

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
LAND CASE No. 10 OF 2017**

HAPYNESS JOHN.....PLAINTIFF

VERSUS

- 1. BAVESH HINDOCHA**
- 2. YOHANA NKWABI NTAKI**
- 3. JAMES JULIUS NDEKI**
- 4. MOSES ABDUL SWALEHE**

*(Administrator of the estate of the
Late **Diana Ignatus Semakula**)*

.....DEFENDANTS

JUDGMENT

Date of last order: 08/09/2022

Date of Judgment: 11/10/2022

A. MATUMA, J.

In this land case there are several disputes between the parties. The core dispute though not subject to the instant matter is between the first and second defendants whereas the first defendant alleges to have lend money to the second defendant amounting to Tshs. 97,000,000/= in lieu of which the second Defendant mortgaged two title deeds of Plots no. 598 Block "B" and 62 Block "U" at Nyasubi area within Kahama District in Shinyanga Region. On the other hand the second defendant admits to have handled

the two title deeds to the first defendant but denies to have borrowed any money from him. His explanation as to why he surrendered the two titles is that the first defendant begged him such titles so that he could use them as security to borrow some money from the Bank in lieu of which he would have been given some percentage of the borrowed money. Who speaks the truth between the two defendants, only them alone and the almighty creator of the world and the universe knows. As I have said earlier, such dispute is not before me and it is not subject for determination as it has its own cases reported to have reached to the Court of Appeal.

Such dispute crosses in this matter only because the first defendant successfully sued the second defendant for recovery of the alleged loan and obtained execution order for attachment and sale of the landed property on Plot no. 62 supra which is now referred to as Plot no. 196 Block "U" Nyasubi. That property was attached and sold on a Public Auction whereas it was the third defendant who bought the same. Prior to the changing of title to himself the third defendant sold it to the fourth defendant who developed it into a Guest House.

The Plaintiff appeared in the lower court through objection proceedings contending that she is the wife of the second defendant and her consent was not sought and obtained in mortgaging the properties in dispute which are matrimonial properties. The lower court overruled her by finding that for the purposes of the matter before it, the Plaintiff was not a wife to the second defendant as she contracted the marriage on the same very day when she instituted the objection proceedings and therefore the marriage was intended to defeat the end of justice as by the time the first and

second defendants contracted for the loan the Plaintiff was yet married to the second Defendant.

In the circumstances, it is when the Plaintiff started this case contending her legal rights to the suit properties as a lawful wife of the second respondent. The second respondent supports her that she is his wife whom she married customarily since 1999 but solemnized in the year 2014 by contracting the marriage afresh at the District Commissioner's office.

During the final pre-trial conference the following issues were drawn;

- 1. Whether the sale or intended sale of plot No. 598 Block "B" Nyasubi area was lawful in absence of the plaintiff's consent*
- 2. Whether the sale of the house located in plot No. 62 Block "U" Now plot No. 196 Block "U" was lawful without the consent of the plaintiff*
- 3. Whether landed properties in plot No. 598 Block B" and plot No. 196 Block "U" are matrimonial assets.*
- 4. Whether there was valuation conducted in plot No. 62 Block "U" prior to sale.*
- 5. To what reliefs are the parties entitled to.*

At the hearing of this case the Plaintiff and the second defendant appeared in person unrepresented while the first, third and fourth defendant were represented by learned advocates Mr. Mutongore and Gahise.

The Plaintiff Happyness John in her sworn evidence stated that she was married to the second defendant since 1999 customarily and they are blessed with four issues who were born in 2000, 2004, 2006 and 2009 respectively (exhibit P2). Later they solemnized their marriage by

