

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 28552 OF 2023

*(Arising from the decision of District Court of Temeke, One Stop Judicial Centre at Temeke
in Matrimonial Case No. 265 of 2022)*

AMINA LUDOVICK SIMON.....APPELLANT

VERSUS

ABDALLAH ISMAIL BARUTI.....RESPONDENT

JUDGMENT

10th May & 14th June, 2023

BARTHY, J.:

The appellant in this case is aggrieved by the decision of the District Court of Temeke, One Stop Judicial Centre at Temeke, in Matrimonial Case No. 265 of 2022, delivered on the 19th of October, 2023. The appellant appeals against both the judgment and the order, basing the appeal on the following grounds:

- 1. That, the trial magistrate erred in law and facts for failure to realize that the time when the respondent was outside the country, he had good communication with the appellant as*



his wife and the appellant was in full supervisory of all the domestic activities.

- 2. That, the trial magistrate erred in law and facts by awarding only 10% of the house located at Mbuyuni to the appellant without taking into account the efforts and time spent by the appellant in supervising the construction activity.*
- 3. That, the trial magistrate erred in law and facts because there is no conclusive evidence that the house located at Vijibweni and Mivumoni Area was only built by the respondent before the subsistence of their marriage hence therefore are not Matrimonial assets.*
- 4. That, the trial magistrate erred in law and facts for failure to consider the evidence adduced by the appellant*

Wherefore, the appellant prays for the following reliefs: that this appeal be allowed, the decision of the trial court be quashed, the cost of the petition be awarded, and any other order this honorable court may deem fit and just to grant.

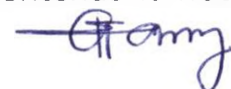
At the hearing of this matter the appellant enjoyed the service of learned counsel Katala Kalimba and the respondent appeared in person. The matter was disposed by oral submissions.

In the submission in chief, Mr. Kalimba argued grounds 1 and 2 jointly. He stated that the parties were spouses, and during their marriage, the respondent stayed abroad while the appellant was in the country. Despite the physical distance, communication persisted, with each party fulfilling their respective roles within the marriage.

He went on to state that, the appellant supervised all family developments, including the construction of the houses, while the respondent was abroad. The respondent provided financial support for the construction, but the appellant's supervisory role was instrumental in its completion.

He also stated before the District Court, the appellant was awarded only 10% as her contribution to the matrimonial assets, which is unfair. He insisted the domestic duties, are recognized in legal precedents such as the case of **Bibie Maulid vs. Mohamed Abdulahman** [1989] TLR 162 and **Bi Hawa Mohamed v. Ally Sefu**, Civil Appeal No. 9 of 1983, which should have been duly considered. Hence, this court should reconsider the evidence and allocate the appellant her rightful share of the matrimonial properties.

Expounding on the third ground, which challenges the non-distribution of the house at Mivumoni, the appellant contends it was a



jointly acquired asset. Mr. Kalimba submitted that despite the appellant's assertion, the trial court deemed it the respondent's sole property.

However, the respondent had failed to provide conclusive evidence to support this claim, as required by section 110 of the Law of Evidence Act. Therefore, the trial court's decision was unjustified, and the appellant deserves her rightful share of the property.

In the fourth ground, it was submitted by Mr. Kalimba that the trial court failed to properly analyze the evidence pertaining to the division of matrimonial assets. It focused solely on the dissolution of the marriage, neglecting crucial evidence regarding the acquisition of joint assets and the custody and maintenance of children, as highlighted in the case of **Victoria Sigalla v. Nalasco Kilasi**, Matrimonial Appeal No. 196 of 2014. As a result, the distribution of assets was unfair and warrants reconsideration. Thus, it was his prayer this appeal be allowed.


Resisting the appeal, the respondent submitted that the house at Mivumoni was constructed in March 2008 when he was in the United States, and at that time, he had not married the appellant. He went further to state that the marriage with the appellant took place in 2013.

He stated the house at Vijimbweni was initially his farm, and he sent money to Anna Mbagwa for its construction. The house was renovated using money obtained from his parent's inheritance, he later

on moved in with the appellant. He stated the only supervision the appellant did was on the fence, and he had sent money to her for other finishing work like plastering.

The respondent further stated that he went back to the USA and returned in 2017, showing the appellant the house at Mivumoni, which was constructed under his brother-in-law's supervision. Later, he requested the appellant to supervise the finishing work, including plastering. In 2018, he came back to the country and acquired the farm from a person he had landed some money from, exchanging it for land.

The respondent said he involved the appellant as his wife, agreeing she would supervise the construction of the house at Mbuyuni, for which she was awarded a 10% share by the trial court. The respondent stated that the appellant collected rent from other houses and supervised the construction of the house with the additional money he had sent.

Then in the year 2018, the appellant requested to transfer one of the houses in her name in case the respondent died. When he returned back in the country, he found the appellant living with another man named Twaha. To conclude, the respondent referred to the evidence of the appellant before the conciliatory board of BAKWATA, the appellant admitted she had no contribution to the houses acquired. 

In rejoinder submission Mr. Kalimba submitted that the respondent conceded the appellant had contributed to the house at Muyuni. Therefore, awarding the appellant a share of 10% was not justified. He therefore prayed for the court to quash the trial court's decision.

Having heard the competing arguments of both sides, gone through the records relating to this matter, before determining the grounds of this appeal, the brief background is useful to the determination of this appeal. The genesis of this appeal is that, the parties contracted an Islamic marriage on 01/01/2013, which ended on 19/10/2023, when the District Court of Temeke at One Stop Judicial Centre dissolved the marriage and ordered a division of 10% of the Buyuni (Mbuyuni) house to the appellant, which aggrieved her, leading to this appeal.

In this matter, total of four grounds were raised. In the disposition of these grounds, grounds 1, 2, and 4 will be consolidated, and ground 3 will be disposed of separately.

Starting with grounds 1, 2, and 4, this court is tasked to determine whether the trial court erred in law and fact by failing to analyze the evidence brought before it, leading to the unfair distribution of 10% of the house located at Mbuyuni without considering the appellant's efforts.

Perusing the trial court proceedings, it is clear that on 16th March 2022, the appellant adduced her evidence stating they constructed three houses located at Kigamboni Soweto, Kigamboni Kimbiji, and Tegeta Wazo Miale Mivumoni. During cross-examination, it was stated that the Kigamboni-Soweto house was built in 2013 and finished in 2017, the Kimbiji house construction started in 2019, and the Tegeta Mivumoni house construction started in 2017.

On page 9 of the trial court's typed proceedings, the respondent stated that he started living in the USA in 1983 and in 2008 sent money to Hasani Chande Ismail Baruti, who bought him a Tegeta Mivumoni plot. In 2012, he met the appellant and started building a house in the same year. He left money with the appellant for supervising the Vijibweni house and acknowledged buying a plot at Mbuyuni. The respondent further stated that the appellant supervised the construction of the Vijibweni and part of Mivumoni houses.

Section 114(1) of the Law of Marriage Act, Cap 29, R.E 2019, empowers the court to order the division of properties acquired through the joint efforts of both parties during the marriage. Section 114(2)(b) requires the court to assess the extent of each party's contribution.

In the case of **Bi Hawa Mohamed vs. Ally Sefu** (cited supra), it was held that domestic efforts should be considered as contributions to the

acquisition of matrimonial property. The respondent acknowledged that the appellant supervised construction work, and the evidence provided supports the respondent's claim for a more significant share and ownership of the three houses in dispute.

To determine the division of the said properties, the court has to consider the extent of each spouse's contribution. As it was held in the case of **Gabriel Nimrod Kurwijila vs. Theresia Hassan Malongo** (Civil Appeal No. 102 of 2018) Court of Appeal at Tanga [2020] TZCA 31, that the court must consider the evidence tendered to prove each party's contribution. In this matter, the evidence shows that the appellant dutifully managed the money entrusted to her for supervision of construction of one house and part of finishing of two other houses without squandering it.

Despite the claims brought up that the appellant was unfaithful in their relationship, this does not negate her supervisory role in constructing the disputed houses. Even if the respondent did not have a monetary contribution and the appellant was the cause of the marriage breakdown, she is still entitled to her share of the contribution towards the assets, as she did not misuse the funds. This was reinforced in the case of **Scolastica Spendi vs. Uimbakisya Ambokile Sipendi & Another**

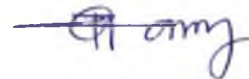
(Matrimonial Cause 2 of 2012) High Court at Dar es Salaam [2018]

TZHC 72, where it was held that:

*Even if it will be said **the appellant did not contribute cash money in acquiring the house sought to be divided, she contributed through doing domestic work and supervising the finishing construction of the house. On that basis, she deserves to get a share of her contribution to the acquisition and finishing the construction of the house. The argument by the first respondent that the petitioner was unfaithful and engaged in an affair with her boss, one Barabona, cannot be used as a criterion for denying her share of the contribution to the house.***

The evidence and admissions by the respondent indicate that the appellant genuinely supervised the construction of those houses as a dutiful wife. Even if the supervision was limited to part of the constructed house, the improvements made count towards the acquisition of the matrimonial assets.

This was also emphasized by court in the case of **Yesse Mrisho vs. Sania Abdul** (Civil Appeal No 147 of 2016), Court of Appeal at Mwanza, TanzLII [2019] TZCA 597. Therefore, grounds 1, 2 and 4 have the merit



and the court finds the award of 10% of the Mbuyuni house to the appellant is not justifiable.

I will now address the remaining ground, ground 3 of the appeal. This ground concerns whether the houses located at Vijibweni and Mivumoni were solely built by the respondent. The respondent provided evidence that he sent money for their construction, and the appellant did not dispute this claim. This evidence is sufficient to establish that the respondent financed the construction of these houses.

However, it is also important to consider the appellant's contributions, albeit minor, in supervising the construction during its final stages. While her involvement was relatively limited, it should still be acknowledged, the third ground of appeal is also found to have merit.

To reflect her contribution to the matrimonial assets, it is appropriate to increase her share in the house at Mbuyuni. By adjusting her share in the Mbuyuni house, in doing so we can ensure a fair distribution of the matrimonial assets, taking into account both the rent collection from the respondent's houses and the supervisory role played by the appellant.

In the upshot, this appeal is partly allowed to the extent of adjusting the distribution of the Mbuyuni house to 30% for the appellant and 70% for the respondent. The rest of the trial court's order remains

undisturbed. It is also ordered that, the property in issue should undergo valuation

prior to finalization of distribution. Each of the parties be accorded the first option to buy out the other party if so inclined. With the nature of the relationship of the parties I give no order as to costs.

It is so ordered.

Dated at Dar es Salaam this 14th June, 2024.




G. N. BARTHY

JUDGE

Delivered in the presence of the appellant and respondent in person, RMA. Ms. Bernadina and in the absence of the appellant's advocate.

SGD: G. N. BARTHY

JUDGE