

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

PC CIVIL APPEAL NO. 63 OF 2020

*(Originating from Civil Appeal No. 13/2019 Resident Magistrate Court, Originating from
Mwanza Urban Primary Court Civil Case No. 122/2917)*

JOVIA CLEMENT APPELLANT

VERSUS

JUDITH EMMANUEL RESPONDENT

J U D G M E N T

23/02/2021 & 17/03/2021

W. R. MASHAURI, J;

The appellant in this appeal was dissatisfied with the decision of the 1st appellate court in Civil Appeal No. 122 of 2017. She has now come to this court on the following grounds: -

1. That the trial magistrate erred in law and fact for failure to determine the grounds of appeal.
2. That the trial magistrate erred in law and fact for failure to determine grounds of appeal raised by respondent in Civil Appeal No. 13 of 2019 (sic).
3. That the trial magistrate erred in law and fact by making decision without considering the evidence in record.

4. That the trial magistrate erred in law and fact by making decision without considering the evidence of the appellant on the acquisition of the property subject to execution.

The appellant is represented by Miss Hidaya Hamis of TAWLA. When the matter was called in court for hearing on 27/10/2017, Miss Hidaya learned counsel submitted that, this is a 2nd appeal originating from the decision of the Resident Magistrates' court in civil appeal No. 122 of 2017.

In support her three grounds of appeal, she argued only grounds of appeal No. 3 and submitted that, in her case, (i.e. original case, the appellant had proved that she is wife of the respondent and she has a case in primary court of Mwanza at Mwanza and the house the respondents wants to sell is property of the family, pursuant to the provisions of Section 60(I) of the law of Marriage Act No. 5 of 1971 which provides that; even if the matrimonial property is in the name of the husband, it is a rebuttable presumption that, such property is property of the family.

In this matter the appellant proved that, she contributed in building the house by calling in court a Mason who built house and said that he built the house and was paid labour charges by the appellant.

That, as provided under Section 3(f) of the 4th schedule to the magistrates' court Act that if the house in dispute in residential house, it cannot be sold as it is property of the family.


In this matter the appellant was husband of her worker that she did not know the appellant before but she just saw her filing documents in court to object the sale of the matrimonial house.

I have, upon carefully followed her argument in support of her 3rd ground of appeal and I have gathered that her submission is actually nothing else but a mere endeavor to persuade the court to make its decision or her favour. In her submission the learned counsel for the appellant has submitted inter alia that, in his matter the appellant was worker of the husband and he was husband of the appellant.

That, the appellant Jovia has however failed to prove that, she was husband of her worker be that as it may if Jovia was husband of her worker or wife of her worker, this case therefore is between Jovia the appellant and her worker whose name is not disclosed by the learned counsel for the appellant in her submission.

It is therefore hard to reach a verdict that the disputed house is property of the family of Jovia and her husband (the appellant) whose name is not known.

According to the confusion of the parties done by counsel for the appellant in her submission, I am of the view that this matter is not properly before this court, the same is struck out and no any order as to costs is made.


W. R. MASHAURI
JUDGE
17/03/2021

Date: 17/03/2021

Coram: Hon. W. R. Mashauri, J

Appellant } All present.


Respondent: }

B/c: Elizabeth Kayamba

Court: Judgment delivered in court in the present of all parties on line this 17th day of March, 2021.

Right of appeal explained.




W. R. MASHAURI
JUDGE
17/03/2021