IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

PC MATRIMONIAL APPEAL NO. 15 OF 2019

(Arising from Matrimonial Appeal No. 12 of 2018 in District Court of Lindi at Lindi.

Original Matrimonial Cause No. 18/2017 at Lindi Urban Primary Court)

RAHISI JUMA NANYANJE.....APPELLANT

VERSUS

SIABA SAIDI.....RESPONDENT

JUDGMENT

30 July & 24 Nov. 2020

DYANSOBERA, J.:

The respondent Siaba Saidi petitioned before the Primary Court of Newala District at Newala Urban in Matrimonial Cause No. 28 of 2017 for dissolution of marriage and division of matrimonial properties. The trial court found that the marriage between the respondent and her ex-husband one Rahisi Juma Nanyanje, the present appellant was broken beyond repair. It, consequently, granted a decree of divorce. With respect to matrimonial properties, the trial court found that the respondent had

contributed both in money and work in the acquisition of the properties but that there were debts utilised by the parties for their common good. It further found that at the time the respondent left matrimonial home, there was only matrimonial business stall. The said court was also satisfied that the respondent had already been given a piece of land situated at PCCB area. After making that finding, the trial court awarded the respondent one third of the value of the house as compensation, a cupboard, a bed, house hold assets, a set of coaches and five fowls. As regards maintenance of the infant child, the appellant was ordered to pay 50,000/= per month.

The respondent was not satisfied with this decision and appealed to the District Court at Newala vide Matrimonial Appeal No. 3 of 2018 complaining that it was unjust for her to be awarded one third of the value of the house as compensation while she contributed 100% to its acquisition and that the evidence given by the appellant at the trial was inconsistent and incredible. With regard to her being engaged in VICOBA, she asserted that it is the appellant who persuaded her to join the association and that after she had borrowed the money, the appellant refused to pay. She argued that the debts were matrimonial assets and both were involved in the repayment. She refuted the bricks to belong to the appellant's father. As to the piece of land near PCCB allegedly given to her, the respondent said that there was no evidence to prove that fact.

In its judgment delivered on 7th August, 2018, the first appellate District Court awarded 50% of a share of the house to each party on the ground that the evidence that the respondent was given a piece of land

situated at PCCB area was lacking. The court was, however, clear that each party was free to buy out the other by paying the 50% value of the house to be determined by the government valuer and that inability to buy either out, the house to be sold and proceeds of sale to be equally divided among them.

It is against this decision that the appellant has filed this appeal. He is armed with four grounds of appeal. In the first ground of appeal, the appellant is complaining that the first appellate court, having held that each party contributed to the acquisition of the matrimonial properties, the magistrate erred in law and fact by requiring equal distribution from the parties.

The appellant's complaint in the second ground of appeal is that the court erred in law and in fact in awarding the respondent 50% of the value of the house while there was strong evidence that the respondent mismanaged the assets and income generated together.

In the third ground of appeal, the appellant is taking exception with the exemption of a plot (farm) at PCCB area, Newala Urban from properties forming matrimonial assets which was given to the respondent. In the last ground of appeal, the appellant's complaint is against the order of placing the child under the custody of the respondent.

On 1st day of November, 2020 when this appeal came up for hearing, parties appeared in person and were unrepresented.

Arguing the appeal, the appellant told this court that he bought a piece of land in 2009. In 2012 he got married to the respondent. The appellant insisted that the respondent mismanaged the matrimonial property. He said that the piece of land near PCCB area was wrongly excluded in the division by the District Court. As regards the maintenance of the child, the appellant explained that he maintains the child but the respondent complains at the Social Welfare Office. The appellant asserted that the child visits him.

In her reply, the respondent maintained that at the time the appellant bought the piece of land, they were already together insisting that it is Mzee Mdai who showed the piece of land to them. According to her, the division of 50% was correct. She said that they got the first born child in 2010 while the second child was born in 2015.

In his rejoinder, the appellant emphasised his father and brother. He contended that the trial court was correct but that the District court disregarded the debts and that she was taking money on VICOBA.

I have perused the record of the lower courts and the grounds of appeal. I have taken into account the submissions by the appellant and the respondent.

Typically, a husband and wife share the activities of earning livelihood and running their homes and caring for their children. When the marriage is no more, the party denied of the property has the right to get compensated. It is in that spirit that the law comes into play.

Section 114 (1) and (2) of the Law of Marriage Act, Cap.29 R. E. 2002 on powers of court to order division of matrimonial assets that:

114.

(1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or to order the sale of any such asset and the division between the parties of the proceeds of sale.

(2) In exercising the power conferred by subsection (1), the court shall have regard–

(a) to the customs of the community to which the parties belong;

(b) to the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;

(c) to any debts owing by either party which were contracted for their joint benefit; and

(d) to the needs of the infant children, if any, of the marriage,

and subject to those considerations, shall incline towards equality of division.

(3) For the purposes of this section, references to assets acquired during the marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

It was not disputed that the parties were married and stayed together for six years in a rented house. They then managed to buy a piece of land and built a house. This means that the house was jointly acquired by the parties during the subsistence of their marriage.

In his first ground of appeal, the appellant is faulting the first appellate court for requiring equal distribution. I think the complaint has no basis. After taking into account that each party contributed to the acquisition of the said property, the court was enjoined by paragraph (d) of sub-section (1) of section 114 of the Law of Marriage Act, after considering the factors under sub-paragraphs (a), (b) and (c) of the above provisions to incline towards equality of division.

With respect to the second ground of appeal, there was no evidence to prove that the respondent mismanaged the assets and income they had generated together. It was proved at the trial that the respondent found the appellant with a business stall which was by then small but by their joint efforts they increased its size. Their efforts to revamp their economic situation stuck as they suffered business instability twice. The appellant told the trial court that the respondent was participating in village community banks (VICOBA) whereby the appellant realised that the respondent owed the said organisation Tshs. 1, 500, 000/=. This alone was no evidence to prove that the respondent mismanaged the assets and income particularly where the respondent asserted that the appellant failed to pay the debt and the debt was for their common good.

As correctly found by the first appellate court, the appellant failed to lead evidence to prove that respondent was given a piece of land situated at PCCB area. Although the appellant asserted that, "Pia tulikuwa na uwanja eneo la PCCB ambao alipewa mdai kwenye mgao", the evidence which was relied on by the Primary Court when it observed, "Ila vile vile Mahakama hii imezingatia kuwa mdai alishapewa uwanja uliopo maeneo ya PCCB". The evidence on record, however, is clear that after separation the meetings for division bore not fruits and the matter was referred to BAKWATA Ward then BAKWATA District and ultimately to the Primary Court. This evidence given by PW 2 one Salam Ally was not controverted. This ground fails.

In the last ground of appeal, the appellant is faulting the trial court for ordering the custody of the child to be under the respondent. I have taken pains to peruse the record of the first appellate court and I have not found anywhere this issue was raised and discussed. Besides, the question of in whose custody was the child to be placed was neither pleaded nor made an issue at the trial. This ground has no basis.

In view of the above findings, I am satisfied that this appeal is devoid of merit, should be and is hereby dismissed with no order as to costs.

W.P. Dyansobera

Judge

24.11.2020

This judgment is delivered under my hand and the seal of this Court on this 24th day of November, 2020 in the presence of the appellant and the respondent.

W.P. Dyansobera

Judge

24.11.2020