

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

LAND APPEAL NO. 304 OF 2023

*(Arising from Land Application No.425 of 2019, by the District Land and
Housing Tribunal for Kinondoni)*

MARGARETH MOREMI..... APPELLANT

VERSUS

**MARIA ALPHONSE SILILA(As Guardian of ALLISON LOUS
SILILA).....1ST RESPONDENT
VISION PLUS INTERGRATED(VPI) LIMITED....2ND RESPONDENT
ALI KHERI SUMAYE.....3RD RESPONDENT**

RULING

Date of Last Order: 11.09.2023

Date of Ruling: 26.10.2023

T.N. MWENEGOHA, J:

The appellant above named, being aggrieved by the decision of the District Land and Housing Tribunal for Kinondoni, here in above referred as the trial Tribunal, preferred this appeal, on the following grounds; -

1. That, the Hon. Chairperson grossly erred in law and fact by holding that, he differed with the assessors on ground that before the matrimonial court, the appellant failed to show that the properties in dispute were matrimonial.

2. That, the trial Tribunal grossly erred in law and fact by holding that in Matrimonial Cause No. 12 of 2012, the appellant failed to prove that properties in dispute were matrimonial properties.
3. That, the trial Tribunal grossly erred in law and in fact by holding that, the matrimonial court did not grant the appellant the properties in dispute the subject of the Application.
4. That, the trial Tribunal erred in law and fact by holding that the matrimonial court found that the properties in dispute were personal properties of the 3rd respondent and was entitled to sell the properties in dispute without consent of the appellant.
5. That, the trial Tribunal erred in law and in fact by holding that the landed properties in dispute were personal properties of the 3rd respondent, not matrimonial properties.
6. That, the trial Tribunal erred in law and in fact by holding that the appellant did not file a caveat to protect her interests, if any.
7. That, the trial Tribunal grossly erred in law and fact by holding that there was no evidence to show that the appellant has any interest in the suit property.
8. That, the Hon. Chairperson grossly erred in law and in fact and/or misdirected himself by holding that the appellant failed to show her contribution towards obtaining the properties in dispute.
9. That, the Hon. Chairperson erred in law and fact by failing to evaluate the evidence on record.
10. That, the Hon. Chairperson grossly erred in law by disregarding section 161(3)(b) of the Land Act, Cap 113 R.E 2019.

The appeal was heard through written submissions. Advocate Beatus Malima, appeared for the appellant, while the 1st, 2nd and 3rd respondents were represented by Advocate Mohamed Tibanyendera.

However, before I venture into discussing the grounds of appeal, I would like to address an issue that I noted in the appeal at hand. That, there is a new party added in the instant appeal, the 3rd respondent (Ali Kheri Sumaye), who was not a party at the trial Tribunal.

The parties were notified on this anomaly. They were ordered to address the Court on the competence of this appeal and whether it was necessary to implead the 3rd respondent as a necessary party at the trial Tribunal. Both parties complied with the order and I appreciate their efforts in addressing the issues raised by the Court. For the purpose of serving time, I will not reproduce their arguments. However, I have noted and considered the submissions from all parties and the same will be reflected in my Ruling.

I will start addressing the 1st issue, regarding the names of the parties in this appeal against the names appearing on the records from the trial Tribunal. At hand, I have the impugned Judgment, where parties are Maria Alphonse Silla (As guardian of Waleta Allison Lous Silla) and Vision Plus Integrated (VPI) Co. Limited as applicants versus Margareth R. Moremi, as respondent. The name of the 3rd respondent in this appeal is not appearing in the Tribunal Judgment. That, is to say, the 3rd respondent was not a party to the proceedings before the trial Tribunal. In that case, he cannot be joined as a respondent at this stage of appeal while he was not heard at the trial stage. The Court has insisted in a number of authorities on the importance of the issue of names of parties to the case.

That, it plays a key role in their identification. Therefore, they cannot be changed at the will of the parties as done in this appeal, see **CRDB Bank PLC {Formerly CRDB (1996)} versus George Mathew Kilindu, Civil Appeal No. 110 of 2017, Court of Appeal of Tanzania at Dar Es Salaam(unreported).**

It is a must thing to consider that, the names appearing in the former case should be the same as those to be involved in the appeal. Adding another person at this stage, creates a new case and new records, which are different from the previous one, vide Land Application No. 425 of 2019. Hence, we can equally to say that, the 3rd respondent is a stranger to the present appeal. He is nowhere to be found in previous proceedings, see **Salim Amour Diwan versus The Vice Chancellor Nelson Mandela African Institution of Science and Technology and Another, Civil Application No. 116/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam (unreported).**

Secondly, is whether it was necessary to add the 3rd respondent as a party at the trial Tribunal. The answer is evidently yes. The records show that, 3rd respondent was included as a 3rd defendant in a counter claim. It means he was joined in this case as a 3rd party. Therefore, it was not proper not to implead him. The effect of that omission has manifested itself at this stage of appeal. Above all, the 3rd respondent being the seller of the disputed lands to the 1st and 2nd respondents, and also a former husband of the appellant, involved in the Matrimonial Cause No. 12 of 2012, he was a necessary party to the case before the trial Tribunal. Without him, it was not possible for the trial Tribunal to pass an effective Decree. His existence on records as a witness (DW1) is not enough when it comes to Execution of the Decree. He was supposed to be part of it.

For these reasons, Mr. Ali Kheri Sumaye was a necessary party and without him, the whole proceedings of the trial Tribunal are nullity, see **Abdullatif Mohamed Hamis versus Mehboob Yusufu Osman and Another, Civil Revision No. 6 of 2017, Court of Appeal of Tanzania, (unreported).**

For the reasons I have given above, I find the appeal before me not maintainable. Consequently, under the provisions of **section 42 and 43 (1)(b) of the Land Disputes Court's Act, Cap 216**, I proceed and use my revisional powers and nullify the whole proceedings of the trial Tribunal, quash its Judgment and set aside the orders that followed. Further, I order a retrial of the case, before a new Chairman and assessors and Mr. Ali Kheri Sumaye should be joined as a necessary party. No order as to cost.

Ordered accordingly.



T.N. MWENEGOHA

JUDGE

26/10/2023