

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

LAND APPEAL NO. 231 OF 2021

(From the Decision of the District Land and Housing Tribunal of Temeke District, at Temeke in Land Case No. 175 of 2017)

ZAMANA JUMA..... APPELLANT

VERSUS

SAWIDATI HASSANI HOZA1ST RESPONDENT

JUMANNE HOZA.....2ND RESPONDENT

J U D G M E N T

Date of Last Order: 05.05.2022

Date of Judgement: 19.05.2022

T. N. MWENEGOHA, J.

The appeal has its genesis in the District Land and Housing Tribunal for Temeke District, herein after called the trial tribunal, vide the Land Case Application No.175 of 2017. At the centre of the dispute between the appellant and the respondents above named is a landed property, located at Kibada Street, Kongowe, Temeke within Dar es Salaam Region, measuring 24 meters north, 24 meters south, 14 meters East and 16 meters West. After a full trial before the trial tribunal, the decision was entered against the appellant. Aggrieved by the said decision, he has filed the instant appeal with the following grounds;-

- 1. That, the Hon. Chairman erred in law and in fact for holding that exhibits SHH-1, SHH-2 and SHH-3, declared the land in dispute to be part of matrimonial assets.**

- 2. That, the Hon. Chairman erred in law and in fact for holding that, the District Land and Housing Tribunal for Temeke lacked the jurisdiction to entertain the matter and proceeding to determine who is the lawful owner of the land in dispute.**
- 3. That, the Hon. Chairman erred in law and in fact for holding that, the appellant was supposed to institute objection proceedings in Primary Court of Mbagala, instead of filling a land Application in the District Land and Housing Tribunal for Temeke.**
- 4. That, the Chairperson erred in law and facts by holding that the land in dispute is part and parcel of the matrimonial assets between 1st and 2nd respondents as well as part of Matrimonial Case No.66 of 2014.**
- 5. That, the Hon. Chairman erred in law and in fact for holding that the Primary court of Mbagala held that, the land in dispute is part and parcel of the matrimonial assets of Sawida Hassan hoza and Jumanne Hoza.**
- 6. That, the Hon. Chairman erred in law and in fact by ignoring the evidence given by the 2nd respondent during the trial that the land in question has never been his property.**
- 7. That, the Hon. Chairman erred in law and in fact for ignoring the testimony of Hassan Juma Makelo, that he was the one who sold the land in dispute to appellant's mother.**
- 8. That, the Hon. Chairman erred in law and in fact for disregarding the undisputed probate cause of the late Zulfa Zuberi which distributed the disputed land to the appellant.**

9. That, the Hon. Chairman erred in law and in fact not considering the decision of Primary Court of Mbagala, Civil Appeal Case No. 16 of 2015, Hon. Tarimo and High Court decision in Civil Appeal No. 35 of 2015 which both held that Jumanne Hoza did not sell, the land he bought in 1994 to Zulfa in 2001, therefore it should remain to be matrimonial asset and never touched the land in dispute sold to Zulfa Zuberi by Hassan Juma Makelo in 2000.

This appeal was heard orally. Advocate Tumaini Mgonja appeared for the appellant, while the 1st respondent was represented by Advocate Ida Rugakingila. The 2nd respondent appeared in person.

Submitting on the 1st, 4th, 5th and 9th together, the appellant's counsel was of the view that the trial tribunal was wrong to rule that the land in dispute is a matrimonial one, while the Matrimonial cause No. 66 of 2014, with a decision dated 13th of January 2015 at paragraphs 2&3 of page 5 show that there are two lands and one of them was sold to Zulfa Zuberi. The same decision went on to say that, the two lands were brought by each of them. That one of them was bought by the 2nd respondent in 1994 and the other was bought in 2000 by Zulfa Zuberi.

He insisted that, what the court ordered was a distribution of the house built in 1994 and not the plot owned by Zulfa Zuberi. That, the distribution was only on the house and a well. The decision clearly stated incase there is a dispute over the well, then the parties will agree with the owner of the land. Therefore, the disputed land didn't involve the land owned by Zulfa Zuberi.

The 2nd ground was argued together with the 3rd ground that; it was wrong for the court to declare that it has no jurisdiction to entertain the matter. The issue of objection proceedings is not applicable as the land in question was not part of the matrimonial property. The appellant counsel prayed to abandon the 6th, 7th, and 8th grounds of appeal.

In reply, the 1st respondent's counsel submitting on the 1st, 4th, 5th, and 9th, that the chairman was correct to decide that the property was a matrimonial one. The records are clear in Matrimonial cause No. 66 of 2014 are clear that the land in dispute is part and parcel of matrimonial property. On the 2nd and 3rd ground of appeal, it wa submitted that, since the appellant's prayer was in regard to the attached property in the execution, the proper way was to file an objection generally that proceeding.

As for the 2nd respondent, he submitted generally that, it is true that the land in question belongs to Zulfa Zuberi and the same is not a matrimonial property. That, the fact was proved when the tribunal visited *locus in quo*. He prayed for the court to do justice as everything is in record.

In rejoinder, the appellant's reiterated his submissions in chief.

I have gone through the submissions of the parties through their counsels as well as the records at hand. One issue is in need of determination, that is whether the appeal has merits or not.

The consolidated arguments of the appellant's counsel on the 1st, 4th, 5th and 9th grounds, were that, the trial tribunal was wrong to rule that the land in dispute is a matrimonial one, while the Matrimonial cause No. 66 of 2014, the decision dated 13th of January 2015 at page 5, paragraphs 2&3, show that there are two lands are separate and one of them was

sold to Zulfa Zuberi. It was further argued that, what was supposed to be subject of distribution is only a house and well, not the land in question. On part of the 1st respondent, her learned counsel was of the view that, the trial tribunal was correct in its decision. As for the 2nd respondent, his arguments were in support of the appeal.

To resolve the contention as far as the ownership of the land in question is concerned, I went through the records, particularly the decisions that have been referred as the source of the instant conflict. There is a Matrimonial Cause No. 66 of 2014 (exhibit SHH-1). The judgment of the said case dated 13th January, 2015, by Hon. B Pilla, at page 9, the last paragraph, clearly declared the land in question to be a matrimonial one. It went further to deny the purported sale of the said land to one Zulfa Zuberi by the 2nd respondent. This decision remains in force to date as it was upheld by the High Court of Tanzania, vide Appeal no. 35 of 2015. That being the case, the issue of ownership of the land in dispute was determined to its finality. No other court can entertain the same and that is what was said by the trial tribunal. And in fact, it is the correct position.

However, I have noted that, on record I have a Ruling arising in Matrimonial Cause No. 66 of 2014, dated 28th December, 2016. This was a result of execution proceedings, by Hon. Mgendwa. At page 21, paragraph 1, the last sentence, it appears that, what was supposed to be evaluated in the land in question is the well and that was subject to consultation and agreement with the owner of the land. This is where the whole confusion as far as the ownership of the disputed land is concerned. The decision in execution is what has been used by the appellant's counsel to capitalize his position that, the suit land was not part of the matrimonial property. I'm afraid to say that, the said position is a misdirection on part

the appellant. This was a confusion created by the executing court, but does not affect the original decision of 13th January, 2015, by Hon. B Pilla. Therefore, the trial tribunal was correct in its decision. The 1st, 4th, 5th and 9th grounds are therefore, devoid of merits and are rejected accordingly.

As for the 2nd and 3rd grounds, I also agree with the trial tribunal in its position basing on the findings of the 1st, 4th, 5th and 9th grounds herein above. As the question of ownership has already been dealt with by a matrimonial court vide Matrimonial Cause No. 66 of 2014, the trial tribunal had nothing to do other than complying with the decision of the matrimonial court. Either, the said tribunal was correct to advise the parties, the appellant in particular that, since the matter arose out of execution, the proper remedy was for the interested party to institute objection proceedings to challenge the attachment of the land in question and not the file a fresh case. The two grounds are also rejected.

In the end, the entire appeal is dismissed with costs for want of merits.

Right of Appeal Explained.


T. N. MWENEGOHA

JUDGE

19/05/2022

