

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 58 OF 2022

(Arising from Land Application No. 323 of 2018 of Temeke District Land and Housing Tribunal at Temeke before Hon. Bigambo, Chairperson on 25.02.2022)

JOYCE GABRIEL APPELLANT

VERSUS

DEODATA M. KOKUBANZA (as Administratrix of

The estate of the late FRANCIS RUSENENE) RESPONDENT

JUDGMENT

Date of Last order: 28.10.2022

Date of Judgment: 31.10.2022

A.Z. MGEYEKWA, J

This is an appeal; it stems from the decision of the District Land and Housing Tribunal for Temeke at Temeke in Land Dispute No.323 of 2018.

The material background facts to the dispute are briefly as follows; Joyce

Gabriel alleged that he was customary married to Celestine Rusenene (deceased) for more than 25 years, and that the respondent alleged to be the same deceased's 1st wife who had abandoned the deceased, however that the 2nd wife jointly with her husband had purchased the suit property from their joint efforts during the subsistence of their marriage. The District Land and Housing Tribunal decision was decided in favour of the respondent.

Aggrieved, the appellant appealed to this court complaining that the trial tribunal faulted itself to consider water tight documentary and oral evidence advanced by the appellant at the District Land and Housing Tribunal. The appellant raised seven grounds of grievance as follows:-

1. That the trial tribunal Chairman erred in law and in fact by disregarding and throwing out evidence of the appellant's efforts in acquiring the land and house in dispute.
2. The trial tribunal chairman erred in law and in fact by alluding that the certificate of occupancy of the disputed land should have had the name of the appellant as proof of joint ownership.
3. That the trial tribunal Chairman erred in law and in fact by admitting evidence of Dw2 who admitted was a clan member only and therefore not conversant with the facts of the dispute.

4. That the trial tribunal Chairman suppressed evidence of the appellant by declining admission of the Appellant's reply to the deceased's Francis Rusenene's (partner of the appellant) letter of proposal of traditional marriage and dowry, and adopt the Appellant's Judicial Declaration in respect of documents showing her relationship and contribution to the property in issue.
5. That the trial tribunal Chairman erred in law and in fact by finding that the appellant had not adduced enough evidence both oral and documentary to backup her claim on the property.
6. The trial Chairman of the tribunal is faulted in departing from the opinion of the assessors without assigning good cause thereof.
7. The decision of the tribunal is irregular for not containing written opinions of the assessors.

When the matter came up for hearing on 22nd September, 2022, the appellant had the legal service of Mr. Samsoni Joseph Nnko, learned counsel, and the respondent enlisted the legal service of Legal and Human Right Centre.

In his submission in support of the appeal, Mr. Nnko argued all grounds of appeal separately. The learned counsel contended that the District Land and Housing Tribunal failed to observe and consider the opinion of

the assessors, the evidence of the appellant and documentary evidence tendered before the District Land and Housing Tribunal.

The appellant's counsel argued that the District Land and Housing Tribunal failed to observe that the appellant was married to the deceased for more than 25 years. He added that the appellant was leaving with the deceased in their matrimonial house taking care of the respondent's children, while the respondent had abandoned the deceased husband for many years.

On the strength of the above submissions, the appellant's counsel beckoned upon this court to quash and set aside the judgment of the District Land and Housing Tribunal with costs.

Opposing the appeal, the respondent counsel confutation was strenuous. He came out forcefully and defended the District Land and Housing Tribunal's decision as sound and reasoned. He contended that it is upon the appellant to prove his case on how she and his alleged husband acquired the suit property together. To buttress his contention he cited Sections 110 (2) 112 of the Law of Evidence Act Cap 6 [R.E. 2019]. The respondent went on to submit that in order the issue of joint ownership to exist, the instrument of ownership must contain names of both owners, however, the Certificate of Tittle does not show the name of the appellant. Fortifying his submission he referred this Court to section 159 (3) of the

Land Act, Cap.113 [R.E. 2019]. He went on to submit that the appellant was not legally married to the deceased as the deceased had contracted a civil marriage that was never been dissolved by any court of law for the deceased to contract another marriage with the appellant. Thus, it was his submission that leaving with the respondent's deceased husband amounted to concubinage and the same cannot be called a marriage between the two.

The respondent continued to submit that the assessor's opinion was given and considered by the trial tribunal in reaching its decision on 25th February, 2022.

On the strength of the above submission, the respondent argued this Court to sustain the decision of the District Land and Housing Tribunal and dismiss the appeal with costs.

I have subjected the rival arguments by the learned counsels to the serious scrutiny they deserve. Having so done, I think, the bone of contention between the learned counsels is whether the appellant had proved her ownership over the suit property. The appellant's counsel has locked horns with the respondent's counsel on this matter. Each part opposes the version of the other. In my determination, I will address the first, second, third and fifth grounds together because they are intertwined.

Equal related are the sixth and seventh grounds. Except for the fourth which will be argued separately.

On the first, second, third and fifth grounds are related to evidence on record. It would appear from the court records that the respondent was a legal wife of the deceased. To substantiate her testimony she tendered exhibit D1. The respondent was also appointed as an Administratrix of her husband's estate (Exh.D2). I have read the Certificate of Title and noted that it bears the name of the late Francis Rwezaura Rusenene. The appellant was required to prove that she is the lawful owner of the suit property by tendering cogent documents.

The exhibits in record shows that 'Acknowledgment Note' (Exh.P2), is a document which does not introduce the appellant as the lawful owner of the suit land. I am saying so because the appellant's name is not included in the document. In addition, in accordance to the Certificate of Title (Exh.P3) tendered by the appellant reveals that Francis Rwezaura Rusenene was the registered owner of the suit property registered on 20th July, 1994 with Certificate of Title No. 43713. Therefore, the appellant's claims that she is a co -owner of the suit land cannot hold water because there is no any evidence to support her allegation. As rightly pointed out by the respondent's counsel that in case the document was made in favour of both parties then the registration must show that the two of them

are joint occupiers in common. See Section 159 (3) of the Land Act, Cap. 113 [R.E 2019].

The proof of ownership of land in our jurisprudence was discussed in various cases such as **Simeon Francis v Alfred Mitakosa**, Misc. Land Case No. 6 of 2015 and **Amina Maulid & 2 Others v Ramadhan Juma**, Civil Appeal No. 35 of 2019 (both unreported). In the Case of Amina Maulid (supra) The Court of Appeal of Tanzania at Mwanza among other things the Court held that:-

“....a person with a certificate thereof will always be taken the lawful owner unless it is proved that the certificate was not lawfully obtained.”

Similarly, in the case of **Jane Kimaro v Vicky Adili (Administrator of the Estate of the late Adili Daniel Mande)**, Civil Appeal No. 2012 of 2016 among other things it was observed that:-

“Ownership of land starts in whose name that estate or interest is registered.”

Applying the above authorities in the instant case, I found that the appellant has failed to prove that she is lawful owner of the suit property and to establish her status and interest over the suit property.

As to the fourth ground is not related to land matters, the issue of admitting the appellant's father's reply to the deceased's Francis

Rusenene's and the issue of traditional marriage and dowry are related to matrimonial matters. *This court is vested with exclusive jurisdiction on land matters but not with matters subject of matrimonial or probate intricacies.* See the cases of **Aba Patrick Mwakitwange v Regina Muhoja & Another**, Land Appeal No. 126 of 2017, HC Land Division. Having said so, I find that this is ground suffers from the wrong forum crunch that renders it utterly untenable.

On the sixth and seventh grounds, the appellant claimed that the Chairman did not consider the assessors opinion. However, reading the Judgment of the District Land and Housing Tribunal, the Chairman at page 9 stated the reasons for differing from the assessor's opinion. For sake of clarity, I reproduce the said excerpt of the tribunal hereunder:-

"Maoni ya wazee wa baraza kuwa, nyumba iuzwe na fedha zigawanywe kwa warithi na mwombaji pia, nina maoni tofauti kwani, mwombaji ameshindwa kuthibitisha kuwa mmiliki wa eneo lenye mgogoro. Pia anayepaswa kugawa mali za marehemu ni msimamizi wa mirathi na anapaswa kuwagawia warithi. Siyo kazi ya baraza hili kuamua jinsi gani mirathi igawanywe kwani baraza halina mamlaka."

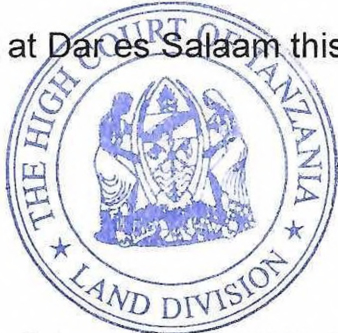
Based on the above excerpt, it is clear that the Chairman stated his reasons for differing with the assessor's opinion. DW2 referred on ground of Appeal No. 3 was not just a clan member but the deceased's wife within

whom has right to administer the estates of her husband's estates so her evidence was correctly admitted. The records reveal that the court records, clearly show that the assessors had given their independent opinion whereas one of the opinions dated 27th December, 2021 by Mr. Ignasio M and the other opinion dated on 18th January, 2022 by Joseph Mwaisagela. Therefore, these grounds are disregarded.

I find it out that for the above reasons no reason to default the DLHT because all of the grounds herein appealed, were clearly resolved by the DLHT trial Chairman. I hereby uphold the District Land and Housing Tribunal decision delivered on 25th February, 2022.

Order accordingly.

Dated at Dar es Salaam this date 31st October, 2022.

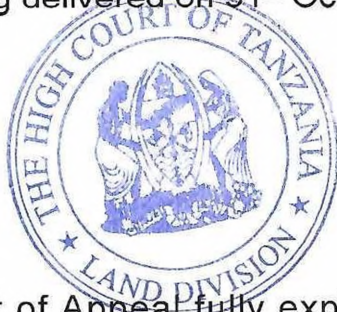




A.Z.MGEYEKWA

JUDGE

31.10.2022

Ruling delivered on 31st October, 2022 in the presence of all parties




A.Z.MGEYEKWA

JUDGE

31.10.2022

Right of Appeal fully explained.