



THE JUDICIARY OF TANZANIA
IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA
(CORAM: HON. AUGUSTINE RWIZILE)
LAND APPEAL NO. 43 OF 2023

ASHA YAHAYA COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

HASSAN SAIDI SELEMANI & SHOMA KASHIRI RESPONDENT / DEFENDANT

JUDGMENT

Fly Notes

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Facts

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Ratio Decidendi

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20th of June 2024

Hon. RWIZILE.:

It was through an islamic marriage that occurred in 2010 which changed marital status of the appellant and the 1st respondent into husband and wife. Before they parted ways on 18th May 2017, via matrimonial dispute No. 14 of 2017 at Ujiji primary court, their marriage was blessed with three children. The court decided, after issuance of a decree of divorce, that the land in dispute be given to the appellant who was in custody of their children.

It was discovered by the appellant however, that the land in dispute was owned by the 2nd respondent through purchase from the 1st respondent, which was done without the consent of the appellant. The appellant then, filed a dispute at the District Land and Housing Tribunal of Kigoma claiming for the disputed land. She was not successful. When her claim was dismissed by the tribunal, she has now filed this appeal with the following grounds;

1. That, the trial tribunal erred in both law and fact for failure to hold the sale agreement between the 1st and 2nd respondent was null and void since there was cogent evidence tendered in the trial tribunal which proved that the 1st respondent sold the suit property to the 2nd respondent without the appellant's consent.
2. That, the trial tribunal erred in both law and fact in declaring the 2nd respondent the lawful owner of the suit property while he did not pleaded ownership by way of counter claim.



Act. See also the case of **Leticia Mtani Ihonde vs Adventina Valentina Masonyi**, (CAT), Civil Appeal No. 521 of 2021, at page 13, it was stated that;

“... matrimonial assets refer to properties acquired by any of the spouses during the pendency of their marriage, to provide for them and their children during their joint lives”.

It is from the record that a decree of divorce was issued two years after it was sold. Based on the evidence of SU5 who witnessed sale of the same land on 19th March 2015, the appellant was absent. This tells the true story that she was not informed of sale of their asset. No doubt therefore that, when a property is a matrimonial, disposing it by sale, or otherwise should be blessed by the parties to the marriage. It was therefore rightly submitted by the appellant that section 59(1) of the Law of Marriage Act ought to be complied with. It does not matter, if the same is registered in the name of one spouse or that the same is not registered in any name as in this case.

As submitted by the appellant, this disputed land was subject to terms and conditions stated in the cited provision as well as in the section 161(3)(b) of the Land Act. Even though, the land in dispute is not registered and may therefore not be subject to the Land Act, still, the law intended to protect property jointly acquired by the spouses for their joint benefits from being unscrupulous abused by unscrupulous spouse. It means therefore, this applies to land registered or otherwise provided it is a matrimonial asset. This court in **Daniel George Bwanali vs Okuly Eliufoo Muro**, (HC), Civil Appeal No. 138 of 2020, on page 8, held;

“In the eyes of the law, the spouses cannot dispose of properties assumed owned by them without consent of each other.

It can be concluded that the land in dispute was a matrimonial property at the time it was sold to the 2nd respondent. It was before the dissolution of the marriage between the appellant and the 1st respondent. Under these circumstances, consent from other spouse was a mandatory requirement before sale. The 2nd respondent was an innocent purchase, but still, the law enjoins a purchaser of the asset of this nature to do some due diligence in order to make sure the consent is obtained if needed. I think therefore, he is not protected by the law.

Having so observed, the submission of the 2nd respondent will serve no purpose. The sale, as a result, is nullity and therefore void ab initio. Therefore, I need not venture into the second ground of appeal. I find this appeal with merit. It is granted. The decision of the Tribunal is quashed, and orders set aside. Costs to follow the event.

Dated at KIGOMA ZONE this 20th of June 2024.



AUGUSTINE RWIZILE
JUDGE OF THE HIGH COURT

