

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

PC CIVIL APPEAL NO. 52 OF 2022

AZIZI IDD SELEMANI.....APPELLANT

VERSUS

AISHA ABASI RAJABU.....RESPONDENT

**(Arising from the decision of the District Court of Temeke, One Stop
Judicial Centre at Temeke)**

(Swai, SRM)

Dated 26th July 2022

in

Matrimonial Appeal No. 34 of 2021

JUDGMENT

23rd August, & 29th September 2023

Rwizile, J.

Parties to this appeal had an Islamic marriage, which was blessed with two children. When their relationship turned sour, the respondent petitioned the Sinza Primary Court for divorce, division of matrimonial assets, custody, and maintenance. The trial court after hearing the matter, issued a decree of divorce along with 35% of the matrimonial assets was given to her, and custody and maintenance orders were given. The appellant was not satisfied with the judgment and decree of the trial court, he filed an appeal to the district.

The district court as well, found for the respondent in some respect that it confirmed a 35% share of the matrimonial assets to wit two houses. Custody and maintenance orders remained unattached. Again, the appellant was not happy, he henceforth filed this appeal on three grounds;

- i. That the learned Magistrate erred in law and fact by identifying and dividing properties that are not matrimonial properties*
- ii. That the learned Magistrate erred in law and fact by failing to assess the role of the respondent in the acquisition of properties.*
- iii. That the learned Magistrate failed to analyse the evidence accompanying the requirements of the marriage conciliation board and proceedings thereto*

The appellant was represented by Mr. Mozart Severinus Hyera of Gavel Juris (Attorneys), who in the written submission in support of the first ground stated that based on exhibit P1, house No. 296 at Tandale Uzuri is owned by Nuru Hussein Dogo. He argued it was given to the parties for use before they moved to their house at Mbezi. It was the view of the learned counsel that it was wrong for the two courts below to include that as a matrimonial asset as held in the case of **Nacky Ester Nyange vs. Mihayo Marijani Wilmore**, Civil Appeal No. 169 of 2019 (CA)

His submission on the second ground was that the district court did not properly analyze the evidence in respect of what constitutes a matrimonial asset. He said, had that been the case, and if the same could have re-evaluated the evidence, it would have come to the conclusion that the same is not one. The district therefore erred, he argued.

Lastly, the learned counsel was clear that there was no compliance with the requirement of filing form No. 3 which is a certificate from the marriage conciliation board. Mr. Hyera was vehement that it was not proved that the appellant was called before the board. It was his view that in the absence of proof that he was called and resisted, it should be held the same was condemned unheard. He asked this court to allow this appeal.

Mr. Jumbe Abdallah Safari of Saffari Law Chambers, submitting in response to the first ground said that, no evidence proves the house in question belongs to the appellant's mother. He argued, that there is no title or any other proof tendered before the court, or that the owner ought to have come to testify. In his view, the house is a matrimonial property and should be divided as it was done, in the strength of the case of **Bi-Hawa Mohamed vs. Ally Seif** [1983] TLR 32. In his view, the second ground as well has no merit, it should be dismissed.

On the third ground, the learned counsel submitted that section 101(c) of the Law of Marriage Act (LMA) provides the answer. He argued that the board has certified that the appellant was called but did not appear and therefore the petition is in compliance with the law. He asked this court to dismiss the appeal.

In a brief rejoinder, Mr. Hyera pointed out that the case of **Bi-Hawa Mohamed vs. Ally Seif** (supra) is not relevant. In his view, section 114 of LMA applies the measure as the extent of contribution in the acquisition of the matrimonial assets that are to be divided between the spouses. And lastly, he added that, the presence of form. 3 alone does not prove proper appearance, since it does not give a full picture of what happened at the board.

Having gone through the submissions of both parties. It is clear to me that the appeal surrounds the division of matrimonial assets. In specific terms, house No. 296 at Tandale Uzuri which according to the appellant belongs to Nuru Hussein Dogo, allegedly the appellant's mother. It was submitted that the evidence proving so is exhibit P1. My perusal of exhibit P1 collectively finds nothing suggesting that there is a house that belongs

to the said person. Above all, there is no evidence that showed the owner could not come to court to testify or is not a compellable witness. The best way for the appellant was to call her mother to prove that the landed property was her own property.

In the absence of such evidence or any other evidence stronger enough to prove wrong the respondent, this court takes the evidence available as the word of the appellant against that of the respondent. In the circumstances, this court finds no weight in the argument by the appellant. The first and second grounds are dismissed as it was done before the district court.

In compliance with section 101 of the LMA. It was submitted that the law requires proof of conciliation before a matrimonial dispute is filed. It is indeed true. Upon perusal of the record, it shows, the board certified that the appellant was called but did not appear, and therefore reconciliation failed. As submitted, form No. 3 was filed, and it is duly signed by the chair, secretary, and a member. It specified that the "husband" in this case, the appellant did not appear and so there was nothing done on their party.

The law negates the requirement of reconciliation if the board certifies as it did that only one part appeared. It is therefore in compliance with section 101(c) of the LMA as submitted by the respondent's counsel. For that matter, I find nothing to fault the finding of the district court. This ground also has no merit, it is dismissed.

For the foregoing reasons, I dismiss this appeal in its entirety. I do not make an order as to costs.



ACK. RWIZILE
JUDGE
29.09.2023