (Civil Appeal 246 of 2019) [2020] TZCA 14** (24 February 2020) was cited supporting the submission. It was further submitted that the decision of the trial court that granted the divorce is also incompetent as it arises from a defective certificate of the Board.

As regards the 3<sup>rd</sup> ground of appeal, the Appellant's counsel submitted that the quorum of the Nyandoto Marriage Conciliation Board was invalid in law. The members of the Board were eight (8) contrary to section 103(1) of the LMA and also contravened regulation 4 of GN. No. 240/1971. Also relying on the case of **Sadiki Rashid v. Mariam Mohamed PC Civil Appeal No. 03 of 2021** the Appellant's counsel submitted that the quorum of the board should not be less than three and not more than 5 members. The Appellant's counsel submitted that they followed up the record by way of a letter and were notified that members of the board were eight (8) which was improper in law. The court must ensure proper administration of the law and the first appellate court should have seen the glaring errors committed by the trial court.

Responding to the 1<sup>st</sup> and the 3<sup>rd</sup> grounds of Appeal, the Respondent's counsel submitted that the certificate of the Nyandoto Marriage Conciliation Board was proper. No law requires the Board to reproduce the party's explanation or statements in the certificate of the Board as argued by the Appellant's counsel. Section 104(5) of the LMA requires the Board to issue a certificate when it has failed to reconcile the parties. It was further submitted that the Board's finding should be only one as per section 101 of the LMA, it

is not a replicate of the parties' explanation. It is a statement that the Board has failed to reconcile the parties. The certificate before the court, was issued by the Nyandoto Marriage Conciliation Board and was proper as per the law.

The Respondent's learned counsel also submitted that, under section 103(2) of the LMA the law recognizes other boards apart from those established by the Minister. In the Ward Tribunal's Act, Cap. 206 R.E. 2002 the Ward Marriage Conciliation Boards are established under section 3. Under Section 9 and Part III of the Schedule to the Act, the Ward Tribunal is mandated with all functions of the Marriage Conciliation Boards in terms of GN. No. 108/1971. Moreover, the Ward Marriage Conciliation Board composition is provided for under section 4(a) of the Ward Tribunal's Act which indicates that a minimum number of members is 4 and maximum is 8 members. Section 4(4) of the Ward Tribunals Act provides the sitting quorum being one-half ( $\frac{1}{2}$ ), which is four members.

Therefore, the Respondent's counsel submitted that the Ward Marriage Conciliation Board's quorum is eight members (8) and thus there is no irregularity. Therefore, since it is proper, the certificate of the Board is to be signed by the chairman, vice chairman, or one member, and thus the certificate admitted in the trial court is proper. It was also argued that the Case of **Ali Sandali** (supra) is distinguishable from the present case because it was about a mere letter from BAKWATA and not the certificate of the Board. The case of **Liliam Kokubelwa Myaka v. Athuman Mohamed Nchullah, Consolidated Civil Appeal No. 01 and 06 of 2022** was cited in support of the submission. What is needed under the law is the finding

that the Board has failed to reconcile the parties not reproducing the statements of the parties.

After hearing the submissions of the parties regarding the first and third grounds of appeal, it is a firm view of this court that a proper determination of the said grounds requires answers to the following questions:

*What are the contents of the Certificate of the Marriage Conciliation Board? Who is the signatory of the certificate? What is the quorum of the marriage conciliation board as per the law?*

The answers to the said questions are available in the relevant laws governing marriage disputes. To start with, section 101 of the **Law of Marriage Act, Cap. 29 R.E. 2019 (hereinafter the 'LMA')**, provides that:

*No person shall petition for divorce unless he or she has first referred the matrimonial dispute or matter to a Board and the Board has certified that it has failed to reconcile the parties:*

The above provision is very clear, and as both counsels agreed, if a party wants to petition for divorce, the matter has to be referred to the Marriage Conciliation Board and the board has to certify that it has failed to reconcile the parties. The certificate of the Nyandoto Ward Marriage Conciliation Board available in the court's record has clearly stated that it failed to reconcile the parties which means that it met the requirements of section 101 of the LMA.

Moreover, section 104(5) of the LMA provides that:

*Where the Board is unable to resolve the matrimonial dispute or matter referred to it to the satisfaction of the parties, it shall issue a certificate setting out its findings.*

Reading the certificate of the Nyandoto Ward Marriage Conciliation Board this court finds that the certificate is more than perfect in complying with the said section. This is because, not only it stated the finding that it failed to reconcile the parties, but also it went further in providing reasons for such failure. As rightly argued by the Respondent's counsel, the law does not require the Marriage Conciliation Board to record in the certificate the statements made by parties during the proceedings of the board. Therefore, this court declines to take up the Applicant's counsel submission which suggested that the Appellant's statements should have been recorded in the certificate. What the board recorded in detail are the reasons as to why they failed to reconcile the parties, not statements of the Respondent, and this court finds no fault and/or irregularity manifest on the said certificate.

Moreover, regulation 9(2) of the **Marriage Conciliation Boards (Procedure) Regulations GN. 240/1971** was cited by the Appellant's counsel on the basis that the same was violated. The said regulation provides that:

*Where the dispute is between a husband and his wife, and relates to the breakdown of the marriage or an anticipated breakdown of the marriage, and the Board fails to reconcile the parties, the Board shall issue a certificate in the prescribed form.*

In the present case, the Board certified to have failed to resolve the dispute between the parties herein by filling a prescribed form, which is Form No.03



in the schedule to the **Marriage Conciliation Boards (Procedure) Regulations**. Moreover, the said certificate was signed, the name of the person who signed is indicated and the stamp of the Board/Ward Tribunal indicating the title/position of the person who signed is indicated as that of the Chairman. It follows that the certificate of the board was issued in the prescribed form and was properly signed.

Moreover, the case of **Hassani Ally Sandali vs Asha Ally (Civil Appeal 246 of 2019) [2020] TZCA 14** cited by the Appellant's counsel is distinguishable as in that case the major point of contention was whether a mere letter satisfied or met the conditions of the law which required a certificate to be issued in a prescribed form.

Therefore, this court, with respect, disagrees with the Appellant's learned counsel on his submission that the certificate of the Nyandoto Marriage Conciliation Board was defective. It is a finding of this court that the certificate was proper and thus the decision of the first appellate court on the contents of the Board's certificate and finding thereof cannot faulted and thus upheld.

As regards the quorum of the Nyandoto Marriage Conciliation Board, the Appellant's submission was that the Board was constituted of eight 8 members which, according to the Appellant's counsel, was over and above the required number as per the law.

However, before examining the details of the quorum of the Board as submitted by the Appellant's counsel, it is important to put the record straight that the Appellant's third ground of appeal on the Nyandoto Ward Marriage Conciliation Board being constituted with eight members is an

afterthought and based on mere submission from the bar. This is because there is no proof on record regarding the number of members of the Nyandoto Ward Marriage Conciliation Board who attended the proceedings which culminated in the issuing of the certificate regarding failure of the Board to resolve the dispute between the parties herein. The alleged letter which was written regarding the number of members who attended the proceedings in the Board was not part of the trial court's record, and save for the certificate of the Board, the Board's record is not before this court for examination. Therefore, the issue of the number of members of the Board who attended the proceedings before the Board could only be resolved if the Board's records were for scrutiny before the trial court, which was not the case, and provided that no evidence was led to that effect in the trial court, then the submission of the Appellant in that respect is without merit.

Nevertheless, for unambiguousness sake, this court will briefly navigate the relevant law on the quorum of the Marriage Conciliation Board, and the starting point should be to understand the quorum under section 103(1) of the LMA which provides that:

*Every Board shall consist of a Chairman and not less than two and not more than five other members.*

Reading the above section, it is clear that there should be a chairman and other members whose minimum number is two and the maximum number is five. This means that in the Marriage Conciliation Board the the minimum number to transact is three and the maximum number is six including the Chairman.

Another relevant provision is Regulation 4 of the **Marriage Conciliation Boards (Procedure) Regulations** which provides that:

*The quorum necessary for the transaction of the business of a Board shall be three members.*

This cements the provisions of section 103(1) above indicating that the minimum number of members is three without which the board cannot transact its business.

Moreover, section 9(1) of the **Ward Tribunals Act** provides that:

*Without prejudice to the generality of the jurisdiction conferred on a Tribunal by section 8, a tribunal shall have jurisdiction to enquire into and determine disputes relating to the offences and **civil disputes specified in the Schedule to this Act** and may impose penalties to the extent specified in that Schedule.*

Item 2 of Part Three to the Schedule of the Ward Tribunal's Act vests the Ward Tribunal with functions of the Marriage Conciliation Board in the following terms:

*All functions of Marriage Reconciliation Boards vested in the existing Arbitration Tribunals in terms of Government Notice No. 108 of 1971 under the Law of Marriage Act.*

Therefore, in light of the above provisions of the law, a Ward Tribunal as established under the Ward Tribunal's Act, is mandated to perform all the functions of the marriage conciliation board as per relevant law.

Moreover, section 4(1)(a) of the Ward Tribunals Act, Cap. 206 R.E. 2002 provides that every tribunal shall consist of not less than four nor more than eight other members.

Under the provisions referred herein above the law makes it clear that the Ward Tribunal has jurisdiction to perform all functions of the Marriage Conciliation Board. The law does not say that the Ward Tribunal will convert itself to be the Marriage Conciliation Board, but being a Ward Tribunal it is empowered to perform the functions of the Marriage Conciliation Board. This means that the Ward Tribunal, as constituted under section 4(1)(a) of the Ward Tribunals Act, shall perform the duties of the Marriage Conciliation Board.

Moreover, the Appellant did not explain how the alleged excess number of members of the Ward Tribunal, performing its duties as a Marriage Conciliation Board, prejudiced him in pursuance of his rights as a party to the failed reconciliation process.

Besides section 104(7) of the LMA provides that:

*(7) The proceedings of a Board shall not be invalid by reason only of the fact that it did not have jurisdiction under subsection (2) of section 103.*

Therefore, even if eight (8) members who allegedly attended the proceedings of the Ward Tribunal exceeded the number of members specifically required for a properly constituted Marriage Conciliation Board, the proceedings of the same cannot be invalidated for want of jurisdiction, irregularity or otherwise under the provisions of section 104(7) of the LMA.

It follows that the 1<sup>st</sup> ground and the 3<sup>rd</sup> Ground of Appeal are dismissed for want of merits.

As regards the 2<sup>nd</sup> ground of Appeal, the Appellant is challenging the decision of the first Appellate Court to award a bar located at Bunju, 'B'

Kinondoni District for 100% to the Respondent, whose contribution to the acquisition of the same was, allegedly, nothing.

The Appellant's counsel submitted that the construction of the house/bar located at Bunju 'B' Dar es Salaam was completed in 2012 before the Respondent was married to the Appellant. She did not contribute anything to the acquisition or construction of the said property. Section 114(1)(2)(b) of the LMA was cited supporting the submission.

It was further submitted that the marriage between the parties herein was contracted on 26/04/2014 when the bar had already been built and occupied. There was no Respondent's effort or contribution in acquiring the said house/bar. Further, the Respondent never lived in the said house as a matrimonial home as it is a commercial building. It was also the Appellant's submission that he has the certificate of title to his name as regards the said property. The Appellant's counsel also disputed the fact that the Respondent took a loan of TZS 159,000,000/= for the development of the said property. He submitted that the said loan, if any, is unrealistic because the Respondent is a social welfare officer and could not be given such a huge amount of a loan given her salary scale. The Appellant's counsel prayed that the proceedings of the two courts below be quashed and their judgments and decrees be set aside.

The Respondent's counsel, in response to the Appellant's submission, submitted that it is not a sin for the spouse to be given 100% of the property. The law allows the Respondent herein to be given 100% of the said property because other properties were given to the Appellant and there is no

complaint on that. Section 114 of the LMA was taken into account when granting the Respondent 100% of the Bunju 'B' property located in the Kinondoni District, Dar es Salaam. The customs and the law were also taken into account in allocating the said property to the Respondent.

It was further submitted that the Respondent was not a mere housewife, she was, and is an employee (a public servant) and a businesswoman. The trial court and the first appellate court also considered the contribution of the parties in the acquisition of properties.

The Respondent's counsel further submitted that formalization of ownership of the property does not render the past developments on the land invalid. The two courts below considered the parties' contributions in the distribution of the properties. Further, in divorce, all properties are subject to division, distribution is not only on a matrimonial house. The learned counsel prayed that this ground of appeal and the appeal in general be dismissed and all decisions of the lower courts be upheld, and prayed that each party should bear their costs.

In determining this ground of appeal it is important for the court to consider the law governing the division of the matrimonial assets. Section 114 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) any debts owing by either party which were contracted for their joint benefit; and*

***(d) the needs of the children, if any, of the marriage, and subject to those considerations, shall incline towards equality of division.***

***(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.***

The law as reproduced above is very clear on the division of the properties/assets acquired during the subsistence of the marriage, or 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 may be distributed by the court taking into account, among others, customs of the community to which the parties belong, the extent of the contributions

made by each party in money, property or work towards acquiring the asset, the needs of the children of the marriage.

This area of law, providing for the distribution of matrimonial properties, is not deprived of guidance by the Court of Appeal. In the landmark case of **Bi Hawa Mohamed v Ally Sefu 1983 TLR 32**, the court of appeal held that:

*(i) Since the welfare of the family is an essential component of the economic activities of a family man or woman it is proper to consider a contribution by a spouse to the welfare of the family as a contribution to the acquisition of matrimonial or family assets;*

*(ii) the "joint efforts" and 'work towards the acquiring of the assets' have to be construed as embracing the domestic "efforts' or "work" of husband and wife;*

Moreover, in **Yesse Mrisho vs Sania Abdul (Civil Appeal No 147 of 2016) [2019] TZCA 597** (7 November 2019), the Court of Appeal held that:

*Section 114 of the LMA provides for the division of properties acquired by parties by their efforts during the pendency of matrimony, and it requires the courts, when considering this issue, to ensure that the extent of contribution of each party is the prime factor. The assets to be determined are also those which may have been owned by one party but improved by the other party during the marriage on joint efforts.*



The Court of Appeal observed further that:

*"...the contribution granted should not necessarily lead to 50% share each, since it is dependent on a party's contribution which is the determining factor of what share one should receive and each case has to be considered on its own circumstances."*

In light of the above authorities, it is crystal clear that in determining the contribution of a party in the acquisition of matrimonial assets, it is important to consider the spouse's contribution to the welfare of the family, joint efforts, and work towards acquisition (which include domestic efforts and work), monetary contribution, and the needs of the children, if any, of the marriage, and subject to those considerations, the court shall incline towards equality of division. With the foregoing guidance, this court now proceeds to navigate the record of the two courts below with a view to determining the 2<sup>nd</sup> ground of appeal.

After a thorough review of the record of the courts below, the following facts, are clear regarding matrimonial assets acquired during the pendency of the marriage:

1. During the subsistence of their marriage, the parties herein acquired and/or improved the following properties:
  - a. A house located in the Bagamoyo District, Mapinga Ward, Snake Park Street.
  - b. A bar located at Bunju 'B' Street, in Mabwepande Ward in the Kinondoni District, Dar es Salaam Region.

- c. They improved the House located at Gamasara, Nyasebe Street, in Nyandoto Ward within the Tarime District.
  - d. Five-acre Farm(s) located in Makurunge Street, Kisarawe, Dar es Salaam.
  - e. A car Mitsubishi Chariot with Registration No. T339DSM.
  - f. A car make of Lexus with Registration No. T494CKT.
  - g. A van with registration No. T492CKT.
  - h. Ten Cattle awarded to them as a wedding gift.
2. The trial court distributed the above-mentioned properties as follows:
- a. The house located in the Bagamoyo District, Mapinga Ward, Snake Park Street was given to the Appellant, and the bar located at Bunju 'B' Street, in Mabwepande Ward in the Kinondoni District, Dar es Salaam Region was given to the Respondent.
  - b. The house located at Gamasara, Nyasebe Street, in Nyandoto Ward within the Tarime District, was divided equally among the parties which is 50% each.
  - c. The Five-acre farm(s) located in Makurunge Street, Kisarawe, was given to the Appellant.
  - d. All the cars listed in paragraphs e, f, and g above were given to the Appellant.
  - e. Ten cattle were divided equally and thus each party was given five cattle.

After highlighting the matrimonial assets acquired and/or improved by the parties herein, and the manner in which they were distributed by the trial court, it is opportune to determine the major contention of the parties.

The Appellant's major contention is that the first appellate court erred in upholding the decision of the trial court of giving the Respondent 100% of a bar located at Bunju 'B' Street, Mabwepande Ward in the Kinondoni District, Dar es Salaam. The argument of the Appellant was centered on three premises: one, that the said property was acquired well before the marriage between the parties herein; two, the Respondent did not contribute anything in the acquisition of the said property; and three the Appellant has a certificate of title to his name regarding the said property.

After a review of the court's record, this court noted that there is no proof on record that the bar located at Bunju 'B' Street, in Mabwepande Ward in the Kinondoni District, Dar es Salaam Region was acquired before 26<sup>th</sup> April 2014 as alleged by the Appellant. Second, there is no proof on record that the Appellant acquired the said property by his effort without any contribution of the Respondent in terms of money, property, or work towards the acquisition of the same. Third, there is no evidence on record that the said property is registered in the Appellant's name.

Conversely, the Respondent's testimony as summarized on pages 1-2 of the trial court judgment, and as available in detail in the proceedings of the trial court, read together with the statement of complaint indicates that the Respondent is a public servant employed at Tarime Town Council as a social welfare officer. The record shows that the Respondent borrowed a

total of Tanzania Shillings One Hundred Fifty-Nine Million (159,000,000/=) from CRDB Bank and NMB Bank as evidenced by exhibits A5, A6, A14, A15 to facilitate the construction of the house/bar at Bunju.

It is also on record that the Respondent deposited a substantial amount of money in the Appellant's account(s) as her monetary contribution towards the acquisition and development of the said house at Bunju and other properties. This was evidenced by cash deposit slips admitted by the trial court as exhibits A7, A8, A9, A10, A11, A12, and A13.

Moreover, as per the record, apart from the Respondent's testimony that she deposited the said money into the Respondent's account for the acquisition and development of the Bunju 'B' property, there is no other explanation as to why the said money was deposited into the Appellant's account by the Respondent. Page 2 of the trial court's judgment speaks for itself as regards the Respondent's contribution to the development of the disputed property. The first appellate court also analyzed the aspect of the Respondent's contribution on pages 10, 11, and 12 of its decision.

It is also important to consider that the Appellant's contention is not the Respondent to be given the property at Bunju 'B', but the issue is the property was given to her as a whole, that is 100%. However, the concurrent decisions of the two courts below were well guided considering that the Respondent was a wife and a mother and thus offering domestic work, contributing to the welfare of the family as she is taking care of the two issues of the marriage as opposed to the Appellant who spends much of his time in the Kansas United States. The Respondent is also an employee and

thus earning income. The trial court and the first appellate court were also guided by the fact that 100% of other properties were also given to the Appellant.

Moreover, this court finds comfort in the case of **Yesse Mrisho vs Sania Abdul** (supra) where the Court observed that:

*Thus, applying the said holding to the present case, and **recognizing that the first and second appellate courts made a finding of fact that the respondent contributed to the acquisition of the matrimonial assets, that is, the house through various means, including domestic work and duties she performed in the studio.** At the same time having in mind that the appellant albeit reluctantly when asked by this Court, did concede to some contribution by the respondent and in effect acknowledging the respondent's contribution, **we find under the circumstances all these factors show that there were joint efforts by the appellant and the respondent in acquisition of the disputed matrimonial asset.***

Now therefore, taking into account factors that should be considered in ordering the division of matrimonial assets as enshrined in section 114(1)(2)(3) of the LMA as reproduced herein above, and without restating them, this court finds no fault in the judgment of the first appellate court in confirming the order of the trial court of awarding to the Respondent 100% of a bar located at Bunju 'B' Street, in the Mabwepande Ward in the Kinondoni District, Dar es Salaam to the Respondent herein. Therefore, the decision of the first appellate court in that regard is upheld.

In light of the foregoing, all three grounds of appeal as presented and argued by the Appellant have no merits and thus there is no justification for this court to depart from the decisions of the two courts below. The Appeal is, therefore, dismissed in its entirety. This being a matrimonial matter each party shall bear their own costs.

It is so ordered.

**Dated at Musoma** this 29<sup>th</sup> day of May 2024.



  
**K. I. Kafanabo**  
**Judge**

The Judgment was delivered in the presence of Mr. Juma David Mwita, Advocate holding brief of Mr. Thomas Ilanga, Advocate for the Appellant, and in the presence of Mr. Juma David Mwita, Advocate for the Respondent.

  
**K. I. Kafanabo**  
**Judge**  
**29/05/2024**