

TANZANIA / JUDGMENT

julian charles mkapa vs elia barnabas mdenye 2023 tzhc 23112 28 november 2023

COURT
TZHCDECIDED
28 November 2023

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA (MTWARA DISTRICT REGISTRY) AT MTWARA PC. CIVIL APPEAL NO 11 OF 2023 (Originating from Masasi District Matrimonial Appeal No. 2 of 2023, Arising from Lisekese Primary Court in Matrimonial Cause No. 9 of 2023) JULIANA CHARLES MKAPA APPELLANT VERSUS V ELIA BARNABAS MDENYE RESPONDENT <C JUDGMENT 28“ Nov. 2023 LALTAIKA, J, The appellant herein, JULIANA CHARLES MKAPA, initiated Matrimonial Cause No.9 of 2023 at Lisekese Primary Court, seeking the division of a matrimonial asset, specifically a house purportedly acquired during her relationship with the respondent. The lower court records indicate that the parties commenced their relationship in 2021 but failed to formalize it under the Law of Marriage Act Cap.29 R.E. 2019. Page 1 of 4 After the trial court adjudicated the matter, it concluded that the presumption of marriage was not established. Consequently, it declined to divide the property claimed by the appellant. Dissatisfied, the appellant appealed to the District Court, which overturned the trial court's decision and ordered a division of the house, allocating 15% to the appellant and 85% to the respondent. Uncontentious with this outcome, the appellant has now lodged the present appeal, outlining two grounds of appeal:

1. The District Court erred in law and fact by determining that the property should be divided unequally, assigning 15% to the appellant and 85% to the respondent, instead of an equal division. 2, The District Court erred in law and fact by disregarding compelling evidence presented during the trial, even though the respondent admitted to jointly building the house. During the hearing on 7/11/2023, both parties appeared in person and without legal representation. Addressing the first ground, the appellant asserted that they commenced dating in 2020 and began constructing the house in January 2021. She emphasized her significant contribution to the construction, alleging that the respondent's financial support dwindled when they closed their shop. The appellant argued that the unequal division was unfair, particularly considering her substantial financial contribution. On the second ground, the appellant contended that the first appellate court failed to consider her contributions, both financially and through ownership of a shop. She asserted that the respondent's shop, despite lasting a short time, resulted in proceeds that were divided among relatives. The appellant claimed that she informed the court of these facts. Page 2 of 4

In response, the respondent denied dishonesty, stating that he presented all relevant documents to the Primary Court. He argued that he proved his financial contributions to building the house and claimed the appellant was not involved in constructing the ring beam. The respondent acknowledged agreeing to pay the appellant TZS. 3,000,000/- but argued it was excessive for the ring beam. On the second ground, the respondent disputed the appellant's assertion that she lacked evidence, citing witnesses presented in the Primary Court. He maintained that the shop belonged to him, with all licenses in his name. In a rejoinder, the appellant challenged the respondent's claim regarding a plot, suggesting the respondent agreed to pay her TZS. 3 million due to a lack of truthfulness. She reiterated that the shop belonged to her relatives. Upon a dispassionate review of the lower court records, grounds of appeal, and submissions from both parties, the matter centres on the presumption of marriage. The trial court correctly discerned that the parties did not meet the statutory requirement of living together for two years or more to trigger the presumption of marriage under section 160(1) of the Law of Marriage Act, Consequently, the trial court rightly refrained from dividing the alleged matrimonial house. Moreover, the District Court's intervention and unequal division of the house were procedurally flawed. The court lacked jurisdiction to distribute matrimonial assets absent a formal marriage or established presumption of marriage, as prescribed by section 114 of the Law of Marriage Act. Page 3 of 4 Said and done, the appeal is dismissed, and the decision of the District Court is quashed, along with the associated orders. The decision and orders of the trial court are upheld. No order as to costs is granted. It is so ordered. E.I. LALTAIKA JUDGE 28.11.2023 Judgment delivered this 28th day of November 2023 in the presence of both parties who have appeared in person and unrepresented. E.I. LALTAIKA JUDGE 28.11.2023 The right to appeal to the Court of Appeal of Tanzania is fully explained. E.I. LALTAIKA JUDGE 28.11.2023 Page 4 of 4

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