

TANZANIA / JUDGMENT

JOHN MAGAMBO JUDGMENT for Tanzlii

COURT
TANZLIIDECIDED
23 January 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA GEITA SUB-REGISTRY AT
GEITA MATRIMONIAL APPEAL NO. 26475 OF 2024 (From the decision of Bukombe District Court
in Matrimonial Appeal No. 22218 of 2024- Hon. Chitepo-SRM.) JOHN
MAGAMBO----- APPELLANT VERSUS VAILETH JUMA
----- RESPONDENT

JUDGMENT

Date of the last order: 23 January 2025 Date of the Judgment: 14 February 2025. K. D. MHINA, J.
This is the second appeal involving the parties who were husband and wife and blessed with one
issue during the subsistence of their marriage. However, while composing a judgment regarding
the grounds of appeal preferred before this court, I discovered the District Court [hereafter to be
referred to as the 1st appellate Court] did not deal with the grounds presented before it, including
1 the crucial ground raised regarding the right to be heard; instead, it framed two issues and
disposed of the appeal based on those two framed issues. Therefore, to keep alive the rule of
natural justice on the right to be heard, I recalled the parties to address this Court on that
irregularity. See Charles Christopher Humprey Kombe vs. Kinondoni Municipal Council, Civil
Appeal No. 81 of 2017 (Tanzlii). Furthermore, this Court placed the issue raised on record and
clarified it to the parties. See. Yusuf Khamis Hamza and two others vs. Juma Ali Abdallah, Civil
Appeal No. 25 of 2020 (Tanzlii). This is very important because the issue raised must be placed on
record, and parties are entitled to understand what was raised so that while exercising their right
to be heard to be able to adduce material facts or evidence for or against the issue raised.
However, before embarking on the issue I raised suo motu, I find it appropriate to narrate albeit
briefly, the background of the facts leading to this appeal as they can be gleaned from the
electronic record of appeal. 2 The parties were husband and wife. On 17 July 2024, the appellant
petitioned for a dissolution of marriage and distribution of matrimonial properties before
Runzewe Primary Court. In the course of the hearing, on 7 August 2024, the respondent
requested the case be transferred to the District Court of Bukombe. However, the trial court
rejected the prayer, closed the hearing of the case and adjourned the case for the judgment to 9
August 2024. This is what happened on 7 August 2024; “Mdaiwa:- Naomba kesi yangu isikilizwe na
mahakama ya Wilaya, Mahakama:- Kwa vile mdaiwa anadai kesi yake hataki isikilizwe na
mahakama hii na badala yake anataka kesi isikilizwe na mahakama ya Wilaya, kwa vile hataki
kutoa maelezo yake, mahakama hii inaona sababu yake ya kuomba kesi isikilizwe na mahakama

ya Wilaya haina mashiko na hivyo shauri hili linafungwa kwa pande zote mbili na hukumu itatolewa tarehe 09/08/2024". In its judgment, the trial court dissolved the marriage between the parties and ordered the distribution of 50-50% of one house acquired during the subsistence of the marriage. Further, it granted custody of the issue of marriage to the respondent and ordered the appellant to pay TZS. 30,000/= per month as maintenance of the child. It should be noted that the judgment considered only the evidence of the appellant because after the court closed the case before the respondent testified. Undaunted, the respondent approached the District Court by way of appeal with six (6) grounds of appeal. For better understanding and later discussion in this appeal, I paraphrase those grounds of appeal. They were as follows;

1. That, the trial Magistrate erred in law and fact for deciding the matter without giving the appellant the right to be heard.
2. That, the trial Magistrate erred in law and fact by deciding the matter without evaluating evidence.
3. That, the trial Magistrate erred in law and fact on dividing the matrimonial property without considering the extent of the contribution made by each party in acquiring the property.
4. That, the trial Magistrate erred in law and fact by deciding the house to be sold and the money to be 4 divided equally among the parties without considering the need of the infant of the marriage.
5. That, the trial Magistrate erred in law and fact by ordering the respondent to pay Tshs.30,000/= per month without considering the cost of where the child is living, the age together with needs of the child per day.
6. That, the trial court erred in law and fact to deliver judgment without assigning the reasons for reaching that before it". At the 1st appellate court, both grounds of appeal were argued by way of oral submission. However, in its decision, the 1 st Appellate Court did not at all address and determine the grounds of appeal which were placed before him. On the contrary, he simply formulated his own two issues, which he termed as points for the determination of the appeal. The issues were;
 - i. Whether in the distribution of the matrimonial property, the contribution of each spouse was considered and ii. Whether in the distribution of the matrimonial property, the welfare of the child who was below seven (7) years was considered. 5 Therefore, from above, it is the first appellate court did not at all consider the grounds of appeal in the petition of appeal which were placed before it for determination, including the grounds of appeal which raised the points of law such as the right to be heard and whether the trial court judgment contained reasons for the determination. At the hearing of the issue, I raised suo motu; both parties appeared in person unrepresented. In their submission, the parties had nothing much to submit. The appellant briefly submitted that the District Court erred in failing to dispose of the grounds of appeal presented before it. On the other hand, the respondent had nothing to submit however she stated that the District Court quashed the Primary Court

decision. Having gone through the entire records of appeal and brief submissions by the parties. I will start by citing the following decisions by the Court of Appeal. 6 One, Malmo Montage Konsult AB Tanzania Branch vs. Margret Gama, Civil Appeal No.86 of 2001 (unreported), where it was held that; "In the first place, an appellate court is not expected to answer the issues as framed at the trial. That is the role of the trial court. It is; however, expected to address the grounds of appeal before it. Even then, it does not have to deal seriatim with the grounds of appeal as listed in the memorandum of appeal. It may, if convenient, address the grounds generally or address the decisive grounds of appeal only or discuss each ground separately". Two, in Mwajuma Bakari (Administratrix of the estate of the late Bakari Mohamed vs. Julita Semgeni and Another, Civil Appeal No. 71 of 2022 (Tanzlii), where it was held that; "It is trite law that the court is enjoined to consider the grounds of appeal presented to it either generally or one after another". What can be gleaned from the above two cited cases is the appellate court; 7 First, it shall address all grounds of appeal presented before it. Second, the ways to address the grounds are as follows: one, it can address the grounds generally; two, or one ground after another and three, it can address the decisive ground of appeal only. Third, the appellant court is not expected to answer the issues as framed at the trial. In this matter, as previously alluded, the first appellate court did not deal with the grounds of appeal canvassed in the petition instead it framed two issues, both related to distribution of matrimonial properties. Though the issues framed related to the 3rd and 4th grounds of appeal, but they were not decisive grounds and the 1st appellate court dealt with them while there were unattended complaints of the right to be heard and the legality of the trial court's decision. In the circumstances, the 1st appellate court should have at least determined the 1st and 6th grounds first. These two grounds 8 dealt with the legality of the trial court's decision and the right to be heard. Therefore, it is clear that the first appellate court departed from the trite principle that the appellate court shall consider the grounds of appeal presented before it. The question is what is the effect of that failure In the cited case of Mwajuma Bakari (Supra), it was held that; "...failure to consider the grounds is fatal to the decision". Further, in Simon Edson@ Makudi vs. Republic, Criminal Appeal No. 05 of 2017 (Tanzlii), it was held that; "...the impugned judgment fell far below the required standard and for that reason, it was not a judgment known in law. It was a nullity". Flowing from above, the failure of the 1st appellate court to consider the grounds in the petition is fatal and a nullity. It implies that there is no judgment from the first appellate court before this 9 Court for determination. Therefore, I nullify and quash the 1st appellate court's proceedings and set aside the judgment and order (s). As to the way forward, since the grounds of appeal were not attended and determined, for the interest of justice, I remit the case to the District Court for it to hear the parties on the basis of those grounds, before another Magistrate. Since the matter is raised suo motu by the Court, I order no costs. It is so ordered. K. D. MHINA 10 JUDGE 14/02/2025 Court: The right to appeal is fully explained to the parties. K. D. MHINA JUDGE 14/02/2025 11 12

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