

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT SUMBAWANGA**

**MISC. LAND APPEAL NO. 24 OF 2019**

*(Appeal arising from the Judgment and decree of the District Land and Housing Tribunal for Rukwa at Sumbawanga in Appeal No. 87/ 2018, Original Case No. 26/ 2018 of Sumbawanga Asilia Ward Tribunal)*

**ADOLFU S/O NTAPULA.....APPELLANT**

**VERSUS**

**STELA D/O KASELA.....RESPONDENT**

**JUDGEMENT**

9<sup>th</sup> – 30<sup>th</sup> March, 2020

**MRANGO, J**

This appeal arises from the land appeal case No. 87 / 2018 of the District Land and Housing Tribunal for Rukwa at Sumbawanga. The same is originated from land complaint No. 26 of 2018 of Sumbawanga Asilia Ward Tribunal. The appellant and respondent are in a dispute over land ownership and each one of them is claiming to be rightful owner of the said land in dispute.

The respondent Stella Kasela emerged the victorious in the dispute before the Ward Tribunal and she was declared the rightful owner of the land in dispute. Aggrieved by the decision of the Ward Tribunal the

appellant Adolfu Ntapula unsuccessful appealed to the District Land and Housing Tribunal for Rukwa which upheld the decision of the Ward Tribunal by declaring respondent as the lawfully owner of the land in dispute with an order that the appellant to give a vacant possession of the land in dispute . The appellant again preferred this appeal to this court so as to challenge the decision made by the District Land and Housing Tribunal on 19. 09. 2019. The appeal is therefore against the whole judgement and order made by the District Land and Housing Tribunal for Rukwa on the following grounds:-

- 1. That the Tribunal Chairperson erred both in law and fact in giving right over the disputed land basing on the facts that the disputed land was owned jointly by the respondent and her late husband without any evidence to that effect and hence reaching to the wrong decision**
- 2. That the Tribunal Chairperson erred in law and fact in failing to consider the evidence as tendered the appellants and their witnesses to the effect that the respondent's husband died without any property owned jointly with his wife. The appellant in consideration of love and affection decided to**

**build a house for the children left by the husband of the respondent on a clan land of the late Mzee Daniel s/o Ntapula.**

**3. That the Tribunal Chairperson erred in law and fact in disregarding the evidence that at the time of death of the husband of the respondent they had no any property they owned jointly and they were living on the rented house.**

When this appeal was called on for hearing before this court both parties appeared in persons, unrepresented.

In supporting the appeal, the appellant prayed for the court to adopt the grounds of appeal he has lodged and he had nothing more to add whereas respondent also prayed for the court to adopt her reply to the grounds of appeal and she had nothing more to add.

Having gone through the submissions made by both parties, I have observed that the main issue for determination by this court is weather this appeal is meritorious. The grounds of appeal are therefore dealt together as hereunder.

The appellant claimed in his first ground of appeal that the tribunal erred in law and fact in its decision to declare the respondent as lawful owner of the land in dispute for the fact that the disputed land was owned jointly by the respondent and her late husband without any evidence to that effect and hence reaching to the wrong decision.

However, the evidence on record shows that respondent had been living with her deceased husband until the year 2015. The year 2015 is when her late husband passed away. The records at the trial tribunal further reveals that, after her husband death, is where the dispute over the land emerged and thereafter the dispute was registered by the respondent in the trial tribunal for determination. My scrutiny of the tribunals records below, shows that there is no evidence to dispute the fact that respondent was a lawfully wife of the deceased, who also sister in-law of the appellant.

It is rebuttable presumption that all the properties acquired during the subsisting of the marriage or relationship are jointly acquired by the couples. The respondent firmly testified before both tribunals that the disputed land belong to her and her children. Respondent complains that what the appellant is doing is to take over her lawfully acquired property.

It is a principle of law that, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist. See **section 110 (1) of the Evidence Act, Cap 11. RE 2002.**

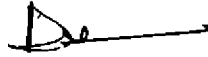
The appellant assertion that at the time of death of the respondent's husband, respondent had no any property owned jointly is without supportive evidence to prove.

This court is of the view that respondent has successfully substantiated her legal right over the disputed land as it was acquired jointly with her late husband. As there is no evidence adduced before the tribunals which shows that her husband in his life time had bequeathed his share to some other persons, otherwise the property devolved upon the respondent as per case of **Juma Rahisi Nanyanje vs. Shekhe Farisi [1999] TLR. 29.**

Meanwhile, I found that the appellant's decision to challenge decision of the District Land and Housing Tribunal which upheld the decision of the trial tribunal has no merit.

In the premise, I uphold the decision and orders of the appellate tribunal. The appeal is dismissed in its entirety with costs.

It is so ordered.



**D.E MRANGO**

**JUDGE**

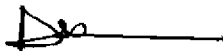
**30. 03. 2020**

Date	-	30.03.2020
Coram	-	Hon. D.E. Mrango – J.
Appellant	}	Both present in persons
Respondent		
B/C	-	Mr. A.K. Sichilima – SRMA

**COURT:** Judgment delivered today the 30<sup>th</sup> day of March, 2020

in presence of both the parties in persons.

Right of appeal explained.



**D.E MRANGO**

**JUDGE**

**30. 03. 2020**