

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOBIA SUB- REGISTRY)

AT BUKOBIA

LAND APPEAL NO. 76 OF 2022

(Arising from Karagwe District Land and Housing Tribunal's Land Case No. 18/2016)

MONICA LWIMILINZI APPELLANT

VERSUS

PASCHAL PHILIPO RESPONDENT

JUDGMENT

4TH March & 08th March 2024

A.Y. Mwenda, J

This appeal emanates from the decision of the District Land and Housing Tribunal of Karagwe at Kayunga. In that case, the applicant (now the respondent) filed a suit against the appellant and one MARTIN NICHOLAUS for trespass and encroachment of a piece of land located at Omururama Locality/village, Chanica Ward, Karagwe District. He prayed the tribunal to award any relief it deemed fit to grant. The tribunal called the matter for hearing and at the end, it declared the respondent as the rightful owner of the suit property. The appellant and one MARTIN NICHOLAUS were declared as trespassers and were ordered to vacate the premises within 90 days from the date of the judgement. On top of that they were permanently restrained from entering the suit premises after expiry of 90 days from the date of the judgment. They were also order to pay costs.

This decision did not please the appellant who, through the services of Mr. SAMWEL ANGELO, learned Counsel, filed the present appeal. In it, five grounds were raised, which are: -

1. That the trial tribunal erred in law to act on exhibit "A" which was improperly admitted.
2. That the trial tribunal erred in law to declare respondent a winner while he had not proved ownership of the Suitland
3. That the trial tribunal erred in law to act and decide on the case to which "the time when the cause of action arose". Was never disclosed.
4. That the trial tribunal erred in law for not assessing the issue of broken love of the parties versa vie possibility of division of assets. (*sic*)
5. That the trial tribunal erred in law for not deciding on the fate of exhausted improvements made by the appellant on the suit land.

With these grounds, the learned counsel for the appellant prayed this appeal to be allowed, an order that the Suitland belongs to the appellant and any other relief this court may deem fit to grant to be issued. On his part, the respondent resisted the appeal with a reply consisting of five points.

When the hearing of this appeal was fixed, the appellant was represented by Mr. SAMWEL ANGELO, learned counsel whilst the respondent appeared in person without legal representation. The learned Counsel for the appellant firstly, abandoned the first ground of appeal. The rest were argued separately however, the focus of this the court shall be on the argument supporting the fourth ground of appeal because it raises jurisdictional issue capable of disposing this matter.

In his submission in respect of the fourth ground of appeal, the learned counsel for the appellant addressed the court that during the trial, the respondent testified that he lived with the appellant in the land in dispute for about twenty-four (24) years and were blessed with one issue of their relationship. With the said time frame, the learned counsel opined that the appellant and the respondent acquired the status of a husband and wife. He added in that, if the court finds his opinion incorrect, then the parties were lovers(paramours) and as such, the proper way to deal with their dispute was a division of matrimonial properties before a matrimonial court where assessment of their respective contribution would be determined. The learned counsel further stressed that after the District Land and Housing tribunal have discovered that there was love affairs between the duo, it ought to have found that it lacked jurisdiction to entertain the matter in question. According to him, it ought to have advised them to table their grievances before the matrimonial Court. In support to this point, the learned counsel for the appellant cited the case of BI. MTUMWA

MADARI MAKAME VERSUS ABDALLA OMAR SAID (Legal Representative of the Late OMAR SAID ABEID), CIVIL APPEAL NO. 104 OF 2021, CAT (Unreported). With the said submission together with others in respect of the remaining grounds which the court found no need to reproduce, the learned counsel for the appellant prayed the present appeal to be allowed and to issue any order deemed fit to grant.

On his part, the respondent did not resist the argument by the learned counsel for the appellant. He was brief in conceding that the appellant was his wife as they spend twenty-four (24) years together and blessed with one issue. Otherwise, he said, he is not aware if the District Land and Housing Tribunal was a wrong forum to deal with their dispute.

With the submissions from both sides, the crucial matter for determination is whether the District Land and Housing Tribunal had jurisdiction to try the dispute between the parties. While dealing with a similar issue in *BI. MTUMWA MADARI MAKAME VERSUS ABDALLA OMAR SAID* (Legal Representative of the Late OMAR SAID ABEID) (Supra), the court of Appeal said that it is settled that jurisdiction of the Court is conferred by a statute and indeed, the parties cannot, even by agreement confer jurisdiction to the court which does not have contrary to the requirement of the law. The take from that finding is that each suit should be filed before the court/tribunal vested with jurisdiction to entertain that particular dispute.

In the suit before the District Land and Housing Tribunal, the pleadings and the evidence tendered reveal that the appellant and the respondent cohabited for over twenty-four (24) years. At para 6(iii) of the Application, the respondent is quoted to say: -

"6(iii)THAT, I happened to fall in love with the 2nd respondent (now the appellant) who was my fellow teacher and agreed to live together in my rightful acquired land for a duration of twenty-four (24) years to date."

On her part, the appellant partly noted the said contention in that truly the duo were lovers/paramours although she declined the allegation that they agreed to live together for the said time frame. During trial, the respondent aired his evidence on how he and the appellant lived together and were blessed with one issue. He went further to testify on how the name of the said child was changed from his clan names to that of the 1st respondent's whom he alleged had a secret affair/marriage with the appellant. When he was cross examined by the appellant he said the following, that:

"Kwenye eneo nilikuwa naishi na wewe, huyo mjibu maombi umemuingiza wewe.

-Ulichofanya ni kuniitia polisi na kilichonifanya niondoke ni kwa sababu kuitiwa(s/c) polisi na kunisababishia vurugu.

-Wewe pia ulikuwa mwalimu kipindi nanunua.

-Eneo lote nimelinunua mimi na nimezungushia miti ya migorora.”

Again,when he was cross-examined by the gentleman assessor one MZEE KABENDWE, he responded as follows, that:

“-Eneo hilo walivamia 2015, hawajafanya maendelezo yoyote wamevamia eneo zima.

-Mjibu maombi wa 2(the appellant) nimekaa nae kwenye eneo bishaniwa miaka 24 ila hatukufunga ndoa.

-Kilichoniondoa ni mjibu maombi wa 2(the present appellant) kutumia nguvu ya serikali waliniletea polisi na walinikamata.”

-Nimeacha kuishi na mjibu maombi wa 2 tarehe 27/10/2015 baada ya kukamatwa na polisi...”

From above quote, it is apparent that the duo, cohabited for about twenty-four (24) until the respondent decided to pack his bags/luggages and leave the premises after he was reported before the police by the appellant. Although,

the respondent alleged that they did not formalize their marriage during the said time frame, still their dispute falls in purview of the Law of Marriage Act, Cap.29 R. E 2022 over presumption of marriage under section 160 as they lived for two years or more and required a reputation of being a husband and wife. With the said status, even if the respondent allegation that he is the one who purchased the land and erected structures in it were true, the mere fact that he acknowledges that the respondent was working for gain as a teacher during pendency of their affair by itself confer rights of ownership as the appellant had her contribution to the acquired assets. On that basis their respective contribution to the acquired assets ought to be assessed by a matrimonial court. The same court would be able to delve with the respondent's complaint against the first respondent under section 73 of the Act.

Faced with similar scenario, the court of appeal in *BI. MTUMWA MADARI MAKAME VERSUS ABDALLA OMAR SAID* (Legal Representative of the Late OMAR SAID ABEID) (Supra) held:

"Though the deceased (plaintiff) instituted a suit claiming vacant possession as the normal suit, we are of the considered view that the amended written statement of defence and counter claim lodged by the appellant together with the reply to both the said written statement of defence and counter claim by deceased, clearly turned the matter into a matrimonial dispute on the division of

matrimonial assets acquired jointly during the pendency
of the marriage..."

In the same footing and as analysed above, this court is of the view that the District Land and Housing Tribunal had no jurisdiction to try the suit and grant the reliefs sought. As such this court hereby nullifies the proceedings and set aside the decree in land case No. 18/2016. If the parties are still interested to pursue their rights, the same should be placed before the appropriate forum in accordance with the Law of Marriage Act, Cap 29 R.E 2022. Otherwise there is no order as to costs.

It is so ordered.


A.Y. MWENDA
JUDGE
08.03.2024

Judgment delivered in chamber under the seal of this court in the presence of Mr. Samwel Angelo learned counsel for the appellant and in the presence of the respondent Mr. Paschal Philipo.




A.Y. MWENDA
JUDGE
08.03.2024