

TANZANIA / JUDGMENT

Yuda Sanka

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6 May 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI PC. CIVIL APPEAL NO. 3098 OF 2024 (Originating from Civil Appeal No 25
of 2023 in the District Court of Babati at Babati and formally CF Matrimonial cause No. 01 of 2023
in Dareda Primary Court} YUDA SANKA GWANDU.....
APPELLANT VERSUS ROMANA NAMBORI EDMUND.....RESPONDENT

RULING

&h May 2024 MIRINDO, J.: Yuda Sanka Gwandu and Romana Nambori Edmund were husband and wife. In October 2023, Yuda Sanka Gwandu instituted a matrimonial proceeding before Dareda Primary Court. He prayed for divorce, division of matrimonial properties and child maintenance. The trial court granted divorce and ordered child maintenance. It declined to order division of matrimonial property on account there was joint matrimonial property. Romana Nambori Edmund was aggrieved with the order relating to children custody and denial of division of matrimonial property. He appealed to Babati District Court. 1 The appeal was heard by way of written submission. In its appellate judgment, the District Court dealt with the requirement to submit matrimonial dispute before a marriage conciliatory board in terms of section 101 of the Law of Marriage Act [Cap 29 RE 2019]. The District Court found that there was no compliance with this requirement. It quashed the proceedings of the Primary Court and advised parties to comply with the law. The appellant appeared in person at the hearing of the appeal. The respondent was represented by Mr Richard Gray, learned counsel. At the commencement of the hearing of the appeal, I invited parties to address me on whether they had the opportunity to address the District Court on the question of marriage conciliatory board. Both parties admitted that they were not afforded that opportunity. It is an established principle of procedure that parties should be afforded opportunity to be heard and the failure to do so generally vitiates the proceedings. This principle has been stated and restated by the Court of Appeal in number of decisions most notably in Abbas Sherally and Another v Abdul SHM Fazaiboy, Civil Application 133 of 2002, Court of Appeal of Tanzania at Dar es Salaam (2005) (unreported) where Mroso JA stated that: The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of the principles of natural justice... 2 It is clear that the

District Court determined the issue of marriage conciliatory board without affording parties opportunity to heard. For this reason, I invoke the revisional powers of this Court and set aside the judgment of the appellate District Court. I remand the appeal to the District Court before the presiding the learned appellate Senior Resident Magistrate, VJ Kimario to afford the parties the opportunity to be heard on the requirement of marriage conciliatory board, if it so wishes or proceed to compose judgment according to law. It is so ordered. DATED at BABATI this 6th day of May, 2024 F.M. MIRINDO JUDGE Court: Ruling delivered in the presence of the appellant and in the presence of the respondent in person and Mr. Richard Gray, learned counsel for the respondent. B/C: William Makori present. buRINDO JUDGE 6/5/2024 3

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Prepared on 14 October 2026 · Esheria