**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**LAND APPEAL CASE NO. 28 OF 2023**

*(Arising from Land Application No. 94 of 2022 of the Karagwe District Land and Housing Tribunal at Karagwe)*

**AISIYAT HARUNA..... APPELLANT**

**VERSUS**

**JONAS VEDASTO.....RESPONDENT**

**JUDGMENT**

*19/09/2023 & 13/10/2023*
***E. L. NGIGWANA, J.***

The appellant in this case is Aisiyat Haruna. She is challenging the decision of the Karagwe District Land and Housing Tribunal at Karagwe (DLHT) henceforth the "trial Tribunal" handed down on 20/04/2023, through Land Application No. 94 of 2022 which ended being dismissed against her favour for want of merit. Along with that, the respondent one Jonas Vedasto was declared a winner of the land in dispute.

The brief background culminating to the dispute may be of assistance to understand what parties are battling to. The record has it that in 2013 the appellant and his husband one Haruna developed a misunderstanding in their marriage which necessitated the appellant to move away from matrimonial home. When the situation became cool considerably, she came

back in 2018 and found the respondent one Jonas Vedasto conducting his agricultural activities in the land in dispute which she alleges to be a matrimonial property acquired jointly with her husband. The appellant alleges to have been given part of the land in dispute by her father-in-law to herself together with her husband and part of it; they purchased from her father-in-law.

The respondent on the other hand, claims the land in dispute to have been legally purchased by him from the appellant's husband one Haruna since he believed it was not a matrimonial property save a clan land.

The trial tribunal having heard parties, it finally reached to its findings that the land in dispute was not a matrimonial property but a clan land and thus; the respondent legally purchased it from the appellant's husband.

Being not amused with such a decision of the trial tribunal, the appellant has approached this first appellate court armed with four grounds of appeal which are herein below quoted verbatim as follows:

1. *That, honourable trial tribunal Chairman erred in law by holding the suit land as clan land and not matrimonial property.*
2. *That, honourable Chairman erred in facts and law by failure to consider evidence adduced by the appellant and her witness which proves the*

*suit land to be matrimonial property where it was acquired during subsistence of the marriage for exclusive matrimonial use.*

3. *That, honourable Chairman erred in law and facts by failure to consider that the respondent has no tittle over the suit land since even if he was sold the same by the appellant husband the said appellant husband had no locus to sale a matrimonial property without spousal consent.*
4. *That, honourable Chairman erred in facts and law by failure to consider that the suit land is only a property in which the appellant depends on for taking care of her children who are still young.*

The appellant finally prays for this court to allow the appeal with an order reversing decision of the DLHT of Karagwe and declare the appellant as lawful owner of the suit land whereas the respondent in his reply to the memorandum of appeal disputed and opposed all grounds and prayed for dismissal of the current appeal.

At the oral hearing, none of the parties had a legal representation; instead, each party paddled for its own canoe.

The appellant having adopted her grounds of appeal to form part of his submission, she submitted that the suit land is estimated to measure one acre as half of it was given to her husband in 2003 and in 2007, she and her

husband bought it from the appellant's father-in-law one Kajuna at the tune of **Tshs. 700,000/=** the money they had obtained after selling beans. It was the submission of the appellant that they developed the land in dispute from 2007 up to 2013 when she went back home before she returned in 2018.

She added on the second ground that the evidence she adduced at the trial tribunal was very strong to prove that the land in dispute was a matrimonial property and their marriage is still subsisting and she was married in 2003.

On the third ground she elaborated that her husband was legally wrong to sell the matrimonial property without her consent while she has five children with him.

On the fourth ground, she narrated that the land in dispute is the only property which the five children and the entire family solely depends.

Replying to the appellant's submission, the respondent kept on insisting that the trial tribunal was right since he purchased the disputed land from Haruna Kajuna at **Tshs. 2,000,000/=** in 2014 who was accompanied by his father and assured him in the presence of his father that the land belongs solely to him as he was given by his father. He conceded that the appellant is his sister-in-law and her husband is his brother and that they are blessed with five children.

Having considered the grounds of appeal and parties' submissions for and against thereto as well as the entire record, the wanting question is whether this appeal is merited.

Some facts underlying this appeal are not in dispute, I therefore chose to highlight them so as to narrow down the scope of this appeal. The fact that the appellant is married to the respondent's brother is not in dispute.

Furthermore, there is no dispute that when the suit land was sold the appellant had moved away from his matrimonial home due to marriage squabbles with her husband in 2013. There is no dispute that when the appellant came back in 2018, he found the respondent cultivating in the land in dispute. The only issue confronting parties is whether the land in dispute was a matrimonial property owned by spouses jointly or was solely owned by the appellant's husband one Haruna? Should the first issue yield that it was a matrimonial property, was a sell to the respondent legally conducted?

I keenly scrutinized the entire evidence which was tendered before the trial tribunal by both sides as one of the duties of this first appellate court is to re- assess and re -evaluate to see if they were properly determined.

I am alive, and I must put one point clear of distinction at the outset, that not all matrimonial properties are matrimonial home hence the provisions of

section 59 of Law of Marriage Act, [Cap,29 R.E 2019] and sections 161(3) and 112(1) of the Land Act, [Cap 113 R.E.2019] which requires consent before disposition, in form of mortgage cannot apply in this circumstance, since the instant case is not concerned with the issue of consent on Mortgage over a property which is a matrimonial home. The said issue has different legal principles from the current issue of disposition in the form of sale.

It is my respective and considered observation that the appellant had strong evidence compared to the respondent's side in proving that the suit land was a matrimonial property which the couples had jointly acquired. This was testified by the appellant (AW1) and her sister-in-law one Anajoyce Johansen (AW2). Part of the evidence from AW2 is quoted saying:

*" Shamba walipewa na Baba Mzazi na eneo jingine mleta maombi na mume wake walinunua ispokuwa hawakupewa kielelezo"*

When she was sought for clarification by Assessor Mshashu, she mentained answering that *"Shamba bishaniwa mleta maombi na mume wake walipewa na baba na nilikuwepo kipindi shamba anapewa mume wa mleta maombi,tulikuwepo ni mimi,mama,Baba na mume wa mleta maombi"*(page 13 of the trial tribunal proceedings)

She went on that *"Tulikuwa tunamuona mjibu maombi anaendeleza shamba ila wanafamilia hatukujua kinachoendelea ni nini"? Mleta maombi na mume*

*wake wana Watoto 5 wengine wapo shule ila wawili wapo na mleta maombi nyumbani"*

The appellant herself testified that they (Appellant and her husband and children) are currently living in the house built around the suit land." *Sasa hivi mimi na mume wangu tunaishi kwenye nyumba iliyopo kwenye eneo"'*

It is ostensibly viewed that the suit land is nothing but a matrimonial property acquired jointly and was being developed jointly up to 2013 when the appellant moved from her home but the marriage was still subsisting.

Additionally, the fact that there are is testimony of the respondent inquiring from the seller (appellant's husband) if he had agreed with his wife, suggests that the respondent knew the suit land was a matrimonial property jointly owned by the appellant and her husband, and thus negates his argument that the suit land was a clan land or the sole property of the appellant's husband. Let the record speak for itself on page 14 of the trial tribunal proceedings as there is the clear evidence of the respondent (Jonas Vedasto) as follows:

*" Nilipokuwa nyumbani,alikuja Haruna na baba yake na kuniambia kuwa anauza shamba.**Mimi nilimuuliza kwamba,kama amekubaliana na familia ila Haruna aliniambia mke wake hayupo ameenda kwao"***

The above testimony negates the respondent's proposition that the suit land belonged to the clan. I paused to ask if at all the respondent knew the suit land to be the clan property why did he ask the seller if he had agreed with his wife to sell him the said suit land. And if he was told that they were no prior consent due to the fact that his wife had moved back home, why then did he go on to buy the same without such consent. The mere fact that the respondent is the brother of the appellant husband brings this court to the premise that he knew plate well that his brother was married and the entire family depended on that suit land but for reasons best known to him; he did not bother to follow such legal procedure. In my respective view, the fault has to be shouldered by the respondent at his own detriment for failure to take due diligence to comply with the provision of the law. In other words, he has to bear such consequences at his own peril.

In my respective view, I hold that disposition in the form of sale of the matrimonial property which is owned jointly should require consent of the other spouse unless it is rebutted that only one spouse owns it in exclusion of other(s). The reason is to protect the rights and interests of spouses over the said land against unscrupulous dispositions. The Tanzanian legislature with such contemplation in its mind enacted the provision of section 161(2) of the Land Act, [Cap 113 R.E 2019] which reflects that spirit as follows:

*"Where land held for a right of occupancy is held in the name of one spouse only but the other spouse or spouses contribute by their labour to the productivity, upkeep and improvement of the land, that spouse or those spouses shall be deemed by virtue of that labour to have acquired an interest in that land in the nature of an occupancy in common of that land with the spouse in whose name the certificate of occupancy or customary certificate of occupancy has been registered."*

From the above provision, it is immaterial even if the suit land could be registered in the name of the appellant husband only since there is evidence that a spouse has a contribution on it, has the occupancy in common. Likewise in our instant case since the appellant had proved that the suit land was gifted to her and her husband and later on another piece of land extending to it being sold to form part of it and she was developing the same by upkeeping and using the same before she moved back home due to matrimonial quarrels, she had therefore *primafacie* acquired an interest in that land in the nature of an occupancy in common and thus her consent before disposition of the same was mandatory and inevitable in the circumstance. This being a land case and not marriage issue, I cannot labour in determining the issue of extent in contribution in acquiring the suit land

by the appellant since this court is not dealing with the issue of division of matrimonial property.

By and large, on the basis of the above stated reasons, I find merit in this appeal and consequently allow it. The decision of the trial tribunal is overturned. I declare that the suit land is a matrimonial property the sale over the suit land was ineffectual. Given the nature of the dispute and the parties to the suit, each party shall bear its own costs. It is so ordered.

Dated at Bukoba this 13th day of October, 2023.

E. L. NGIGWANA

JUDGE

13/10/2023

**Court**: Judgment delivered this 13th in the presence both parties in person, Hon. E.M.Kamaleki, Judge's Law Assistant and Ms. Queen Koba, B/C.


E. L. NGIGWANA

JUDGE

13/10/2023