

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 82 OF 2021

(Originating from Misc. Land Application No. 15/2015 of the District Land and Housing Tribunal at Karagwe)

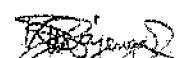
VELINA SIMON.....	APPELLANT
VERSUS	
SIMON NESTORY.....	1ST RESPONDENT
GOZIBERT PHILIMON.....	2ND RESPONDENT
SEMEO SIMON.....	3RD RESPONDENT
SEMU MAHUBA.....	4TH RESPONDENT
SALVATORY PHILIPO.....	5TH RESPONDENT
STEVEN FAUSTINE.....	6TH RESPONDENT
NOVATH KISHENYI.....	7TH RESPONDENT
FELIX KIKWASI.....	8TH RESPONDENT
JOHANSEN NESTORY.....	9TH RESPONDENT
IDD SEMU.....	10TH RESPONDENT

JUDGEMENT

03rd June & 17th June 2022

Kilekamajenga, J.

The appellant and the first respondent were husband and wife whose marriage was dissolved by Bugene Primary Court in Matrimonial Cause No. 04 of 2010. Thereafter, the Primary Court proceeded to order the division of matrimonial assets as follows: The matrimonial house was not divided but retained for the interest of the whole family. Especially, the Primary Court stated that: *'Baada ya kupitia ushahidi wa pande zote mbili kwa makini, mahakama hii imeridhika kuwa nyumba iliyopo chinyongo ambayo imepatikana wakati wan do hii ikiwa na uhai. Kwa kuwa wanandoa hawa wana watoto sita (6), basi nyumba hiyo itabaki kuwa*



mali ya familia yote na ili kulinda maslahi ya watoto kwani haitakuwa busara nyumba hiyo kugawanywa na ukizingatia kwamba kwa sasa inatunza wanafamilia hiyo. The house located at Omurushaka remained in the hands of the first respondent because it was not a matrimonial property. The appellant was given two plots of land which are at Bwera hamlet and the first respondent was also given two other plots located at Bwera and Mkasoni. The in-house properties from Chonyonyo were divided equally among the parties. Thereafter, the execution process commenced. The few documents available in the court file shows that, the appellant, through the court broker, was required to surrender two farms of coffee located at Chonyonyo and a house from Bwera hamlet and half of the in-house properties.

In 2015, the appellant filed the instant case in the District Land and Housing Tribunal for Kagera at Karagwe alleging that, the first respondent, without the appellant's consent, sold the appellant's land to the 2nd, 3rd, 4th, 5th and 6th respondents. In 2016, she amended the application and included more respondents in her case. After the full trial, the appellant's case was dismissed for want of merit. The appellant appealed to this court armed with two grounds coached that:

1. *That, the trial tribunal erred in law. It allowed the first respondent, the former spouse known as Simon Nestory, to act contrary to the Bugene Primary Court Matrimonial Cause No. 04/2010 of divorce decree delivered*

on 28th October 2010. That without giving notice nor seeking nor obtaining consent from the court, five days after the judgment, he sold the appellants premises to the rest of the respondents.

- 2. That, the trial tribunal misdirected itself in law. It allowed the 1st respondent to sell the appellants premises without notice nor seeking nor obtaining consent from the appellant contrary to the law.*

During the hearing of the appeal, the appellant who was also present in person, was represented by the learned advocate, Mr. Eliphaz Bengesi whereas the learned advocate, Mr. Raymond Laurent appeared for the 1st, 2nd, 4th, 5th, 7th, 8th and 10th respondents. The 3rd, 6th and 9th respondents were absent and the court ordered the hearing to proceed in their absence. When addressing on the grounds of appeal, the counsel for the appellant cited several illegalities in the decision of the Primary Court in Matrimonial cause No. 04 of 2010. He argued that, the matrimonial house was not divided and division of other properties have led to contradiction in the execution of the decision of the Primary Court. He urged this Court to revise the decision of the Primary Court in Matrimonial Cause No. 04 of 2010. He further argued that, even the decision of the District Land and Housing Tribunal contradicts with the decision of the Primary Court. He also confirmed that, the appellant has genuine claim against the 1st, 2nd, 5th and 6th respondents but she has no cause of action against the rest of the respondents. He finally urged the court to order the execution of the decision of the Primary Court as it was not properly done.

In response, the counsel for the respondents insisted that the appellant failed to prove her claim because the first respondent sold his own land after the dissolution of the marriage. He urged the court to confirm the decision of the District Land and Housing Tribunal. However, he also noted that, this dispute originates from the illegalities in the decision of the Primary Court, therefore, if any party is aggrieved, he/she should file an appeal subject to the law of limitation.

When rejoining, Mr. Bengesi insisted that the execution of the decision of the Primary Court was not properly done.


In addressing the grounds of appeal and the submissions from the counsels, it has become evident that, the appellant has a claim against the first, second, fifth and sixth respondents only. In other words, she unnecessarily caused inconveniences to the third, fourth, seventh, eighth, ninth and tenth respondents without any justifiable cause. Based on that admission, the respondents who were unfairly joined in this case legally own their pieces of land. Therefore, the appellant should pay the costs incurred by those respondents in prosecuting this case.

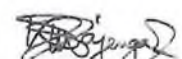
On the claims against the first, second, third and sixth respondents, I find no problem if the first respondent sold the land which was given to him after the dissolution of the marriage. The counsel for the appellant hinted on some illegalities in the decision of the Primary Court and urged this Court to revise it. With respect, the matter before this court is on a land dispute and not on the decision of the Primary Court. Though, I also see some errors on the order of division of the matrimonial assets, my hands are tied and I cannot decide on the matter which is not before me. I leave this matter for any interested party to challenge the decision of the Primary Court. In respect of whether the execution was properly done or not, again, I lack a direct response because only few documents are available in this file.

In conclusion, I real find no reason to fault the decision of the District Land and Housing Tribunal. If the appellant still believe that the decision of the Primary Court was unfair, she should challenge it through an appropriate forum. Otherwise, I find no merit in the instant appeal and hence dismiss it with costs. It is so ordered.

Dated at Bukoba this 17th Day of June 2022.





Ntemi N. Kilekamajenga.
JUDGE
17/06/2022



Court:

Judgment delivered this 17th June 2022 in the presence appellant, 1st respondent, Mr. Faustine Kishenyi for the 7th respondent and the 10th respondent present in person. The rest of the respondents were absent. Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
17/06/2022

