

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

MISC. LAND APPLICATION NO. 58 OF 2020

(Arising from Land Appeal No. 5/2020 of the High Court – Kigoma, original Land Application No. 29 of 2014 of the District Land and Housing Tribunal of Kigoma before Waziri M.H – Chairman)

MELESIANA KAGUNGU..... APPLICANT

VERSUS

ASHERY BALELA KIHUMBI.....1ST RESPONDENT

ENOCK KASAMO.....2ND RESPONDENT

R U L I N G

24th March & 6th April, 2021

I.C. MUGETA, J.

The facts of this case are that the applicant and the 2nd respondent are husband and wife. They jointly owned as a matrimonial property the house on plot No. 40, block B, Mlote, Kigoma Municipal registered in the name of the 2nd respondent. This house was disposed of to the 1st respondent by the 2nd respondent. The applicant refused to grant vacant possession on ground that she did not consent to the disposition. The 1st respondent filed a suit at the District Land and Housing Tribunal where it was declared that the

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disposition was proper. The applicant was ordered to grant vacant possession. This decision was confirmed by this court (Matuma, J) on appeal by the applicant. The applicant is aggrieved and she wishes to appeal to the Court of Appeal.

In terms of section 47 (2) of the Land Disputes Court Act [Cap. 216 R.E. 2019] the applicant is seeking leave of this court to appeal to the Court of Appeal. The ground for the application are set out in paragraph 7 of the affidavit, namely: -

- i. Whether the District Land and Housing Tribunal for Kigoma was right in holding that the property in dispute was the sole property of the 2nd respondent.*
- ii. Whether the High Court was right in determining that there was consent in disposition of the property in dispute.*

When the application was called for hearing, the applicant and the second respondent appeared in person while the 1st respondent was represented by Damas Sogomba, learned advocate. The applicant adopted the affidavit and prayed the court to consider the evidence therein. Mr. Sogomba resisted the application on ground that it does not raise any issue of general importance worth the attention of the Highest Court.

As submitted Mr. Sogomba, leave to appeal is grantable upon demonstrating issues of general importance or a novel point of law. The purpose is to spare the Court of Appeal with attending unmeriting matters. The issue for my determination, therefore, is whether a point of general importance or a novel point of law has been raised.

One of the issues raised is whether the applicant consented to the disposition of the land. Both the trial court and this court made a concurrent finding of fact that consent was given. Under the circumstance, the Court of Appeal can disturb this finding if proved that the lower court either misapprehended the evidence or misapplied the law. Unfortunately, throughout the affidavit the applicant has not established or even mentioned which facts as far as consent is concerned were misapprehended or any law that was misapplied. I find that the issue of consent by itself as far as the concurrent findings of this court and the lower tribunal are concerned does not raise any issue of general importance or point of law which needs the attention of the Court of Appeal where the misapprehended facts or misapplied law has not been disclosed.

The other point raised concerns the tribunal holding that the suit premised are a sole property of the 2nd respondent. However, this issue was not raised

or discussed by this court. I have read the record of appeal in this court and found that this matter was raised in the third ground of appeal. However, when the case was called up for hearing, the counsel for the applicant consolidated the grounds of appeal and in the course did not address that issue. For that matter this court did not deal with it because under the circumstances it was presumed abandoned. It is now settled that an appeal cannot lie to the Court of Appeal on an issue neither raised nor discussed by this court. This issue too, therefore, does not raise any matter of general importance for consideration by the Court of Appeal.

In the fine, I find that the application is without merits. I dismiss it with costs.




I.C. Mugeta

Judge

6/4/2021

Court: Ruling delivered in the presence of both parties.

Sgd: I.C. Mugeta

Judge

6/4/2021