

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 224 OF 2021**

*(From Land Application No. 125 of 2018, by the District Land and Housing Tribunal for Kinondoni.)*

**JANET JULIUS KIBONA.....APPELLANT**

**VERSUS**

**MENGI OBENI MWAKISOLE.....1<sup>ST</sup> RESPONDENT**

**TPB BANK PLC.....2<sup>ND</sup> RESPONDENT**

**J U D G M E N T**

*Date of Last Order: 13.10.2022*

*Date of Judgment: 26.10.2022*

**T. N. MWENEGOHA, J.**

Being aggrieved by the judgment and decree of the District Land and Housing Tribunal of Kinondoni District, vide Land Application No. 125 of 2018, dated 30<sup>th</sup> September 2021, the appellant has preferred this appeal on the following grounds; -

- 1. That, the District Land and Housing Tribunal for Kinondoni erred in law and fact by declaring that the mortgage process involving the land in dispute was legal while the purported wife in the name of Diana Michael Haule never lived in the suit house as a matrimonial home.**

- 2. That, the District Land and Housing Tribunal for Kinondoni erred in law and fact for failure to evaluate and consider the evidence adduced by the appellant.**
- 3. That, the District Land and Housing Tribunal for Kinondoni erred in law and fact by deciding that the appellant was not the wife of the 1<sup>st</sup> respondent but recognized Diana Michael Haule as a wife while the tribunal has no jurisdiction in matrimonial cases.**
- 4. That, the District Land and Housing Tribunal for Kinondoni erred in law and fact by deciding that Diana Michael Haule was a legal wife of the 1<sup>st</sup> respondent without any proof.**

The appeal was heard by written submissions and ex parte against the 1<sup>st</sup> respondent. Advocate Joseph Mbogela appeared for the appellant, while the 2<sup>nd</sup> respondent was represented Advocate Meiseyeki Msangi.

In this judgment, I will start with the 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal and discuss them together. The arguments of Mr. Mbogela were that the trial tribunal was wrong to entertain a matrimonial dispute to which it has no jurisdiction. That, the trial tribunal without any proof, declared Diana Haule as a legal wife of the 1<sup>st</sup> respondent instead of the appellant. Mr. Msangi on the other hand submitted that, there is nowhere in the judgment of the trial tribunal where it was declared that Diana Michael Haule is the wife of the 1<sup>st</sup> respondent. Rather it considered the affidavit provided by the 1<sup>st</sup> respondent (exhibit D3) and a spousal consent (exhibit D2) in deciding on the legality of the mortgage agreement between the 1<sup>st</sup> and 2<sup>nd</sup> respondent. In his brief rejoinder on the 3<sup>rd</sup> and 4<sup>th</sup> grounds, the appellant's counsel reiterated his submissions in chief.

To answer the two grounds above, I dwell on the judgment of the trial tribunal, at page 6. In the said page the learned chairperson of the tribunal referred the provision of Section 76 of the Law of Marriage Act, Cap 29 R. E. 2019. The same provides from the jurisdiction of courts as far as matrimonial cases are concerned. At paragraph 2 of the same page, the learned chairperson concluded his finding by stating as follows:-

*"Hivyo hoja ya kama mwombaji ni mke wa Mengi Obeni Mwakisole ipelekwe kuamriwa na mahakama hizo. Baraza hili halina mamlaka ya kuamua hoja hiyo kama alivyoeleza wakili msomi Adeline wa Benki ya Posta."*

These words show clearly that, the trial tribunal refrained itself in touching matters that are out of its jurisdiction. It further advised parties to file the same in courts of competent jurisdiction to be dealt with, if they so wish. Therefore, it is not true that the trial tribunal entertained a matrimonial dispute. Furthermore, there is nothing in the impugned judgment that suggest an existence of declaration by the trial tribunal, that Diana Michael Haule is a legal wife of the 1<sup>st</sup> respondent. Hence, I find the 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal to be devoid of merits. The same are rejected.

Back to the 1<sup>st</sup> and 2<sup>nd</sup> grounds, I will also consolidate them owing to the reason that, they are both based on evaluation of evidence. It was the arguments of the appellant's counsel that, according to Section 114(1)(a) of the Land Act, Cap 113 R. E. 2019, the mortgage is valid if there is evidence that it has been assented by the mortgagor and the spouse of the mortgagor living in that matrimonial home. That, as per Section 112(2) of the Land Act, a matrimonial home has been defined to be a building or part of the building in which the husband and wife ordinarily

reside together. That, Diana Michael Haule, the one who gave the spouse consent in the mortgage in question as a wife of the 1<sup>st</sup> respondent never lived in the mortgaged house. He insisted that, had the trial tribunal considered the evidence of the appellant, it could have arrived at a different conclusion in favour of the appellant.

Replying to the 1<sup>st</sup> and 2<sup>nd</sup> grounds, the counsel for the 2<sup>nd</sup> respondent maintained that, the trial tribunal was right in holding that the mortgage process of the disputed property was legal. The 1<sup>st</sup> respondent dully complied with the provisions of Section 114 of the Land Act, Cap 113 R. E. 2019. Therefore, the trial tribunal properly evaluated the evidence before it and arrived to a just decision. He cited of **Hemed Said versus Mohamed Mbilu (1984) TLR 114.**

In his rejoinder, the counsel for the appellant insisted that, the mortgage was not legal as the same was not consented by the spouse living in the house in dispute.,

By simple meaning, a spouse is a wife or husband. The fact that the appellant live in the mortgaged house does not prove that she is a spouse(wife) of the 1<sup>st</sup> respondent unless it is proved so. The law of Marriage Act, Cap 29 R. E. 2018 under Section 55 requires a marriage between the parties to be proved by presentation of the following documents as quoted here under; -

*55. "The following documents shall be admissible in evidence without proof in any court or before any person having power under any written law to receive evidence, as being prima facie evidence of the facts recorded therein:-*

- (a) *a marriage certificate issued under this Act or any law in force before the commencement of this Act;*
- (b) *a copy of such marriage certificate purporting to be certified as a true copy by the registrar having custody of the original;*
- (c) *an entry in any register of marriages kept under this Act or any written law heretofore in force;*
- (d) *a copy of an entry in any such register purporting to be a true copy so certified by the Registrar-General or the registrar having custody of the register;*
- (e) *a copy of an entry in a return sent to the Registrar-General in accordance with section 46, certified by the Registrar-General to be a true copy of such entry; The Law of Marriage Act [CAP. 29 R.E. 2019] 39*
- (f) *an entry made, prior to the coming into force of this Act, in any register of marriages maintained by the proper authority of the "Baraza Kuu la Waislamu wa Tanzania" (BAKWATA), the Shia Ith'nasheri, the Shia Imami Ismaili, the Bohora or any other community or a copy of any such entry certified by a proper officer of that authority to be a true copy; and*
- (g) *in relation to a marriage celebrated in a place of worship at a time when the official registration of such marriages was not required, an entry in any register of marriages kept by the proper authority of the religion concerned or a copy of any such entry sealed with the seal, if any, of that authority and*

*certified under the hand of the registrar or other proper officer of that authority to be a true copy".*

I have perused the records at hand and found nothing was presented by the appellant to prove that she is a wife of the 1<sup>st</sup> respondent. As observed by the trial tribunal, the first step was for the appellant to approach a matrimonial court and enquire on the status of her relationship with the 1<sup>st</sup> respondent and later fight for her rights in the disputed land if any. So far, I find the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal to have no merits too.

In the end, the appeal is dismissed with costs. The decision of the trial tribunal is upheld so are the orders contained therein.

It is so ordered.



**T. N. MWENEGOHA**  
**JUDGE**

**26/10/2022**

