

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**PC. CIVIL APPEAL NO. 106 OF 2020**

*(Arising from Kinondoni District Court Matrimonial Appeal No. 3 of 2018 Originating  
from Kinondoni Primary Court Matrimonial Cause No. 108 of 2018)*

**RESPICTUS KAMUHANDA ..... APPELLANT**

**VERSUS**

**ESTHER ROGATION ..... RESPONDENT**

**JUDGMENT**

1<sup>st</sup> and 22<sup>nd</sup> December, 2020

**BANZI, J.:**

This is a second appeal originating from Kinondoni Primary Court where the Respondent petitioned for divorce, maintenance of a child and division of matrimonial properties basing on customary marriage contracted in 2009. After receiving evidence from both sides, the trial Court concluded that, there was presumption of marriage between the Appellant and the Respondent. Consequently, the Appellant was ordered to pay the Respondent Tshs.5,000,000/= as compensation for her contribution on improvement to the matrimonial properties. In addition, the Respondent was

given custody of their child with visitation right to the Appellant. On the other hand, the Appellant was ordered to maintain his child by paying Tshs.50,000/= per month and to contribute Tshs.300,000/= in the school fees for the child.

Aggrieved with the decision of the trial Court, the Respondent appealed to the District Court of Kinondoni, which allowed the appeal partly by increasing the amount in respect of division of properties jointly acquired by their joint efforts from Tshs.5,000,000/= to Tshs.10,000,000/=. Discontent with the decision of the District Court, the Appellant lodged the appeal before this Court on one ground thus;

- 1. The Honourable trial (sic) Magistrate erred in law and facts when awarded the respondent Tshs.10,000,000/= as division of the matrimonial assets without any justification or proof of the same.*

At the hearing of this appeal, the Appellant was represented by Mr. Stephen Mayombo, learned Advocate whereas, the Respondent appeared in person unrepresented. By consent, the appeal was argued by way of written submissions.

It was the submission of Mr. Mayombo that, in division of matrimonial assets, the Court under section 114 (1) and (2) (b) of the Law of Marriage Act [Cap. 29 R.E. 2019] ("the LMA") is required to consider extent of contribution by each party in money, property or work towards the acquiring of the assets. He cited the case of **Bibie Maurid v. Mohamedi Ibrahim** [1989] TLR 162 which underscored the factors to be considered in division of matrimonial assets. In that view, he argued that, it was an error for the first appellate court to consider time upon which the parties have cohabitated as a determinant factor to extend the amount awarded by trial court in division of matrimonial assets. According to him, before increasing the same, the appellate court was supposed to evaluate the evidence in respect of contribution made by the Respondent in the improvement of the house in question. Failing to do so, the entire decision was unjustifiable and it renders the judgment nullity and unjust. Thus, he prayed for appeal to be allowed.

In her reply, the Respondent submitted that, the argument of the Appellant has no basis because under section 114 (1) of the LMA it is the discretion of the court to assess the shares to be awarded in division of matrimonial assets. To support her point, she referred unreported decision of this Court in the case of **George Ganchev v. Hope Elizabeth Yussuf**

**Abbebe**, Civil Appeal No. 109 of 2019. It was also her submission that, parties in this case lived eight years whereby, they acquired two houses within such period. She added that, the Respondent being an entrepreneur, she contributed monetary, physically and mentally in construction of the two houses. It was also her contention that, she sold her land located at Izigo Muleba in order to support the construction of the two houses in question by buying building materials. In that regard, she submitted that, considering her contribution towards construction of the houses as proved by the receipts tendered, the first appellate court was justified to increase the said amount. She concluded by praying for the appeal to be dismissed with costs.

Having thoroughly considered the evidence on record and arguments for and against the ground of appeal, the main issue for determination is *whether the first appellate court was justified to increase the amount from Tshs.5,000,000/= to Tshs.10,000,000/= in respect of the properties in question.*

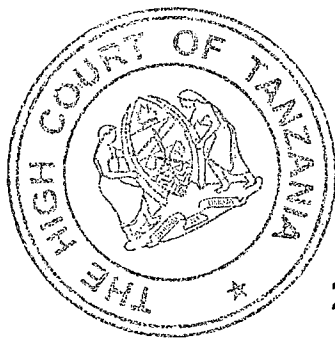
It is worthwhile noting here that, according to section 160 (2) of the LMA, when a man and a woman have lived together in circumstances which give rise to a presumption of marriage, the court shall have jurisdiction to make an order or orders and grant such other reliefs including division of

properties acquired during the subsistence of their union. Since there was presumption of marriage in the matter at hand, the trial court had jurisdiction to grant other reliefs including division of properties acquired in the subsistence of union between the Appellant and the Respondent. However, such division depends on the extent of one's contribution towards acquisition, upkeep and improvement of the property in question. The remaining issue is whether the first appellate court was justified in increasing the amount awarded as contribution by the Respondent.

It can be recalled that, at the trial Court, the Respondent was given Tshs.5,000,000/= after it was established that, she contributed towards improvement of one of the properties acquired prior to their union. The District Court after considering substantial parts of the property developed by the Respondent, upheld the decision of the trial Court by increasing the amount to Tshs.10,000,000/=. I have carefully examined the evidence of both parties in respect of the property in question. What I gather from the evidence of both parties, the property in question was acquired by the Appellant prior to their union. However, it is also on evidence that, during the subsistence of their union, the house in question was demolished and rebuilt. In the course of rebuilding the house, the Respondent contributed

by buying building materials as evidenced by Exhibits A<sub>1</sub> and A<sub>2</sub>. Therefore, it is the considered view of this Court that, the Respondent has contributed towards the improvement of the house in question. On its part, the first appellate court recognised substantial development of the house in question during cohabitation of the Appellant and the Respondent. Basing on that, it increased the amount from Tshs.5,000,000/= awarded by the trial court to Tshs.10,000,000/=. In that regard, I find no reason to fault the decision of the first appellate court considering the fact that, Exhibits A<sub>1</sub> and A<sub>2</sub> proved that the Respondent has contributed more than seven million Tanzanian shillings.

Having said so, and for the reasons stated above, the appeal is hereby dismissed in its entirety. The judgment and decree of the District Court are upheld. Owing to the nature of the matter, each party shall bear its own costs. It is so ordered.

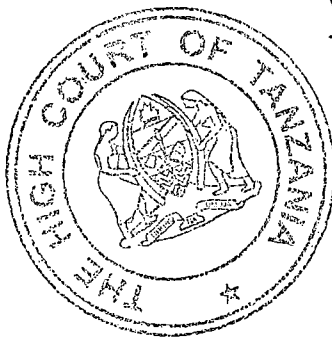


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**I. K. BANZI**  
**JUDGE**

**22/12/2020**

Delivered this 22<sup>nd</sup> December, 2020 in the presence of Ms. Ritha Mahoo  
learned counsel holding brief of Advocate Stephen Mayombo for the  
Appellant and in the absence of the Respondent who is reported sick.



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**I. K. BANZI**  
**JUDGE**  
**22/12/2020**