

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LAND APPEAL NO. 31 OF 2021**

*(Arising from Application No. 410/2018 of Mwanza District Land and Housing Tribunal)*

**MAGRETH L. IFUNYA.....APPELLANT**

versus

**JUMA KIANGO.....1<sup>st</sup> RESPONDENT**

**JACKSON BAHATI.....2<sup>nd</sup> RESPONDENT**

**GRACE MURUNGU.....3<sup>rd</sup> RESPONDENT**

**JOSEPH SENDE.....4<sup>th</sup> RESPONDENT**

**ELDAN AUCTIONEERS & GENERAL BROKERS...5<sup>th</sup> RESPONDENT**

**JUDGMENT**

21<sup>st</sup> September & 18<sup>th</sup> October, 2021

**RUMANYIKA, J:.**

With respect to a house having had lost the war and battle, according to records on 4/5/2021 in Mwanza District Land and Housing Tribunal at Mwanza (the DLHT) Magreth L. Ifunya (the appellant) was not happy hence the appeal against Juma Kiango, Jackson Bahati, Grace Murungu,

Jaseph Sende and Eldan Auctioneers & General Brokers (the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents) respectively.

The appellant faulted the DLHT on grounds essentially as under;-

- (i) That the 5<sup>th</sup> respondent improperly auctioned and sold the disputed premises.
- (ii) That before the DLHT the issue was res judicata.
- (iii) That actually the appellant had proved her claims on balance of probabilities.
- (iv) That with respect to the DLHT order in Misc. Land Application No. 150/2012 and order of this court (Gwae, J) dated 16/6/2015 in Misc. Land Application No. 246/2014 the DLHT improperly evaluated the evidence.

When, by way of audio teleconference the appeal was called on 21/09/2021 for hearing, Messrs S. Kaijage and A. Luoga learned counsel appeared for the appellant and the 4<sup>th</sup> respondent respectively. I heard them through mobile numbers 0682 804 480 and 0753 766 8879 respectively. Although, pursuant to orders of 05/07/2021 and 12/07/2021 the other respondents were, through Mwananchi local newspaper reported served they did not appear, the court proceeded hence, with respect to

them the ex-parte judgment. With respect to the appellant the court having had overruled a locus standi based preliminary point of objection (the p.o) raised and taken by Mr. A. Luoga but reasons reserved.

According to land register or any other records the disputed premises may have had been only in the name of Wilson Mkiza the appellant's husband yes, and, in that regard the appellant may have had registered no caveat or in any way whatsoever demonstrated her interest in the property granted, but no one of the respondents had sufficiently disputed the fact that under provisions of the Law of Marriage Act Cap 29 RE 2019 she was on the house entitled to matrimonial share just as it was undeniable that the 1<sup>st</sup> four respondents were innocent and bonafide purchasers for value. One also having had effected some substantial development thereon (case of **Suzana S. Waryoba v. Shija Dalawa**, Civil Appeal No. 44 of 2017 (CA) unreported. Leave alone the fact that although they were prosecuted and found liable, now for a decade or so now the appellant and husband had not paid the rent arrears to the 1<sup>st</sup> respondent and the matrimonial premises were attached, auctioned and sold. Actually the appellant may have had not been able to prove sole title yes, but as spouse her evidence

sufficiently demonstrated her interest in the disputed premises. It is for these reasons that I dismissed the p.o.

Now on the merit part of the matter;

Having had chosen to argue grounds 1 and 3 together, the 2<sup>nd</sup> and 5<sup>th</sup> grounds combined, he abandoned the 7<sup>th</sup> ground, then the 4<sup>th</sup> and 6<sup>th</sup> separately argued, however on further reflection Mr. S. Kaijage learned counsel also dropped grounds 4 and 6 and submitted thus, **one**; That actually the disputed premises were prematurely and improperly sold because on record there was no such court order or proclamation for sale. This court (Gwae, J) having had reversed the respective proceedings of the DLHT on 16/06/2015 that due to the illegality of sale, the issues of bonafide purchaser and compensation for the developments effected by "the purchasers" they should not have been raised. That is all.

In reply, Mr. A. Luoga learned counsel submitted that on 19/10/2012 the DLHT properly ordered sale of the disputed premises much as this court (Gwae, J) revised the proceedings on 16/06/2015, say three years later and the house was sold on 2/5/2013 to one Patrick therefore 3 years by far and the reverse order was long ago over taken by events that

having had developed the plot the bonfide purchasers 2<sup>nd</sup> and 4<sup>th</sup> respondents were not to blame (case of **Suzana S. Waryoba** (supra)).

A brief account of the evidence on record it reads thus;-

Sm1 one Magreth L. Ifunya stated that she was wife of Wilson Paulo who purchased the disputed plot in 2007. That they were tenants of the 1<sup>st</sup> respondent but having had defaulted rent as tenant, the husband was sued and Butimba ward tribunal found him liable to pay but yet defaulted and were evicted then successfully in 2012 the land lord sued the husband for the rent arrears whereby, in execution of the decree their semi-finished house was attached, auctioned and sold.

The appellant further testified that as the couple was not happy, her husband complained, the DLHT nullified the sale but the latter simply ordered the husband to pay the arrears therein between, but on different occasions the plot having had changed hands and developed the appellant therefore claimed to be declared lawful owner of the premises and an order of demolition.

Sm2 Wilson Paulo supported the Sm1's evidence essentially.

Jackson Bahati a defence witness is on record as Dw2 having had stated that by way of public auction he duly purchased the premises from Patrick Said in 2013 (only for identification purpose, copy of the sale agreement – Exhibit ID – 1).

Dw3 Grace Sanane (wife of Dw2) she supported evidence of the husband.

Dw4 stated that following a diligent search and was he satisfied, he purchased the semi-finished house from Dw3 in 2016 for shs. 20.0 million (copy of the sale agreement-Exhibit DJ 2). That he occupied the house undisturbed until 2018. That is all.

The issue is whether the disputed premises were properly sold to the 1<sup>st</sup> four respondents.

At least it wasn't disputed; **(a)** that the appellant and Wilson Paulo wife and husband had been tenants thereof **(b)** that having had defaulted rent they were accordingly prosecuted, found liable and evicted **(c)** that as they did not, say for 9 years pay the rent arrears they had their house attached, auctioned and sold.

Very unfortunately it could be by accident or design that no copy of the tribunal's decision was made available with a view of this court to seeing what such other incidental orders were they. For the interest of justice however, the decree holder would not have been entitled only to the principle rent arrears accrued for nine (9) good years or so. Whether or not the appellant, and or her husband had partly paid the rent arrears it was immaterial in my view. After all appellant did not tell what exactly was paid, when and who received the money. As said before, now that she had interest and share in the disputed premises, the appellant and husband shared the blame. Unlike in cases of defaulted bank loan agreements, where an aggrieved spouse may complain against the lender and the borrower contracting but in her back therefore pray for the contract to be declared void for want of spousal consent, tenancy agreement presupposed consent of the spouses much as the appellant took cognizance of the agreement and tenancy. Not only her claims were after thought but also her hands were not clean therefore she shouldn't have gone to equity.

With regard to the issues of sale order of 19/10/2012 having had been set aside/revised by the DLHT or by this court (Gwae, J) on

16/6/2015 as alleged by appellant, not only the latter did not sufficiently show that with the order, say three years later issued actually the said reverse order of this court it had not been over taken by events.

Whether or not for some reasons the public auction and sale were premature therefore improper, this is not a fit case where I would invoke the ancient saying; means justifies the end given the obtaining circumstances. Better if the appellant used it as shield not as a sword.


It follows therefore, the alternative prayer of the appellant being paid a difference of the proceeds is neither here nor there much as, as innocent and bonafide purchasers for value as were, and no doubts they had effected such substantial development on the disputed premises, I would as hereby do decline by any means and reasons whatsoever to disturb the purchaser's long stay, occupation and use of the disputed premises (case of **Suzana S. Waryoba** (supra)).

The appeal is lacking. It is dismissed with costs and it is ordered as such. Right of appeal explained.



**S.M. RUMANYIKA**  
**JUDGE**  
**10/10/2021**

The judgment delivered under my hand and seal of the court in chambers this 18/10/2021 in the presence of Messrs S.Kaijage and Luoga learned counsel online.



**S.M. RUMANYIKA**  
**JUDGE**  
**18/10/2021**