

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB REGISTRY OF MANYARA  
AT BABATI**

**LAND APPEAL NO. 16 OF 2023**

*(Originating from Application No. 06 of 2022 before the District Land and Housing Tribunal for Mbulu at Dongobesh)*

**YONA OYE .....APPELLANT**

**VERSUS**

**KATARINA PAULO.....RESPONDENT**

**JUDGMENT**

*23<sup>rd</sup> May & 13<sup>th</sup> June, 2023*

***Kahyoza, J.:***

**Katarina Paulo** (the respondent) sued **Yona Oye** (the appellant), claiming for 16 acres of land and the house. She alleged that they (**Katarina Paulo** and **Yona Oye**) acquired the disputed land and build the house jointly during the substance of their marriage. After hearing the parties the district land and housing tribunal (the tribunal) decided in favour of **Katarina Paulo** that the disputed land was matrimonial property.

Dissatisfied, **Yona Oye** appealed contending that the tribunal had no requisite jurisdiction to entertain the matter, the tribunal granted co-ownership of the property which was neither one of the prayers or supported by evidence, the tribunal did not property analyze the evidence

and lastly, that proceedings and judgment were tainted with irregularities in dealing with matrimonial property.

The appellants five grounds of appeal raised three issues as the first and fifth grounds of appeal refer to the same issue and the third ground of appeal is not clear. The issues are as follows-

- 1) was the tribunal clothed with jurisdiction?
- 2) was the tribunal justified to declare co-ownership of the suit land?
- 3) did the tribunal properly analyze the evidence?

The appeal was heard orally. Both, the appellant, and respondent had no legal services. At the hearing, they opted not to make oral submissions. They relied on the petition of appeal and reply to the petition of appeal.

Undeniably, **Katarina Paulo** and **Yona Oye** were married couples. They wedded in 1982 and divorced on 10.5.2022, when the primary court granted a decree of divorce. Neither of the parties appealed. As the record bears testimony, the dispute ensued at the time the parties were dividing matrimonial property. **Yona Oye** refuted division of the disputed land contending that it was not matrimonial property. **Katarina Paulo** sued **Yona Oye** for declaration that the suit land was matrimonial asset. It is on

the above background, I will determine the appeal commencing with the issue raised by the first and fifth ground of appeal.

**Was the tribunal clothed with jurisdiction?**

The appellant and complained in the first ground of appeal that the tribunal erred in law to entertain the suit without requisite jurisdiction. He did not explain the bases of the error. However, in the fifth ground of appeal, the appellant explained that the judgement and proceedings were tainted with irregularities for dealing with matrimonial property.

**Katarina Paulo**, the respondent did not file a reply. She submitted orally that a person who prepares documents for the appellant has interest in the matter. She argue that the person was cultivating the disputed land.

I commence by stating the obvious; **one**, that the dispute before the tribunal was whether the disputed land was matrimonial property; **two**, that the tribunal found that the dispute land was matrimonial asset; **three**, the dispute of the parties emanated from the matrimonial proceedings. The tribunal's jurisdiction was limited proceedings under the Village Land Act, Customary (Leaseholds, Enfranchisement) Act, the Rent Restriction Act, and the Regulation of Land Tenure (Established Village) Act. Hence, the tribunal has no jurisdiction to decide issues covered by the **Law of**

**Marriage Act**, [Cap. 29 R.E. 2019] (the **LMA**). Section 33 of the **Land Disputes Courts Act**, [Cap. 216 R.E. 2022] (the **LDCA**) states that-

***33.-(1) The District Land and Housing Tribunal shall have and exercise original jurisdiction-***

*(a) in all proceedings under the Land Act, the Village Land Act, the Customary Leaseholds Enfranchisement Act, the Rent Restriction Act, and the Regulation of Land Tenure (Established Village) Act; and*

*(b) in all such other proceedings relating to land under any written law in respect of which jurisdiction is conferred on a District Land and Housing Tribunal by any such law.*

As pointed above the fundamental issue before the tribunal was whether the disputed land was matrimonial asset. It is clear from section 33 of the LDCA, that matrimonial issues are not within the domain of the tribunal.

***"114.-(1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or to order the sale of any such asset and the division between the parties of the proceeds of sale.***

*(2) N/A*

*(3) For the purposes of this section, references to assets acquired during the marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts."*

It was the duty of a matrimonial court to order division of matrimonial assets and in doing so if a dispute arose whether a given asset is a matrimonial asset, that court must determine it. The criteria for determining whether a given asset is matrimonial is provided under section 114(3) of the LMA. The tribunal has no jurisdiction to apply the LMA, thus it had no mandate to make a finding whether the disputed land was matrimonial asset or otherwise. I agree with the appellant that the tribunal decided the suit without requisite jurisdiction. It is settled that the proceedings conducted, and the judgment and decree given by the court without jurisdiction is nullity. The Court of Appeal in **Attorney General v. Lohay Akonaay & Another** [1995] T.L.R. 80, stated that-

*"...courts would not normally entertain a matter for which a special forum has been established unless the aggrieved party can satisfy the court that no appropriate remedy is available in the special forum..."*

The tribunal had no mandate to entertain the issue of whether the disputed land was matrimonial whilst there exists a special forum for

dealing with matrimonial issues and with a different procedure. I find the proceedings and the judgement of the tribunal a nullity. Since the first and fifth grounds of appeal disposes the appeal there is no impetus for determining the rest of the ground of appeal.

In the end, I find that, appeal meritorious. I allow the appeal, set aside the judgment and decree, and quash the proceedings. Given the parties' relationship, I make no orders to cost. The respondent is at liberty to institute the dispute to a court of competent jurisdiction.

I order accordingly.

**Dated at Babati** this 13<sup>th</sup> day of June, 2023.



**John R. Kahyoza,  
Judge**

**Court:** The Judgment delivered in the presence of the parties. B/C Ms. Fatina present. Right to appeal explained.

**John R. Kahyoza,  
Judge  
13. 6. 2023**