HAKIKA MFAUME VS. MARIAM ISMAIL
THE HIGH COURT OF TANZANIA
KAZIMOTO, J.
3RD MARCH, 1989 – MTWARA

Family Law – Matrimonial Civil Appeal from the decision of the district court – dispute over division of matrimonial property – whether the house in question is a matrimonial property or whether it belongs to the appellant's brother.

With their marriage dissolved, the respondent unsuccessfully sued the appellant in primary court for division of matrimonial property. Her appeal to the district court was successful hence this appeal by the appellant.

In her evidence, the respondent had testified that she contributed to the building of the house in dispute. The appellant in his part lamented that the house belonged to his brother. The issue was therefore, whether the house was a matrimonial property or the appellant brother's.

There was enough evidence to the effect that the house was a matrimonial property, but no evidence as to the value of the house. The court then decided that the house be sold by the court broker and the proceeds of sale be divided equally to the parties.

HELD:

(1) The house in dispute is a matrimonial property.

(2) Judgement of the district court upheld.

Appeal dismissed with costs

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No case referred to.

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IN THE HIGH COURT OF TANZANIA
AT MTWARA
PC MATRIMONIAL CIVIL APPEAL NO.4 OF 1988
NEWALA DISTRICT COURT CIVIL APPEAL NO. 25 OF 1987
Original Newala Primary Court Civil Case No. 28/87

JUDGMENT

KAZIMOTO, J.

The appellant and the respondent were lawfully married according to Islamic Law. Their marriage having been dissolved the respondent unsuccessfully sued the appellant for division of matrimonial property, notably a house, which is alleged to have been built by their joint efforts. She appealed to the district court which allowed her appeal and ordered that the respondent should be given half the value of the house which is shs. 15,000/=. This order had aggrieved the appellant and is seeking to set it aside by this court. both parties appeared in person before me.

There is no dispute that during their marriage the appellant and the respondent had built a house. The evidence at the trial shows that the respondent as well as the appellant had contributed their efforts materially and financially towards building the said house. The case for the appellant is that although the respondent had helped in building the house the house does not belong to the parties, that it belonged to the appellants brother and that the appellant was only requested to oversee the construction of the house. The

respondent had disputed this vigorously. The issue in this appeal is whether the house in question is a matrimonial property or whether it belongs to the brother of the appellant.

In her evidence at the trial the respondent testified that when they married in 1984 the appellant had shs. 300/= (three hundred) only and that the appellant advised the respondent to go and cultivate in the shamba while the appellant sold cigarettes. She said they agreed that money realised should be used to build a house. She further testified that the appellant told her to forego good meals and clothing for this project which she said she did and that all the money realised was used to buy iron sheets, timber, and other building materials and that they began to build a house. She said that she was not told that the house belonged to the appellant's brother.

The appellant testified that his brother gave him iron sheets to build a house and that is brother employed a person to cut poles and paid shs. 500/= for the building the house.

Both parties called witnesses to support his/her case. In this appeal the appellant conceded that the respondent helped in plastering the house but suggested that she should be paid for her labour rather than demand division of the value of the house.

The first appellate court was of the view that there was insufficient evidence to prove that the house belonged to the appellant's brother. I tend to agree with the first appellant court. Indeed the respondent appeared to have scarified a great deal, including the bare necessities of life, towards building the house. Had the appellants disclosed that the house that they were building belonged to DW2 the respondent would not have agreed to forsake clothing and good food for the same of saving money to build a house which does not belong to them. It appears to me abundantly clear that the house in dispute does not belong to dW2, the appellant's brother but it belongs to the appellant and the respondent and that they had built it through their joint efforts. Accordingly I hold that the house in dispute is a matrimonial property and as such it is liable to be divided between the appellant and the respondent.

In her evidence the respondent has claimed that the value of the house is shs. 30,000/=. The first appellant court has ordered equal division base don this value. With respect there is no evidence as to the value of the house. Evidence should be led to establish the exact value of the house. While I agree with the principle of parity of division of the matrimonial property I would order that the house in dispute should be valued by a competent valuer like the district engineer who should certify the value to the District Court. Half of the value of the matrimonial property so certified as aforesaid should be awarded to the respondent. In the event that the house cannot be valued for any reason then the house should be sold by a court broker and the proceeds of sale be divided equally between the appellant and the respondent.

For the reasons that I have given I uphold the judgment of the district court and dismiss the appeal with costs.

E.E. KAZIMOTO
JUDGE

Court: Judgment delivered in the presence of both parties this 3rd day March, 1989.

E.E. KAZIMOTO
JUDGE