

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

PC CIVIL APPEAL NO. OF 30/2023

(Arising from Matrimonial Appeal No. 44 of 2022 District Court of Dodoma Original Matrimonial Cause No. 84 of 2021 Dodoma Urban Primary Court

EDWARD JUMA MAGAWA.....APPELLANT

VERSUS

PRISCA JOHN NKINGA.....RESPONDENT

CONSENT JUDGMENT

Date of last order: 3/4/2024

Date of Judgment: 3/4/2024

KHALFAN, J.

Parties herein celebrated a Christian marriage on 31/12/2005. It is on record that their marriage was blessed with four issues. They lived happily for about seventeen years, but later on, the marriage was marred with frequent squabbles. The appellant alleged that the respondent used to disrespect him by insulting him and at one point, she attacked him with a bush knife.



The appellant therefore filed the matter before Dodoma Urban Primary Court (hereinafter referred to as the trial court) seeking for an assortment of reliefs such as, declaration that, the marriage between the parties has broken down beyond repair hence decree of divorce be granted, distribution of matrimonial assets acquired during the subsistence of the marriage, the custody of the issues of the marriage be granted to the appellant.

After hearing the parties, the trial court was satisfied that the marriage between the parties was broken down irreparably hence it granted the decree for divorce. The respondent was granted the custody of the issues of the marriage and the appellant was granted access during holidays. Equally, the assets were divided as shown in the judgment. Parties were ordered to bear their own costs.

The respondent was aggrieved with the trial court's decision; hence, she preferred an appeal to the District Court of Dodoma (hereinafter referred to as the first appellate court). After hearing the parties, the first appellate court nullified the proceedings and judgment of the trial court and ordered the matter be heard afresh on the reason that the trial court did not frame issues before hearing had commenced.



The appellant was aggrieved with the decision of the first appellate court; hence, he preferred the instant appeal with four grounds of appeal as follows:

- 1. That, the Honourable Resident Magistrate erred in law and facts for failure to consider and determine basing on the ground of appeal raised by the Respondent at the first Appellate Court.*
- 2. That, the Honourable Resident Magistrate erred in law and facts for failure to consider that the Trial Court revealed, raised and determined the issues in controversy.*
- 3. That, the Honourable Resident Magistrate erred in law and facts to consider that failure to raise the issue itself is not fatal.*
- 4. That, the Honourable Resident Magistrate erred in law and facts for failure to record, to analyse and determine the facts stated by the appellant.*

Before hearing of the appeal on merits had commenced, parties executed a deed of settlement in which they decided to settle the matter amicably.



The decree for divorce as well as custody of the issues of the marriage granted by the trial court remain undisturbed. They agreed that the appellant to get a farm at Ibiwa Dodoma, a house situated at Ihumwa Dodoma. The respondent should retain a farm at Nala Dodoma, a plot at Chidachi Dodoma and three houses located at Maili Mbili, Dodoma.

It was agreed further that the respondent pay the appellant a sum of TZS 40 million as his contribution in the acquisition of the house located at Nkuhungu. The said amount to be paid through bank account number 52010046661 NMB in the name of Edward Juma Magawa in two instalments whereby the first instalment of TZS 20 million to be paid at the end of April 2024 while the second instalment of TZS 20 million to be paid at the end of May 2024.

With such settlement deed, this court duly marked the matter settled with an order for the parties to bear their own costs.

It is so ordered.




F. R. KHALFAN
JUDGE
3/4/2024