

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOBA DISTRICT REGISTRY)

AT BUKOBA

MISC. LAND APPEAL NO. 48 OF 2021

(Originating from Nyaruzumbura Ward Tribunal Civil Case No. 12 of 2019 and Appeal No. 71 of 2019 of the District Land and Housing Tribunal for Karagwe at Karagwe)

MZAMIRU KAYONGA-----APPELLANT

VERSUS

ANITHER JERADI-----RESPONDENT

JUDGEMENT

Date of Last Order: 22/09/2021

Date of Judgment: 01/10/2021

Hon. A. E. Mwipopo, J.

This is an appeal against the decision of the District Land and Housing Tribunal for Karagwe at Karagwe in the Appeal No. 71 of 2019 which originates from Civil Case No. 12 of 2019 at Nyaruzumbura Ward Tribunal. The Respondent namely Anither Jeradi filed a case in the Ward Tribunal alleging that the Appellant herein namely Mzamiru Kayonga failed to pay the rent of the house he rented from Respondent's Husband. The trial Tribunal after hearing evidence from both parties, decided in favour of the Appellant for the reason that the Appellant was not tenant

in the house but owner of the said house which was a collateral for the loan taken by the Respondent's. The Respondent's husband did put the house in issue as a security for the loan which later on he failed to pay it. The Respondent was aggrieved by the trial tribunal decision and appealed to the District Land and Housing Tribunal which decided in her favour and Ward Tribunal decision was quashed. The Appellant was not satisfied with the decision of the District Land and Housing Tribunal and filed the petition of appeal to this Court containing 4 grounds of appeal. The said grounds of appeal are as follows hereunder:-

1. That, the Appellate Tribunal erred in law and fact by deciding the case basing on the wrong interpretation of section 59(1) of the Law of Marriage Act, Cap. 29 R.E. 2019.
2. That, the first Appellate Tribunal erred in law and fact by deciding and awarding the right over disputed property to the Respondent as a spouse without any proof of their marriage.
3. That, the first Appellate Tribunal erred in law and facts by deciding the case basing on the contradicting evidence of the Respondent and her witnesses.
4. That, the first Appellate Tribunal erred in law and facts by deciding the matter basing on the weak evidence adduced by the Respondent.

The Appellant who has no legal representation, argued all four grounds of appeal jointly. He briefly submitted that the District Land and Housing Tribunal

erred to hold that the Respondent is the rightful owner of the land in dispute. He said that the land and house in dispute was legally obtained and he has been residing in the house for the past 7 years. Then, he prayed for the court to consider all his grounds of appeal as they are found in the Petition of Appeal.

Mr. Raymond Laurent, Advocate who represented the Respondent, in reply to the Appellant submission stated that he is supporting the decision of the Appellate Tribunal for the reason that the transfer of land in dispute which was done between the husband of the Respondent and the Appellant was not proper. He said that the suit land was matrimonial property and the Respondent's husband used the property for his own benefit and not for the benefit of his spouse. The Appellate Tribunal properly interpreted section 59 (1) of the Law of Marriage Act, Cap. 29 R.E 2019. As the land is on unsurvey area, it was his opinion that it is not mandatory to register caveat. He added that the right of the Respondent in the land in dispute is clearly shown by the sale agreement which shows that the Respondent and her husband bought the land together, which means that even if the Respondent was not a wife of Jerald Paul still the Respondent is co - owner of the land in dispute hence has interest in the land.

The Counsel submitted that there is no contradiction at all in the evidence of the Respondent as it was submitted by the Appellant. He added that the

evidence of the Respondent was not weak and proved that the land was bought together by the Respondent and her husband.

On the Appellant's allegation that he was residing in the house for 7 years thus he has right to the area, the Counsel submitted that this has no basis as the transfer of the land from Respondent's husband to the Appellant was illegal since Jeradi Paul (respondent's husband) transferred the land to the Appellant without the consent of the Respondent. He said that the transfer was done in secret and as a result the Respondent has right to her land and the Appellant has to take action to get his rights by other legal actions. The Counsel prayed for the Appeal to be dismissed with cost for want of merits.

In his rejoinder, the Appellant argued that the House was a bond for the money borrowed by Respondent's husband. He said that relatives of the Respondent's husbands assured him that the house in dispute was not matrimonial property.

From the submissions, the Court is called upon to determine whether the appeal filed by the Appellant has merits. And, I'm going to determine each ground of the appeal as provided by the Appellant in the petition of appeal.

The appellant in his first ground of appeal alleged that the Appellate Tribunal erred in law and fact by deciding the case basing on the wrong interpretation of section 59(1) of the Law of Marriage Act, Cap. 29 R.E. 2019. The appellate tribunal

in its judgment held that the Respondent consent was supposed to be obtained on the agreement entered between the Appellant and Respondent's husband to put the house in dispute as collateral for the loan. The Appellate Tribunal found that the property was jointly acquired by the Respondent and her husband as co purchaser leave alone as spouse. The interpretation of the Appellate Tribunal of section 59(1) of the Law of Marriage Act is valid and I agree with the Appellate Tribunal that the matrimonial property jointly acquired cannot be disposed without the consent of the other spouse. In the case of **Dantel George Bwanai V. Okuly Eliufoo Muro**, Civil Appeal No. 138 of 2020, High Court, Dar Es Salaam District Registry, at Dar Es Salaam, (Unreported), this Court held that, I quote:-

"In the eyes of the law, spouses cannot dispose of properties assumed owned by them without consent of each other."

The evidence in record reveals that the land in dispute was purchased by Respondent and her husband. This means that the Respondent was co-owner of the disputed land. As a result it is clear that the house in dispute is matrimonial property. Therefore, in order to dispose of the Matrimonial property, the consent of the Respondent as spouse was required as it was rightly held by the Appellate Tribunal.

The Appellant submitted that there is no proof of the marriage of Respondent and her husband. This allegation has no weight since record shows that the Appellant was aware that the Respondent's husband has many wives and

in answering questions by the members of the Ward Tribunal admitted that he knew the Respondent as the third wife of Jeradi Paul. Thus, there is no dispute if the Respondent was the wife of Jeradi Paul.

The third Appellant ground of appeal was that the first Appellate Tribunal erred in law and facts by deciding the case basing on the contradicting evidence of the Respondent and her witnesses. I have read the record of proceedings before the trial tribunal and I found no contradiction between Respondent and her witnesses. Her testimony is clear that she is co-owner of the disputed land with her husband. Her witnesses testified that the Respondent's husband took loan from Appellant and the house in dispute was put as collateral without consent of his spouse. Thus, the evidence in record was sufficient to prove that the Respondent did not consent for the Matrimonial property to be used as collateral for the loan taken by her husband.

The Respondent's evidence as discussed above is sufficient and has proved on balance of probabilities that the loan agreement between the Appellant and Respondent's husband was unlawful as the disputed house which was part of security for the loan has no the consent of the Respondent. The Respondent discharged her burden of proving a facts she asserted as it is required by the law (see. **Paulina Samson Ndawavya V. Theresia Thomas Madaha**, Civil Appeal

No. 45 of 2017, Court of Appeal of Tanzania, at Mwanza). Thus, the Appellant's allegation in ground of appeal No. 4 in the petition of appeal has no merits.

On the issue that Appellant has resided in the house for 7 years, the evidence in record shows that the Respondent was told by her husband that the Appellant was the tenant in their house. The Appellant and Respondent's husband entered into loan agreement without her consent. This evidence in record proves that it was not possible for the Respondent to know that there was loan agreement which put as collateral co-owned property which the Appellant alleged he acquired following failure of Respondent's husband to repay the loan. The Respondent believed that the Appellant was residing in the house in dispute as a tenant. Thus, this ground also has no merits.

Therefore, I find that the appeal is devoid of merits and I hereby dismiss it. As the circumstances of this appeal reveal that the failure to obtain the consent was caused by both the Appellant and Respondent's husband, I will make no order as to the costs. Each party to take care of his own cost.



A.E. MWIPOPO

JUDGE

01.10.2021

Court: The Judgment was delivery today this 01.10.2021 in chamber under the seal of this court in the presence of the Appellant and Respondent.




A. E. MWIPOPO
JUDGE
01.10.2021