

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT SUMBAWANGA**

**MISC. LAND APPEAL NO. 23 OF 2019**

**(From the Decision of the District Land and Housing Tribunal of  
Rukwa at Sumbawanga in Land Case Appeal No. 3 of 2017, Civil  
Case No. 1/ 2019 of Kate Ward Tribunal)**

**ELIASA D/O MASENGA .....APPELLANT**

**VERSUS**

**YOWAS S/O MISHECK.....RESPONDENT**

**JUDGMENT**

**16<sup>th</sup> April – 07<sup>th</sup> May 2020**

**MRANGO, J**

This appeal has been preferred by the appellant Eliasa Masenga. The appellant is contesting the judgement and decree of the District Land and Housing Tribunal for Rukwa delivered on 17<sup>th</sup> day of September 2019. The matter has its genesis from Kate Ward Tribunal (Henceforth the trial tribunal) where the appellant sued the respondent over ownership of a plot of land and its development (Disputed House) claiming to be the sole owner of the same. Surprisingly, no one became victorious over the dispute as the trial tribunal rested ownership of the disputed house exclusively to the four issues of the parties.

Being aggrieved by decision and order of the trial tribunal, the appellant appealed before the District Land and Housing Tribunal (henceforth the appellate tribunal) for Rukwa at Sumbawanga. The appellate tribunal determined the appeal with the decision that the disputed house belongs to both parties as the same was jointly constructed by them meanwhile it said to have no jurisdiction with the matter, consequently it advised the parties to approach the proper forum having jurisdiction for the disputed house to be divided between themselves.

Dissatisfied with the judgement and decree of the Appellate Tribunal the appellant has preferred this appeal which comprised of two grounds of petition of appeal before this court which are quoted hereunder;

**1. That the District Land and Housing Tribunal erred in law and fact by stating that the said suit belong to both parties while the same was already determined in matrimonial Case No. 4/ 2018 (Kaengesa Primary Court).**

**2. That the District Land and Housing Tribunal erred in law and fact by stating that the parties have to**

**approach the appropriate forum so that the suit house can be distributed between the parties while the same was already determined by proper forum and the said house declared to be the property of the appellant alone in the aforesaid house declared to be property of the appellant alone in the aforestated matrimonial case.**

When the matter was called on for hearing before this court on 16. 04. 2020 the appellant appeared in person, unrepresented whereas the respondent defaulted to enter appearance despite being served a notice to appear by this court. Therefore, the appellant prayed for the court to proceed ex-parte, this court granted the prayer as prayed by the appellant.

During the hearing the appellant prayed for the court to adopt his grounds of appeal he has lodged and nothing else he had to add.

The issue for determination before this court is whether the appeal has merit.

Having subjected the record of the trial tribunal under my strict scrutiny, it is undisputed that the parties had once lived together for several years. That their relationship led to the four issues born out of their relationship. Also it is on evidence that the appellant claimed before the trial tribunal that their relationship was that of concubine and not exactly a legal relationship. However, she admitted before the trial tribunal to have four issues born during their relationship with the respondent. In her testimony, the appellant did not reveal to the trial tribunal as to when she started to live with the respondent.

In his part, respondent claimed to have started relationship with the appellant and as well to live together in a year 2004. He told the trial tribunal that they acquired some properties jointly during their relationship and he found other properties being owned independently by the appellant including a disputed plot upon which he said to have made contribution to its development (disputed house) before living apart.

With the above version story of both parties, it is my observation that appellant and respondent indeed had a relationship but to say whether legal or illegal relationship is a matter to be considered and determined by

the court of competent jurisdiction. Their relationship produced four issues namely, Anifa, Emmanuel, Patricia and Samia as well the properties acquired jointly including the disputed house.

To put a point clear, it was wrong for the trial tribunal to determine the matter after its findings to reveal that the disputed house was a result of joint contribution of both parties that is matrimonial dispute. However, the trial tribunal proceeded to make an order which vested the ownership of the disputed house in the hands of the four issues of the parties (It made distribution of property to third parties). What the trial tribunal could have done was to dismiss the dispute and thereafter refer it as matrimonial dispute before the proper forum that is before a court of competent jurisdiction which according to **section 76 of the Law of Marriage Act, [LMA] Cap 29 RE 2019** including High Court, a Court of Resident Magistrate, a district Court and a Primary Court. The provision provides that all the mentioned above courts have both original and concurrently jurisdiction in respect of matrimonial proceedings. However, the requirement of **section 101 of the LMA**, concerning reference of the matrimonial disputes to the Marriage Reconciliation Board is to be observed before the dispute is determined by the court.

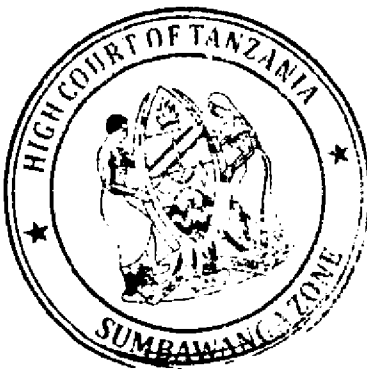
In his petition of appeal the appellant claimed that the dispute was already considered and determined by the Kaengesa Primary Court in a Matrimonial Case No. 4 of 2018, of which no document was tendered as evidence to substantiate his assertion before this court. I may see the appellant's assertion in his ground of appeal as mere statement without legal backup.

Coming to the decision of the appellate tribunal, this court found that upon the appellate tribunal finding that the parties were in a legal relationship under customary marriage and with its observation that the trial tribunal erred to declare the four issues of relationship as lawful owners of the disputed house it could have nullified the whole decision of the trial tribunal as the same had no jurisdiction to entertain matrimonial dispute let alone in making division or distribution of properties.

The position taken by the appellate tribunal was too evasive. It advised the parties to approach the proper forum in case they wish to distribute the jointly acquired properties among themselves. Therefore it left the erroneous decision of the trial tribunal to stand instead of nullifying it first.

With the above analysis, I accordingly allow the appeal with no order as to costs as same has merit before this court. This court also nullifies the proceedings and the decision of the both tribunals, appellate and trial tribunal for being nullity. If parties are still interested are at liberty to refer the matter before the court of competent jurisdiction as hinted upon above.

Order accordingly.



  
**D. E. MRANGO**

**JUDGE**

**07. 05. 2020.**

Date - 07.05.2020

Coram - Hon. D.E. Mrango – J.

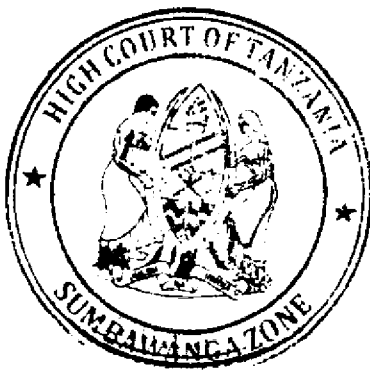
Appellant - Present in person

Respondent - Absent/without notice

B/C - Mr. A.K. Sichilima – SRMA

**COURT:** Judgment delivered today the 07<sup>th</sup> day of May, 2020 in presence  
of the Appellant and in the absence of the Respondent.

Right of appeal explained.



  
**D.E. MRANGO**  
**JUDGE**  
**07.05.2020**