

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC MATRIMONIAL APPEAL NO. 10 OF 2021

*(Arising from the Judgment of Nyamagana District Court dated 30<sup>th</sup> March 2021 in Matrimonial Appeal No. 30 of 2020)*

ANDERSON KISSA ..... APPELLANT

VERSUS

ALICE AWUOR ..... RESPONDENT

JUDGMENT

18 & 31/05/2021

RUMANYIKA, J

With respect to judgment and decree of divorce and division of matrimonial assets by Nyamagana district court, Mwanza (the 1<sup>st</sup> appeal court) dated 09.04.2021 which one 100% upheld decision of Mkuyuni primary court dated 02.10.2020, Anderson Kissa (the appellant) was not happy hence the two grounds essentially;

- (1) That with regard to extent of contribution to the matrimonial house and apportioning the shares the courts below improperly evaluated the evidence.

(2) That the 1<sup>st</sup> appeal court erred in law and fact not ordering stay of the appeal pending final determination in the Juvenile Court of Miscellaneous Civil Application No. 01 of 2021 for parentage of the child.

Like the appellant, Alice Awuor (the respondent) during audio teleconferencing she appeared in person. I heard them through mobile numbers 0682 678 334 and 0747 654 229 respectively.

The appellant submitted; **one;** that although all the receipts were there as proof, the two courts below did not consider extent of the parties' contribution to acquisition of the property. **Two;** that with regard to division of the assets, fifty –fifty percentage shares it was not realistic and **three;** that although with respect to the child the issue of percentage was still pending in the juvenile court, actually he was father of the child.

On her side, the respondent submitted that the child had his biological father other than the appellant much as a DNA examination and analysis was still under way but the appellant had no child whomsoever that during her time now working with Aga Khan Hospital she contributed largely to the house at issue and therefore it was very unfortunate that out of it that she got only 50% share.

A brief account of the evidence on record would read as follows:

SM. Alice Awuor stated that as she was pregnant, the parties contracted a christian marriage on 17.05.2014 but they were not blessed with a child. Then jointly they acquired a house and hair dressing salon at Buhongwa also a shop at Nyamakanga much as personally she injected shs. 2.80 million in the construction of the house at issue but the matrimonial disputes began when she refused the appellant's idea to have the house now registered as jointly acquired irrespective of the pastor's and local leader's intervention. That the marriage became more bitter and sour on the step child being refused by the appellant.

Su1 Anderson Kissa stated that the two having had cohabited each other he paid dowry on 24.11.2013 and celebrated marriage on 17.05.2014 but personally he owned a house at Mugumu Serengeti of which proceeds he erected one at issue much as with regard to all the property listed by the respondent, the latter had no tangible evidence to suggest contribution or even co-owner ship. That the 50% share order in favor of the respondent prejudiced appellant's actual and innocent two children inclusive of one Kayla A. Kissa save for a shop and hair dressing salon jointly owned by the spouses. That long at last she robbed him shs. 3.0 million as on 31.05.2019 the respondent fled the matrimonial home at

times having had cut him with a panga and the case was reported to police that generally the respondent used to threatening his life leave alone one having had several and repeated extra marital relations.

Su2 Magreth Kissa stated that on the appellant's request, with respect to the hair dressing salon she found one an assistant.

Su3 Francis Mushesha stated that he was the respective local chair therefore he knew the parties before.

Su4 Manyanza Mathias stated that he was the one who sold the plot to the respondent and it took her relatively long to contract the foundation and later the whole house then she (the respondent) introduced the appellant husband to him.

Su5 Pendo John stated that following the dispute, on 31.05.2019 she saw the respondent quitting the matrimonial home.

Like the trial court and similarly it appears on the balance of probabilities convinced, the 1<sup>st</sup> appeal court upheld the decree of divorce and fifty – fifty percent division of the matrimonial property much as from the very beginning the appellant was not happy only with the extent of contribution and division of the property.

Having considered the evidence on record, the issue cannot be who, between the owned the property more so the matrimonial house but rather the extent of contribution and shares that every one of them was entitled to.

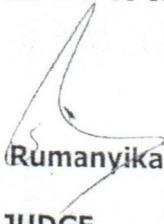
A least in his testimony Su4 Manyanza Mathias cut the long story short that he only sold the plot to the respondent but in terms of timing it took the latter relatively quiet long to develop it much as in terms of evidence the appellant did not sufficiently prove the respondent and own (the appellant's Su4) wrong. Matrimonial property as it was yes, but as said before each one's contribution. The appellant did not even attempt to declare Su4 hostile. The appellant may have had at a later stage injected money to the construction of the house yes, but contrary to his plain allegations his contribution should not have exceeded 50% under all the circumstances much as it was trite law that the spouses who had even just improved the fellows' personally acquired property before marriage they never went out of courts empty handed (case of **Bibie Maulid v Mohamed Ibrahim** (1989) TLR 162. Whether or not the property was only registered or identified only in the husband's name, alone that one wasn't necessarily proof that it wasn't commonly/jointly owned by them

much as it was common knowledge that it was norm and life style in typical African societies. Ground one of the appeal is dismissed.

With regard to the child and issue of parentage, like it was properly said by the two courts bellow that it was so sub judis that until such time when the juvenile court had finally determined the matter, parties should not have raised it here. The 2<sup>nd</sup> ground of appeal equally crumbles.

In the upshot, with the concurrent findings and decisions, I shall have no basis up on which to fault the two courts below. The devoid of merits appeal is dismissed with costs. It is so ordered.

Right of appeal explained.

  
**S. M. Rumanyika**

**JUDGE**

**28.05.2021**

Judgment is delivered under my hand and seal of the court in chambers this 31.05.2021 in the absence of the parties.

  
**S. M. Rumanyika**

**JUDGE**

**31.05.2021**