

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LAND CASE REVISION NO. 06 OF 2020**

(From the decision of the District Land and Housing Tribunal of Mwanza District at Mwanza in Land Case Application No. 166 of 2019)

**VERONICA COSMAS ..... APPLICANT**

**VERSUS**

**JACKSON SIMON ..... RESPONDENT**

**RULING**

**13 & 30/10/2020**

**RUMANYIKA, J.:**

On 01/09/2020, in ordinary course of business I received a letter of complaint by Veronica Cosmas (the applicant) dated 01/09/2020 of no Ref. No. Titled; **MALAMIKO JUU YA MWENENDO WA SHAURI NA. 116/2019 VERONICA COSMAS DHIDI YA JACKSON SAIMON** (Original Land Case No. 10/2018) in the District land and Housing Tribunal, Mwanza (the DLHT). In exercise of the powers conferred upon me under Sections 41 and 43 of the Land Disputes Court Act Cap 216 RE 2019 ,without ado I called for the records of the DLHT and summoned the parties with a view to seeing correctness, propriety and legality of the impugned decision hence the present revision proceedings.

The applicant appeared in person. Mr. Kato Conrad learned counsel appeared for Jackson Simon (the respondent). Making reference to the letter of complaints, the applicant also submitted that with respect to her



ex-husband Cosmas Boniventula, following a decree of divorce and division of matrimonial property and custody of the child dated 08/07/2016 in Misungwi Urban Primary Court Matrimonial Cause No. 10 of 2016, and during execution with respect to Kigongo Ferry house (the house) the respondent (the purported vendor) objected and succeeded, she lost the subsequent battles in the ward tribunal and DLHT leave alone the latter having mishandled the matter. That the respondent may have purchased the house from husband yes, but in her back therefore for lack of spouse's consent a null and void sale agreement. That is all.

Mr. Kato Conrad learned counsel submitted that according to records the respondent purchased the house in 2012 where some local leaders and neighbours also witnessed the agreement then the purchaser occupied it undisturbed until as late as 2018 when against the applicant he won the land case but on 31/05/2018 he was, say 1<sup>1/2</sup> years later served for the applicant's application for extension of time to appeal. That the house may have had been matrimonial yes, but very unfortunately the vendor husband was not sued/joined. That's all.

Actually the central issue is not whether the respondent is owner of the house but rather with respect to the decree of divorce and order of division of matrimonial property and the extent whether as ex-wife of one Cosmas Boniventula the applicant owned the house. The issue is yes for six main reasons; **One;** pursuant to the court order of 08/07/2016 I entertain no doubts that as wife and husband the applicant and the said Cosmas Boniventula owned the house and the applicant owned 45% thereof since. **Two;** the husband may have had not been happy with the order but as



said, in that regard there had been no reverse court order. **Three;** the husband may have sold the house to the respondent or any other person before or after the court order yes but without mandatory consent of the applicant therefore in the latter's back. **Four;** with respect to the matrimonial proceedings, in his evidence (Su1) the ex-husband admitted if at all having had built the house in 2014 i.e. two (2) years before the marriage was dissolved on 08/07/2014. **Five;** Su3 one Ramadhani Swalehe he is on record having testified that upon buying the plot, the ex-husband began electing the house in 2004. Not only there is no time that on that aspect only the said husband had declared his witness hostile, but also Su3 corroborated the applicant's evidence that the spouses acquired the house around mid-2000. It is for this reason I think that with respect to the house the husband did not, in any way whatsoever challenge the order of division of the matrimonial assets. **Six;** chances were there that if at all, the husband sold the house after the court order. What a degree of disobedience of the court order! I think for fair and equitable division of matrimonial property whereas it sufficed only the wife to establish that the property was acquired during subsistence of their marriage, the husband could be believed saying that it wasn't matrimonial property if by way of evidence he showed it sufficiently that he acquired it before marriage or that he acquired it during substance of the marriage (which is not the case here) but the wife did not contribute anything.

It is very unfortunate that objection by the purported purchaser was even entertained leave alone the success. If anything, for recovery of the house the respondent should have been advised and directed to sue the



applicant and ex-husband jointly as the proper and necessary parties respectively. It follows therefore that the subsequent proceedings and orders of the ward tribunal and DLHT are hereby nullified. The respondent is so advised.

The applicant is at liberty to proceed executing the 4 years plus old decree and orders. The District Resident Magistrate In charge Misungwi is directed to always oversee, closely follow it up and report back. It is so ordered. Application is granted.

Right of appeal explained.



**S. M. RUMANYIKA**  
**JUDGE**  
**25/10/2020**

The ruling is delivered under my hand and seal of the court in chambers this 30/10/2020 in the presence of the applicant in person and Mr. Kato Conrad learned advocate for the respondent.



**F. H. MAHIMBALI**  
**DEPUTY REGISTRAR**  
**30/10/2020**