

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

**MISC.LAND APPEAL NO. 8 OF 2022**

*(Arising from Appeal No.38/2019 of DLHT for Karagwe at Kayanga and from original civil case  
No.4 of 2019 of Mabira Ward Tribunal)*

**DOMITINA REVELIANI..... APPELLANT**

**VERSUS**

**SOSPETER PHILIPO.....RESPONDENT**

**JUDGMENT**

*18/8/2022 & 28/10/2022*  
**E. L. NGIGWANA, J.**

Being dissatisfied with the judgment and decree of Karagwe DLHT delivered on 22<sup>nd</sup> July, 2021, the appellant registered an appeal to this court with three grounds as quoted verbatim hereunder:

- 1. That, the learned Chairman of the District Land and Housing Tribunal grossly erred in law; because having noted that the appellant is the wife of the seller one Revelian ought to have hold that she (the appellant) had legal interest worth of being protected against any purchaser of the Suitland, and or any sale of the Suitland without her consent becomes void.*
- 2. That, the appellate tribunal erred in law and fact for not holding that the respondent was not clothed with locus standi to sue on the so called his son land without specifically being empowered to do so by the one who claim to be the owner of the Suitland.*

*3. That, the learned Chairman of the District Land and Housing Tribunal grossly erred in law when shifted the onus of proof to the appellant herein who was the (respondent at the Ward Tribunal).*

The appellant prayed the appeal be allowed with costs with the following orders:

- a) That the sold land is the family land in which the applicant has interest to be protected against any purchaser.*
- b) That purported sale made without involving the appellant on the Suitland was void and null.*
- c) That the buyer claims back his purchasing money from the seller.*
- d) That the buyer be ordered to vacate the Suitland.*
- e) That the Suitland is the legal property of the appellant and his husband.*

An historical account underlying this dispute and all what transpired in both lower tribunals up to this current forum can briefly be recapitulated from the available record. The record has it that the appellant Domitina Revelian is the wife of Revelian Kamugunya who is not a party to this appeal but the said couple were jointly sued at the Mabira Ward Tribunal by the respondent herein Sospeter Philipo. The said respondent was suing on behalf of his son one Adiri Sospeter who had purchased the Suitland from the appellant's husband.

The record further has it that the respondent was given such a power to sue by his son through a letter as the said son resides in Dar es Salaam.

The first line of evidence from the appellant is that the suit land was the matrimonial property which was acquired jointly through gift donated to her and her husband Revelian and hence the sale from her husband to the respondent's son Adiri without her consent was therefore void. The other opposing line of evidence from the respondent is that, his son Adiri legally purchased the Suitland since it was the sole property of the appellant's husband inherited from his father.

The respondent successfully sued the appellant and her husband at the Ward Tribunal. The Ward Tribunal was convinced that the suit land is a clan land and it was acquired solely by the appellant's husband and sold while the couple had long time separated hence not party of matrimonial property. Being unhappy with that finding, the appellant appealed to the DLHT. After the appellate tribunal had heard both parties, confirmed the decision of the Ward Tribunal. Still undaunted, the appellant is now in this temple of justice for the second appeal.

Parties opted to argue the appeal orally. Dickson Laurent, Advocate stood for the appellant whereas the respondent was peddling for his own canoe.

Submitting on the first ground, the Appellant's counsel, Mr. Dickson elaborated that it was clear from the record and without dispute that the appellant and the seller were wife and husband respectively. That the husband sought consent to sell the land and the appellant refused. The husband proceeded to sell land to the respondent's son contrary to section 59 of the Law of Marriage Act, Cap 29 R.E.2019 which forbids a matrimonial property to be disposed without the consent of the spouse. It was the learned counsel's view that the fact that the appellant was the wife

of the seller therefore with an interest right to protect it, the sale without her consent was therefore void and the respondent could not have legally purchased it.

Explaining how the suit land came to be joint property, Mr. Dickson said that the suit land was donated to the appellant and her husband by their father-in-law and went on using the land since 1975 and therefore her husband by selling it, disturbed her interest and the sale was illegal. Mr. Dickson further submitted that the allegation by the respondent that the suit land was sold to pay debt occasioned by the appellant was not supported by any evidence to have so occasioned a debt.

As regard to the third ground, the appellant's learned counsel submitted that the chairman erred in law to have shifted the burden of proof to the appellant contrary to section 110(1) and (2) and 111 of the Evidence Act, [Cap 6 R.E.2022].

In the second ground, Mr. Dickson argued that the respondent had no locus to sue in the Ward Tribunal as he had a letter dated 4/02/2019 which shows he was given power to supervise the property of his son and that the letter is not clear thus, may cause chaos during execution.

In reply, the respondent submitted that the suit land is not a matrimonial property save the property was inherited by Reverian Kamuguye (appellant's husband) from his late father. That, the marriage between the appellant and Revelian is still subsisting but were living separately since 2003. The suit land was later sold to his son who is Adiri who resides in Dar es Salaam and that he witnessed such sale. He added that he is therefore supervising his properties. He went on that the clan members well said that

the seller sold his own property on 15/09/2018 and development started by clearing the land. Thereafter, is when the appellant encroached the same land and planted crops. He prayed for this court to read the judgment of the Ward Tribunal where the matter was dealt and do justice.

In rejoinder, the appellant's counsel presents that the fact that the appellant went to plant the temporary crops in the suit land is evident that the said land is a matrimonial property and the argument that the suit land belonged to the appellant's property alone is not reflected in the Ward Tribunal. At page 23 the seller's witness said that he advised the appellant and her husband to settle the matter.

I had an ample time to peruse keenly the entire record of this appeal. Accordingly, I have considered the rival submissions of both parties. The task before me is to determine whether this appeal has merit. I will do so by discussing the three grounds of appeal in seriatim.

Starting with the first ground. The competing arguments from both sides on the first ground calls me to determine whether the suit land is the matrimonial home and hence the requirement of consent is compulsory in the meaning of section 59 of LMA, Cap 29(Supra)?

The appellant proposes that the suit land is the matrimonial property because it was donated to them by his father-in-law and he has been occupying it since 1975. The respondent opposes the proposition that it is a not matrimonial property as his son purchased it from the appellant's husband who solely inherited from his father and the clan members informed him that it was solely owned by the appellant's husband. The District Land and Housing Tribunal confirmed the decision of the Ward

Tribunal by ruling in favour of the respondent. The DLHT reasoned at page 4 of the judgment that the appellant did not prove before the ward tribunal that the suit land was a matrimonial property and she did not tender any documentary evidence to prove that they were given that suit land by her father-in-law. Let the record speak for itself;

*"Katika Baraza la kata, Mleta Rufaa alitoa Ushahidi kuwa walipewa ardhi na baba mkwe. Mleta rufaa hakuweza kutoa kielelezo chakupewa ardhi hiyo, aidha hakuweza kuleta mashahidi kuthibitisha madai yake. Alidai kuwa wanaojua ni wanaukoo, lakini hakuweza kuwaleta. Aidha alidai kuwa anayefahamu vizuri eneo hilo ni Goldian Rujomba, lakini hakuweza kumuita kuthibitisha madai yake, hivyo sababu hii ya rufaa haina msingi."*

The appellant's counsel had greatly made repetitions by bolstering his argument with section 59 of the Law of Marriage Act that the consent was not obtained from the appellant by her husband before selling the suit land which the appellant believed to be a matrimonial property. The argument which triggered me to pay a visit to the said provision.

Section 59 (1) of Cap 29 provides:

*"Where any estate or interest in the matrimonial home is owned by the husband or the wife, he or she shall not, while the marriage subsists and without the consent of the other spouse, alienate it by way of sale, gift, lease, mortgage or otherwise, and the other spouse shall be deemed to have an interest therein capable of being protected by caveat, caution or otherwise under any law for the time being in force relating to the registration of title to land or of deeds."*

To understand what the term “**matrimonial home**” entail, I had again to visit section 2 of the same Act which is *pari materia* with section 112(2) of the Land Act Cap. 113 (R.E 2002) where the said term is defined as follows:

*“Matrimonial home” means **the building or part of a building in which the husband and wife ordinarily reside together** and includes-*

*(a) where a building and its curtilage are occupied for **residential purposes only**, that curtilage and any **outbuildings** thereon; and*

*(b) where a **building** is on or **occupied in conjunction with agricultural land**, any land allocated by **the husband or the wife**, as the case may be, to his or her spouse for her or his exclusive use; (THE BOLDED IS MINE)*

The glittering questions which now this court must answer is whether the suit land is a matrimonial home in the meaning of section 59 of the Act to have required consent before its disposition? Is the suit land occupied in conjunction with a building? Is the suit land a house where spouses are ordinarily reside? The answers are in negative because the legislature did not intend all landed properties to be matrimonial home. If it meant so, it could have expressly done so in a plain language. The wording of the statute is plain with no ambiguity as a matrimonial home cover landed properties which are in a form of buildings and where the husband and wife ordinarily reside together or a building occupied with conjunction with agricultural land. For such properties a consent of one spouse in terms of section 59 is required before disposition.

Applying the analyzed provisions of law into our facts, the evidence which was testified by both parties at the trial ward tribunal was clear that the suit land had no any building or even being erected any foundation of a building, no any party told the trial tribunal that the appellant and her husband ordinarily resided in that suit land with a building or that it was an agricultural land occupied in conjunction with any building. Therefore, it was not a matrimonial home where the appellant and her husband ordinary resided, hence the issue of consent cannot arise here with due respect to the appellant's counsel.

It should further be put clear that, though the LMA, Cap 29 does not define the term matrimonial property just like it defines matrimonial home but these terms can neither be used interchangeably nor do they mean the same thing. Unlike matrimonial home matrimonial property is the general one it could be movable and immovable properties or any asset but not all matrimonial properties are matrimonial home. Section 60 of LMA is the relevant provision which governs matrimonial properties especially when the court is dealing with the issues of division of matrimonial properties during divorce proceedings the issue which is not a case before this court.

The Court of Appeal in **National Bank of Commerce Limited versus Nurbano Abdallah Mulla**, Civil Appeal No.283 of 2017 CAT at Tanga (Unreported) attempted to define the term matrimonial property which it quoted with approval of the case of **Gabriel Nimrod Kurwijila versus Theresia Hassani Malongo**, Civil Appeal No. 102 of 2018 (unreported). It was stated that:



*"On the other hand, the phrase matrimonial property has a similar meaning to what is referred as matrimonial asset and it includes a matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during their marriage"*

The court of appeal went on that:

*"For that reason, we think that not all real properties acquired by the spouses during the subsistence of the marriage are matrimonial home. The phrase matrimonial home therefore should in our view confine to the house where the spouses ordinarily reside.*

From the analysis above, this court therefore with caution declines to determine the issue whether the property was matrimonial property jointly acquired by both spouses as this matter was a land case and was not brought under matrimonial proceedings seeking for divorce or division of matrimonial properties. Moreso, this court has no such forum at the moment as it is a common ground that the marriage between the appellant and her husband still subsist. Similarly, I found this ground misconceived and bound to fail as the provisions of section 59 was wrongly applied; the suit land was not a **matrimonial home requiring a consent** of the appellant before its disposition in terms of section 59 of the LMA, Cap 29 (Supra).

The second ground touches on the issue of locus standi to sue. At the trial tribunal the respondent presented a letter which was an authority from the respondent's son one Adiri to have full supervision on the suit land. The appellant's counsel had faulted it at the appellate tribunal that it is not a

power of attorney so called and, in this court, he contended that it was not clear hence will bring chaos in execution.

The DLHT concurred with the trial tribunal that since there is no law regulating power of attorney at the ward tribunal the letter suffices for the purpose. Since the said letter was not objected at the trial tribunal and since that there is no law regulating power of attorney and since that the trial tribunal is excluded with the preference of strict application of undue technicalities at the expense of doing justice in terms of section 15 of Ward Tribunals Act, I finally shake hands with the findings of the DLHT. It is on that note that I have no reason to differ with the concurrent findings of the lower tribunals.

I finally hold that the respondent had a locus standi to sue on behalf of his son who was far away as per the instruction letter dated 4/2/2019 as no law describing a procedure of power of attorneys in the Ward Tribunals. I tried to reason if section 33 (2) of the Magistrate Courts Act, [Cap 11 (R.E 2019)], a primary court may permit any relative or any member of the household of any party to any proceedings of a civil nature, upon the request of such party, to appear and act for that party without power of attorneys requirement, why not in the Ward Tribunals like the instant case where a father appeared on behalf of his son under instructions. I find no any sentiment of merit in the ground. This ground bounces too.

The last ground touched on the blame by the appellant's counsel to the DLHT that it shifted the burden of proof to the appellant contrary to section 110 (1) and (2) and 111 of the evidence Act, [Cap 6 R.E.2022]. With due respect to the appellant's learned counsel, I find no how I can determine

this ground since it was not substantiated by the appellant's counsel. I will therefore disregard it and hence it fails too.

In the event, the concurrent decisions of both lower tribunals are upheld. Consequently, this appeal is hereby dismissed. Due to the nature of dispute, I exercise my discretion and waive costs.

Order Accordingly.

Dated at Bukoba this 28<sup>th</sup> day of October, 2022.



E.L. NGIGWANA

JUDGE

28/10/2022

**Court:** Judgment delivered this 28<sup>th</sup> day of October, 2022 in the presence of the respondent Sospeter Philip in person, Hon. E.M. Kamaleki, Judge's Law Assistant and Ms. Sophia Fimbo B/C, but in the absence of the appellant Domitina Reveliani.



E.L. NGIGWANA

JUDGE

28/10/2022