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# LEGAL NEWS

5 February 2025



## Court Underscores Co-wives' Rights in Divorce Proceedings Affecting Matrimonial Properties

The Court of Appeal of Tanzania (the Court) recently in Civil Application No. 285/01 of 2023 between Mariamu Juma Mohamedi and Mariam Nassoro Kipinduka & Halifa Hamisi Ungaunga delivered a ruling upholding and underscoring the centrality of the cardinal principle of natural justice that a person should not be condemned unheard. In this case, the court emphasized the non-divorcing co-wife's right to be heard if her property rights are directly affected in divorce proceedings.

### Background of the Case

Following a divorce decree and an order for equal division of the alleged matrimonial properties between the Respondents who were presumed married, the Applicant, as a lawful co-wife of the Second Respondent approached the Court with a prayer for the Court to exercise its revisionary powers in respect of those proceedings. She purported deprivation of her right to be heard during the proceeding leading to the division of matrimonial properties she jointly acquired with the Second Respondent (the husband). Thus, the Applicant invited the Court to revise and quash the High Court's proceedings confirming the ruling of the District Court that based on Islamic rites, presumed marriage between the Respondents; granted a divorce decree; and an order for the equal division of the alleged matrimonial properties.

### Arguments Raised by Parties

The Applicant argued that she was unaware of the existence of that matrimonial dispute. She became aware after being informed by her husband, the Second Respondent. Further, the Applicant's counsel argued that the Applicant and the Second Respondent are lawfully wedded since 2002 and they have since then secured properties. Therefore, the decision of the District Court which decision was upheld by the High Court has a direct effect on the Applicant's rights to those properties. These arguments were supported by the Second Respondent.

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#### About ECRA Attorneys

ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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In contrast, the First Respondent counteracted by stating that it was the duty of the Second Respondent to inform the Applicant (his wife) on the proceedings. Thus, the Applicant's counsel prayed to the Court for dismissal of the application.

## Determination of Issues and Decision of the Court

The Court raised two issues to determine the application including whether the Applicant had any right to be heard before the division of the alleged matrimonial properties; and whether the division of the alleged matrimonial properties between the Respondents affected the Applicant. Regarding the first issue, the Court observed that both Respondents knew the existence of the Applicant as a lawful wife of the Second Respondent and their marriage was indisputable.

In respect of the second issue, the Court noted that the matrimonial properties listed by the Applicant are the same as those that were listed by the First Respondent in the matrimonial proceeding in the District Court. Thus, the Court held that the decision of the appellate courts in respect of equal division of the alleged matrimonial properties affected the Applicant who was neither a party to the dispute nor was afforded right to be heard and defend her interest. The reasoning of the Court was based on the fact that since the First Respondent knew the existence of the Applicant, the division of the alleged properties acquired jointly during their presumption of marriage could not be divided without the involvement of the Applicant.

Finally, the Court ruled that since the First Respondent knew the Applicant as a lawful wife of the Second Respondent, the Applicant had every right to be heard in every deliberation touching her alleged matrimonial properties. Thus, the Court invoked revisionary powers and nullified the entire proceedings, judgment and orders of the courts below as they offended the basic principles of natural justice on right to be heard.

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Copy of the Judgment of the Court can be accessed by [clicking here](#)

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