IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC CIVIL APPEAL NO.123 OF 2004

SAIDI ATHUMANI..... APPLICANT

VERSUS

SIKITU JUMA..... RESPONDENT

JUDGMENT

MANENTO, JK:

This is a second appeal. The appellant Saidi Athumani and the respondent, Sikitu d/o Juma had married in 1992 but sometimes in the year 2001 their marriage life was not a happy one. The husband now the appellant issued a 'talak' to the respondent. The matter reached the primary court where it was found as a fact that the marriage had broken irreparably. The appellant and the respondent could not live as a wife and a husband any more. Unfortunately, the marriage between the parties was not blessed with any child. Therefore, there was no issue of custody. However, the respondent demanded a share in a house they jointly built at a place called Makangarawe. That was the issue which received cold hands from the appellant. He disputed to have jointly built the house with the respondent.

Both the trial primary court and the district appellate court found, from the evidence in record that the house was built during the subsistence of the marriage between the parties. The trial primary court awarded the appellant one third ($^1/_3$) of the value of the house to the respondent. The appellant was aggrieved. He appealed to the district court. The appellate district court having been satisfied that the house was built at the time of the cohabitation of the appellant and respondent, and that the respondent contributed in one way or another, by filling the gravel to the foundation, cooking for the masons and other employees, together with the provision of the ordinary matrimonial rights to the appellants, it awarded her half ($^1/_2$) of the value of the house. The appellant was further aggrieved by that decision, hence this appeal.

In his memorandum of appeal, he urged that the appellate district court erred in holding that the house in dispute was jointly built by the appellant and the respondent, that the respondent contributed towards the erection of the house in question and thirdly that the magistrate erred in holding that the house in dispute was built after their marriage. The respondent replied in writing by saying that she totally agreed with the decision of the appellate district magistrate.

During the hearing of the appeal, the appellant submitted that he had built the house in question while he was living with his first wife with whom they had four children. In replying to that, the respondent submitted that when she got married, the appellant was living in a rented house of one Ngoro where they all slept with the children. The respondent further said that the appellant had refused to pay her what the BAKWATA had ordered him to pay her. The family reconciliators had ordered him to pay the respondent shs. 300,000/=. The respondent accepted it on condition that he would pay her shs. 10,000/= per month. The respondent wanted to be paid in two installments, a fact which the appellant did not accept. The respondent was then left with only one alternative, that was to refer the matter to the court.

From the evidence before the trial primary court, the decision of the appellate district court and submissions made before this court, I agree with the two courts below that, the house in question was built during the subsistence of the marriage between the appellant and the respondent. Therefore, it is/was a matrimonial home.

Secondly, it was the issue of the contribution by the parties towards the erection of that house. The primary court awarded the respondent one third ($^1/_3$) value of the said house while the district appellate court raised it to

half ($^{1}/_{2}$) of the value of the house. The primary court took into consideration the evidence that the appellant had another house which he sold and so he used part of the money in the building of the house. There were no reasons given by the appellate district court when varying the award of the trial court.

It was in the submission of the respondent that when they married, the appellant had no paid employment. That then justifies that he had his money which he got before marrying the respondent, and according to the appellant's evidence, that money was from the sale of a house he owned and sold before the marriage with the respondent. Therefore, the appellants contribution towards the building of the house was greater than that of the respondent. Thus on the basis of section 114 of the Law of Marriage Act, 1971, the appellant is entitled to a bigger share, therefore, the assessment reached by the trial primary court met the end of justice in this case. The respondent is therefore entitled to $^{1}/_{3}$(one third) of the value of the house in dispute.

From what I have said above, the appeal is dismissed, but the order of the appellate district court that the respondent is entitled to ½ of the value of the house is quashed and set aside. The order of the primary court that the

respondent be paid one third ($^1/_3$) of the value of the house is restored. Each party to meet his own costs.

A.R. Mamento

JAJI KIONGOZI.

25-4-2005

Coram: A.A.M. Shayo, RHC

Appellant: Present in person

Respondent: Present in person

Cc: Claudius

Order: Judgment delivered in chambers today 25/4/05 in the presence of both parties.

A.A.M. Shayo

REGISTRAR-HIGH COURT

25/4/2005