

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**(PC) CIVIL APPEAL NO. 36 OF 2022**

*(Arising from Civil Appeal No. 4 of 2022 of the District Court of Karagwe and Civil Case No. 1 of 2021 of Nyaishōzi Primary Court)*

**WILBROAD BUGAMBO.....APPELLANT**

***VERSUS***

**PIUS WILBARD.....RESPONDENT**

**JUDGMENT**

*14<sup>th</sup> September & 23<sup>rd</sup> September 2022*

***Kilekamajenga, J.***

The respondent married to the appellant's daughter called Amertha Wilbroad through a Christian marriage which was celebrated in the Catholic Church at Rwenkende Murongo within Kyerwa District in Kagera region. It is very unfortunate that, despite the marriage being preceded with exchange of gifts, the same lasted for five days before the marriage turned into a legal battle in court. It is alleged that, after the marriage ceremony, the husband departed with his wife intending to start their happy family. However, the couple went and stayed at the respondent's parents' house for five days before the respondent left to Kigoma. The wife, on her side, left the in-law's house and relocated to another place and blocked the respondent's phone number and jettisoned the film that recorded event of their marriage. The respondent, after a long search



for his wife, finally returned from Kigoma and petitioned for divorce at Nyaishozi Primary Court. The trial court, after considering the surrounding circumstances of the marriage, finally granted a divorce decree to dissolve the marriage.

Few months later, the respondent went back to Nyaishozi Primary Court and filed a civil case against his former father in law (appellant) claiming for the refund of dowry, other gifts exchanged before the marriage and other expenses paid in furtherance of the wedding. The Primary Court ordered the appellant to refund the respondent Tshs. 2,656,000/= being dowry and other gifts paid by the respondent before the marriage. The decision of the Primary Court puzzled the appellant who sought justice in the District Court of Karagwe which also upheld the decision of the trial court. The appellant was still determined to find justice in this matter, he appealed to this court with two grounds of appeal thus:

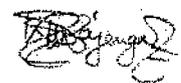
- 1. The learned appellate magistrate erred in law by placing the appellant under liability to refund the bride price.*
- 2. That the judgment complained is unjustifiable as it contradicts the evidence on record.*

The parties, who were all unrepresented, appeared before this court to advance the reasons for and against the decision of the two lower courts. The appellant informed the court that the respondent never paid dowry for her daughter though they contracted the marriage on 29<sup>th</sup> December 2020. The appellant

further confirmed that, the respondent who lived in Kyerwa had a quarrel with his wife some few days after the marriage and the marriage was finally dissolved. The appellant who was dissatisfied with the decision of the lower courts prayed for the appeal to be allowed.

On the other hand, the respondent insisted that, he paid to the appellant Tshs. 2,656,000/= as dowry and other gifts given before marriage. He further stated that he married the appellant's daughter on 29<sup>th</sup> December 2020 and on 05<sup>th</sup> January 2021, he left the wife at his parents' home in Kyerwa and travelled to Kigoma. He was later informed that his wife left to an unknown place. When the respondent consulted the appellant, he seemed not be concerned with their marriage hence he (respondent) petitioned for a divorce decree. He further insisted that, he only stayed with his wife for five days and he was therefore justified to claim for the refund of dowry and other gifts. The appellant urged the court to dismiss the appeal with costs and uphold the decisions of the two lower courts.

When rejoining, the appellant insisted that he was not responsible for the respondent's affairs with his wife.

A handwritten signature in black ink, appearing to be 'E. B. Mwangi', located in the bottom right corner of the page.

In deciding this matter, the major issue is whether the two lower courts were right in ordering the refund of dowry to a marriage which was contracted. I understand, this might be one of the rare cases in our courts. I also understand the established principle of the law that, this being the second appellate court, it cannot interfere with the concurrent findings of the two lower courts unless there are pertinent issues or misapplication of the law. In the case of **Julius Josephat v. The Republic**, Criminal Appeal No. 03 of 2017, the Court of Appeal stated that:

*"...it is the practice that in a second appeal, the Court should very sparingly depart from the concurrent findings of fact by the trial court and the first appellate court. In exceptional circumstances, it may nevertheless interfere as such only when it is clearly shown that there has been a misapprehension of the evidence, a miscarriage of justice or violation of some principles of law or procedure by the courts below."*

I am aware, deciding this matter needs a careful understanding of what amounts to a dowry. The Law of Marriage Act, Cap. 29 RE 2019 which regulates and governs matrimonial disputes define the term dowry under section 2 (1) as follows:

*'dowry' means any payment of stock, goods, money or other property made or promised in consideration of an intended marriage.'*



The above law casts some lights on the fact that dowry does not necessary mean money; it may be goods or any other property. In some African societies, the payment of stock is considered a better kind of dowry. However, such payment of money, stock or property is only considered as dowry when it is given or promised in consideration of a marriage being contracted. Again, dowry may be an important consideration in some societies. In our law, however, non-payment of dowry does not render a marriage void as per **section 41(a) of the Law of Marriage Act** which provides that:

*41. A marriage which in all other respects complies with the express requirements of this Act shall be valid for all purposes, notwithstanding—*

*(a) any non-compliance with any custom relating to dowry or the giving or exchanging of gifts before or after marriage;*

*(b) failure to give notice of intention to marry as required by this Act;*

*(c) notice of objection to the intended marriage having been given and not discharged;*

*(d) the fact that any person officiating thereat was not lawfully entitled to do so, unless that fact was known to both parties at the time of the ceremony;*

*(e) any procedural irregularity; or*

*(f) failure to register the marriage.*

Furthermore, dowry should not be considered as a price that a husband pays to get a wife. Viewing dowry in that perspective would make women commodities

for purchase as there is no price to equate the price of a wife to any amount of money, stock or any kind of property that a person gives. The payment of dowry, whichever amount, is just a gift or kind of appreciation given to the bride or to the bride's parents. In our law, if I have to phrase the words of Paras Diwan, dowry is a nuptial gift which a husband pays or promises to make to his wife and should not, in any way, be termed a price. See, **Paras Diwan, Family Law, 2003 at 57**. Now, when dowry is viewed in that angle, it squarely fits into the provision of **section 71 of the Law of Marriage Act** which prohibits the claim for return of any gift given in contemplation of marriage which has so far been contracted. The section provides that:

*"71. A suit may be brought for the return of any gift made in contemplation of a marriage which has not been contracted, where the court is satisfied that it was made with the intention on the part of the giver that it should be conditional on the marriage being contracted, but not otherwise."*

In terms of the above law, a person may only file a suit to claim for gifts, including dowry which were given in contemplation of the marriage where the marriage has not been contracted. But, where the marriage has been contracted, any gift cannot be claimed. In the case at hand, the respondent could only be justified to claim for the refund of dowry and other gifts if the marriage could not have been contracted. As the respondent and appellant's daughter contracted

their marriage, the respondent had no right to claim for the gifts that he gave including dowry.

Furthermore, in our law, the application of **section 71 of the Law of Marriage Act**, hinders court to invoke the application of any customary or Islamic law that support the return of dowry. **Section 11 (4) of the Judicature and Application of Laws Act, Cap. 358 RE 2002** has a clear provision on this point that:

*"11 (4) Notwithstanding the provisions of this Act, the rules of customary law and the rules of Islamic law shall not apply in regard to any matter provided for in the Law of Marriage Act."*

Furthermore, suits for refund of dowry are not new in our judicial decisions. In the Case of **Generoza Ndimbo v. Blasidus Yohanes Kapesi** [1988] TLR 73, this court was confronted with a case of similar facts to this case and stressed further on section 71 of the Law of Marriage Act that:

*"A suit may be brought for the return of any gift made in contemplation of marriage which has not been contracted...the respondent must prove to have given the gifts to the appellant on the condition that the parties intended to marry."*

Also, in the case of **Mohamed Ndwata v. Hamisi Omari** [1988] TLR 137, this Court held that:

*"Once a marriage has taken place, any gifts, whether traditional or otherwise, given in contemplation of the marriage become the absolute property of the recipient and it cannot be diverted by subsequent divorce: Section 71 of the Law of Marriage Act of 1971 which also supersedes rules of customary or Islamic Law."*

Based on the above established principles of the law, the two lower courts erroneously entertained the claim for refund of dowry. Under the law, the respondent was not entitled to claim for the refund of dowry whereas the marriage was contracted. The claim for refund of dowry and other gifts could only hold water if the marriage was not contracted. Therefore, the appellant cannot refund the respondent the money that respondent paid as dowry and other gifts. I find merit in the appeal and I hereby allow it with costs. I set aside the decision of the trial court and that of the District Court. It is so ordered.

**DATED** at **BUKOBA** this 23<sup>rd</sup> day of September, 2022.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**23/09/2022**

**Court:**

Judgement delivered this 23<sup>rd</sup> September 2022 in the presence of the appellant and respondent all present in person. Right of appeal explained.





*Ntemi N. Kilekamajenga*

**Ntemi N. Kilekamajenga.**

**JUDGE**

**23/09/2022**

*Ntemi N. Kilekamajenga*