

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
PC. CIVIL APPEAL NO. 41 OF 2017

MUSSA ABDUL LWIMBO APPELLANT

VERSUS

ASUMINI DAMIANI RESPONDENT

27/3/2018 & 27/4/2018

JUDGMENT

I.P.KITUSI,J.

Mussa Abdu Lwimbo the appellant and Asumin Damian the respondent were husband and wife for about six years from 31 July 2010 to 20 October 2016 when the Primary Court of Ifakara, at Kilombero District issued a decree of divorce upon the respondent's petition for the same. The ground for the respondent's petition was that the appellant had issued her with a talak.

The Primary court also ordered equal division of the proceeds of sale of a milling machine which it was satisfied was a result of joint efforts of the parties. There was also an order of payment of shs 350,000/= by the appellant as partying money under section 115(f) of the Law of Marriage Act.

The appellant's appeal to the District Court aimed at challenging the order as to division of the matrimonial assets was unsuccessful. By the second appeal the appellant is still bent at challenging the decision as to division of the proceeds of the milling machine in equal shares.

This case therefore covers a very limited landscape, and the issue is only whether the parties jointly contributed to the acquisition of the machine. If the answer to that issue is in the affirmative then the appeal raises the issue whether it was necessary for the court below to order sale of the machine instead of ordering an evaluation of the same so that one of the parties may have an option to buy the other off.

As regards the orders for equal division of the machine, there are concurrent findings of two courts below, that the parties made equal contribution. In view of that and in view of the settled law that an appellate court may not depart from trial court's assessment of evidence, the appeal on this point has no merits. In **Maluru Leison & J. Foya V. R Sospeter**, [1988] TLR 102 this court held in part;

"I am keenly aware that it is only in rare circumstances that and appellate court would interfere with the trial court's findings of fact....."

Thus the appeal as to the parties contributions has no merits and I dismiss it.

There is however one more point for determination, that is whether it was necessary for the court to order sale of the milling machine. I think that order was unsolicited because nowhere did any of the parties invite the court to make it. I quash the order for sale of the milling machine and order the same to be valued by an independent

valuer within 60 days of this order. Any of the parties may buy off the other by offering him/her half of the price of the milling machine. Execution of this order to be supervised by the District Court.

To that extent the appeal is allowed but I make no orders as to costs.

I.P.KITUSI

JUDGE

29/5/2018