

**IN THE HIGH COURT OF ZANZIBAR  
AT TUNGUU  
MATRIMONIAL CAUSE NO. 55 OF 2021**

**PAJI BURTON KIBOPILE ..... PETITIONER**

VS

**YUSSUF ROBERT LUIS ..... RESPONDENT**

**JUDGEMENT OF THE COURT**

24/05/2023 & 04/07/2023

**KAZI, J.:**

The parties in this matter, Paji Burton Kibole (petitioner) and Yussuf Robert Luis (respondent), are wife and husband who celebrated their holy matrimony on 10<sup>th</sup> July 2010 at the Anglican Church, Diocese of Zanzibar. After eleven years of their marriage, the petitioner, on 15<sup>th</sup> September 2021, instituted this petition for divorce against the respondent for the decree nis to dissolve her marriage and for the order to distribute the matrimonial house in which the respondent owned 70%.

The petitioner advanced her grounds for the dissolution of their marriage in her petition. She claimed she had lived in separation for three years, without a sexual relationship or talking with the respondent. She further contended that the

respondent had a sexual relationship with another person and had a child out of wedlock. Therefore, the petitioner claimed in her petition that there is no love and trust between her and the respondent, and since they no longer share the marital home, their marriage has permanently broken down.

The respondent denied the petitioner's allegation through his written statement of defence. However, the respondent did not object to the petitioner's prayer for divorce, and he conceded that they are no longer sharing the marital home and that the two are no longer in love.

Ms. Time Assaa, a learned advocate, represented the petitioner at the hearing. The respondent was unrepresented and fended for himself.

Based on the facts from the pleadings, the following issues framed for the Court's determination: -

1. Whether the marriage of the parties has broken down irreparably.
2. Whether parties jointly acquired matrimonial property. If yes, whether the petitioner is entitled to a division of the matrimonial property.
3. What reliefs are parties entitled to?

In establishing her case, the petitioner called no one to testify on her side but herself. Conversely, the respondent called five witnesses to testify in his defence.

The first issue is not contested. According to the evidence adduced by the parties and from the pleadings, it was shown by the petitioner and the respondent that their marriage had broken down irreparably. The first issue is therefore answered in the affirmative.

The only matter in contention is the second issue. The question that needs to be resolved is whether the parties acquired a house jointly during the subsistence of their marriage.

According to paragraph 7 of the petition, the petitioner pressed the Court to divide the house she shared with the respondent situated at Mbuzini, Zanzibar, which is bounded as follows; North by the road; South by Nyanda; East by Plot; and West by Edward Robert.

In her evidence, when testified as PW1, the petitioner averred that they built a house during the subsistence of her marriage with the respondent. The house was built on the respondent's plot, and she contributed almost 75% to the house's construction. She stated further that she bought bricks, wood,

and other construction materials and paid for masons with her own money. She averred that she earned money from her work as a therapist at the hotels such as Venta and Ocean Paradise, where she was paid a salary and commission. There was a time she was working in Oman and was sending respondent money for finishing a construction, but the respondent squandered them, she added. PW1 testified further that the disputed house is unfinished, but its three bedrooms and kitchen are completed. Therefore, they were living in the said house. PW1 claimed that the respondent's mother destroyed all her receipts for the purchased material when she deserted the matrimonial home.

In his defence, when testified as DW1, the respondent stated that the house they were constructing was not theirs but a family house, and the person responsible for it was his mother. DW1 stated that PW1 contributed to the house's construction as she built one wall and bought around 60 iron sheets. DW1 testified that he spent the money received from PW1 when she was in Oman by repairing their car, which was involved in the accident when PW1's relative drove it. DW1 contended that what the respondent is entitled to what she contributed to the house is about Tsh. 2,500,000/- or 3,000,000/-.

Respondent's second witness was David Jacob Kaswende (DW2), who testified that the disputed house belonged to Yussuf Robert Lous. The house was built in the shamba of Robert Luis Maganga, the respondent's father and was constructed before the petitioner and respondent married. He added that the respondent's mother was previously living in the disputed house. In cross-examination, DW2 contended that he saw the disputed house between 2003 and 2010, which was unfinished and without a window at its rear side.

Violet Juma Yussuf, the respondent's mother, testified as DW3. In her evidence, she maintained that the petitioner and respondent did not acquire any property during their marriage. She maintained that the respondent did not build the disputed house, but it was built by her late husband, Robert Luis Maganga. She stated in the cross-examination that the house belonged to her late husband, and she has documents to prove that. She further responded to Ms. Assaa's questions that she lived in the house in dispute with her children. She also confirmed that the petitioner contributed to the house's completion but claimed that the petitioner's contribution was minimal.

DW4 was Matrinda Silas Masoud, a member of the Sheha Committee. In her evidence, she told the Court that she didn't know if the parties, in this case, acquired properties together.

She testified that she had been staying in Mbuzini since 1995, and she knows that there is a house the respondent's father built in the said area. In the cross-examination session, DW4 stated that in 1995 the disputed house was unfinished. It had two rooms and a banda at its backside. DW4 further stated that they saw the renovation to the disputed house after the petitioner started living there, but she didn't know if she contributed to the said renovation.

The last defence witness, Juma Thabit Mansoor, DW5, also testified that the disputed house and shamba belonged to the respondent's father, the late Robert.

I have carefully considered the evidence adduced by both sides' witnesses. I have compared the testimonies of the petitioner and the respondents' witnesses and find the respondent's evidence overwhelming. The respondent's evidence established that the disputed house is not a matrimonial property and does not belong to either party in this petition. In her unchallenged testimony, DW3, a respondent's mother, confirmed that the disputed house belonged to her late husband, Robert Luis Maganga. Her evidence was supported by unchallenged evidence from DW4, a member of Mbuzini Sheha's Committee, DW2 and DW5. It was established by the evidence, however, that PW1 contributed in renovating and or additional

construction of the disputed house, which was built, before the parties were married, by the respondent's late father.

On the other hand, the petitioner's evidence was not supported by any concrete evidence to establish that the disputed house is matrimonial property. She claimed that they built a house at the respondent's plot without advancing any proof to show that the plot belonged to the respondent. She even failed to establish when they started the construction.

All in all, as the respondent's evidence established that the disputed property existed before the petitioner and respondent met and subsequently married, the second issue of whether parties jointly acquired a matrimonial property is not answered in the affirmative.

The last issue relating to the reliefs parties entitled. This issue will not detain me longer. On their evidence, both parties established that the petitioner used her money to renovate the disputed house. However, even though the petitioner failed to demonstrate the amount she spent and is entitled to from renovating a disputed house, the respondent hinted in his evidence that the petitioner is entitled to be paid about two and a half or three million shillings. I have therefore decided to award the petitioner 2,500,000/- as a refund from the money spent to renovate the house of the respondent's late father.

In the event, I am pleased to make the following orders; that the marriage between the petitioner, Paji Burton Kibopile and the respondent, Yussuf Roberty Luis is hereby dissolved. Consequently, the Divorce Decree is issued forthwith. The respondent is to refund the petitioner Tsh. 2,500,000/- for the renovation made to the respondent's family house.

Since this is a family matter, I make no order regarding costs.

Dated at Tunguu, Zanzibar this 04<sup>th</sup> July 2023.



**G. J. KAZI**  
**JUDGE**  
**04/07/2023**