

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 25 OF 2019**

*(Appeal from the Judgment of the District Court of Temeke in Matrimonial Cause No. 43/2017 dated 20<sup>th</sup> December, 2018 (by Hon. Batulaine RM))*

**ALLY JUMA MSOKORO.....APPELLANT**

**VERSUS**

**ASHURA ALLY.....RESPONDENT**

**JUDGMENT**

**Date of last Order:** 30/10/2019  
**Date of Judgement:** 19/12/2019

**MLYAMBINA, J.**

The appellant and the respondent had contracted marriage in 1997. It was unfortunate they were not blessed with any issue but they managed to acquire joint properties. In 2017, the respondent herein petitioned against the appellant herein before the Temeke District Court for *inter alia* decree of divorce and division of matrimonial properties. After the trial, the court granted the decree of divorce and ordered the matrimonial properties be divided at the ratio of 40% for the petitioner and 60% for the respondent.

The appellant has been aggrieved with that decision, hence this appeal on fifteen grounds. However, when arguing the appeal, the appellant opted to argue grounds 1, 2, 3, 4, 7, 9 and 10 which calls upon to determine an issue namely:

*"Whether assessing the evidence on record the trial court was justified in ordering a 40 to 60 distribution of the matrimonial assets to the parties herein to the detriment of the appellant."*

In view of the appellant the afore issue has to be answered in negative due to the following reasons:

1. The court did not give consideration on the existence of the 2<sup>nd</sup> wife of the appellant hence misguided in ruling that the contribution of the acquisition of the matrimonial assets was done by the parties herein only, while in fact the same was due to the contribution of three people (the parties herein and the 2<sup>nd</sup> wife of the appellant).
2. The court did not consider the provisions of *Section 114 (2) (a) of the Law of Marriage Act Cap 29 (R. E. 2002)*.

In response, the respondent submitted that the court was justified in ordering 40 to 60 distribution of the matrimonial assets to the parties herein.

With regard to the appellant first reason the respondent argued that the properties that have been ordered for distribution between the parties as matrimonial property are those that were acquired by the parties herein.

It was replied by the respondent that the respondents' acknowledgement of the existence of the second wife is neither acknowledgement nor proof of the second wife's contribution to the acquisition of the matrimonial properties. Thus, the second wife was married in October, 2004 while matrimonial properties were acquired since 1999. Also, the respondent has clearly indicated to the court her own effort in acquiring the said matrimonial properties with the appellant and not the other wife.

The respondent did submit that, she contributed to the acquisition of matrimonial properties because she was doing business as an agent for selling newspapers for Majira, Uwazi and Nipashe companies even before the appellant married her. She also told the court that she took a loan from AKIBA COMMERCIAL BANK of Tshs 9,000,000/= at different times where the appellant stood as a surety. The borrowed money was used to develop the business jointly owned with the appellant.

On the second appellant's reason, the respondent submitted that she was chased away from the matrimonial home and did not desert her family as claimed by the appellant. Thus, the respondent's daughter who lived with the appellant and the respondent for 15 years, also testified that, the appellant used to

beat and threaten the respondent and later chased her from the house.

In rejoinder, the appellant disputed the fact that the second wife was married after the acquisition of the matrimonial home.

I have considered the arguments of both parties in the light of the available trial court records. I found, there is no dispute that *Section 11 (2) (b) of the Law of Marriage Act Cap 29 (R.E 2002)* requires that in ordering the division of the matrimonial properties the court should have regard to the extent of the contributions made by each party in money, property or work towards the acquiring of the assets.

There is no dispute between the parties that the appellant herein married the respondent in 1997. There is no dispute that the appellant herein married the second wife. The appellant in his defence case told the court that, in 1997 he bought a plot at Majimatitu for Tshs 200,000/= and he paid for instalment. That, at the time the petitioner was already his wife. The appellant continued to tell the trial court that he also bought a Shamba at Chamazi Mzambarauni for Tshs 600,000/= in 2006.

The appellant did further tell the trial court that he also opened shops for business one to sale clothes and another for motorcycles

spare parts. The shop for motorcycle spare was at Majimatitu but it has been closed "died". That, he started the disputed shop in 2012 where the petitioner used to sale and sometimes the appellant.

Further, at page 26 of the unnumbered typed proceedings, the appellant stated that the shop at Majimatitu was being supervised by the 2<sup>nd</sup> wife.


In the light of the afore evidences, I'm satisfied that the matrimonial home at Maji Matitu was acquired by the parties herein as a joint matrimonial property. For that reason, such property has to be divided 50% each between the appellant and the respondent.

It is in record; the respondent was not a mere house wife. She did some business of selling News Paper even she acquired undisputed loan from AKIBA COMMERCIAL BANK.

Even if, I may agree with the appellant that the respondent was a mere house wife, at that time of acquisition of the matrimonial home, the respondent discharged her duties. She did cook for her husband, prepared the bed, washed clothes and there was no complaint on love issues. That alone not been disputed anywhere, entitles the respondent with 50% of the share on matrimonial properties.

As regards the shop, the respondent has not disputed that the shop has been supervised by the second wife as well. For that reasons, I find the appellant is right that the division of the matrimonial shop did not consider the efforts of the second wife. As such, I order that the respondent herein be given 30% only of the total value of the family shop.


In the end result, the appeal is partly sustained to the extent that the matrimonial properties be divided between the appellant and the respondent by 50% each. The matrimonial shop be divided by giving the respondent 30% only. No order as to costs.



**Y. J. MLYAMBINA**  
**JUDGE**  
**19/12/2019**

## **COURT**

Judgement pronounced and dated this 19<sup>th</sup> day of December, 2019 in the presence of both parties in person.



**Y. J. MLYAMBINA**  
**JUDGE**  
**19/12/2019**