

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

CIVIL APPEAL NO. 4879 OF 2024

SARAH MARIUS MAKUA(as legal representative of
the late **EVANGELINA MARIUS MAKUA**).....**APPELLANT**

VERSUS

PAULINA FRANK..... **RESPONDENT**

JUDGMENT

Date of last Order: 03/6/2024

Date of Judgment: 19/6/2024

A. MSAFIRI, J.

The appellant herein above being dissatisfied with the decision of the District Land and Housing Tribunal for Ilala (the trial Tribunal) in Application No. 270 of 2020, has lodged this appeal advancing seven (7) grounds of appeal which I shall not reproduce herein but they are reflected in the course of determining the appeal. The respondent also filed her reply to the petition of appeal.

The appeal was heard by written submissions and the appellant was represented by Mr. Christian Rutagatina, learned advocate while the respondent was represented by Mr. Wilson Ogunde, the learned advocate.

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I have considered their worthy submissions and I will analyse them as I determine the grounds of appeal. Before determining the grounds of appeal, the brief background of the dispute is apposite.

Initially the late Evangelina Marius Makua who was by then still alive, filed an Application No. 270 of 2020 before the said trial Tribunal against the respondent. She was claiming that she is the owner of a house identified by Ref. No. IMC 00378290 located along Tabata Kimanga Street, Segerea Ward within the neighbourhood of Plot No. 84 Block N of Tabata area in Dar es Salaam (herein as suit premise). She prayed to be declared the rightful owner of the suit premise. After hearing of the matter, the trial Tribunal decided in favour of the respondent and that led to the current appeal.

Before determining the grounds of appeal, being the court of first appeal, I will briefly go through the evidence as adduced during the trial. In her testimony as SM1, Evangelina Makua said that the respondent is her sister in law and was married to SM1's brother one Frank Martin Shekilango. That in 1989 the said Frank purchased a plot at a price of TZS 20,000 whereby she contributed TZS 10,000 and her brother Frank contributed TZS 10,000. That in 1990 she started to build on her side of plot (implying that the suit plot was divided into two pieces of land). That she

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constructed her house and lived therein and her brother and the respondent had their own house. That surprisingly when the marriage of her brother Frank and the respondent dissolved, her house was included in the matrimonial assets of the estranged couple. That the suit premises is not the matrimonial property of the respondent and her estranged husband but it is her property. She produced the decision of the Matrimonial Court which included the suit premise in the matrimonial asset. The judgment was admitted as exhibit P1. She produced another decision which she has appealed against exhibit P1. The said decision was admitted as Exhibit P2. Another decision was admitted as exhibit P3. She said she has been paying building rent to TRA and her house is recognized and identified by No. IMC 00378290. She insisted that the suit premises is her lawful property.

In cross examination she admitted that her name is not in the sale agreement of the suit premises but there is only the name of her brother Frank. She also admitted that she was not present during the sale, She admitted further that the house in dispute is within the Plot No. 84 Block N, Tabata, Ilala.

SM2 was Frank Martin Shekilango. He testified and admitted to be a young brother of the applicant and ex-husband of the respondent. He said he

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and his sister the applicant jointly acquired a piece of land and that they contributed money to pay for the said land. That in the same year 1990 the land was surveyed but he was not present and the land was surveyed as one Plot. That he unsuccessfully made follow up to the surveyors to come and separate the two plots. He said that there was irregularities in the decision before Hon. Msafiri, RM (exhibit P1) as the court included the house of his sister the applicant in the matrimonial properties. He insisted that the house of the applicant is not a matrimonial property.

SM3 was Monica Paul Sangeza who testified that the applicant is her sister. The evidence of SM3 is similar to the one of SM2 except that SM3 added that one Marius Makuwa, the husband of the applicant gave SM3 his Will. She produced the said Will which was admitted as exhibit P4 (KM4). She said further that she knows the house in dispute belongs to her sister the applicant.

The applicant Evangelina Makua passed away while the trial was going on and the present appellant Sarah Makua was appointed the administrator and proceeded with the case.

The respondent testified as SU1. She said that she lives at Tabata in Plot No.84 Block N and that she was married to Frank Martin since 1986 and they managed to purchase a piece of land described as Plot No. 84 Block

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N located at Tabata Kimanga. That they built a house and moved in in 1993. That they built two houses on the same plot and her husband Frank invited his sister Evangelina Makua to live in the second house. That later her husband abandoned her and went to live with another woman. That under her sister's advice, Frank filed for divorce and in the case, Plot No. 84 Block N Tabata was declared matrimonial property. She said that the contents of the Will which is produced in Tribunal has no any relation with the disputed house. She insisted that the suit premises is matrimonial property owned jointly by her and her ex-husband.

Having gone through the evidence I will now determine the grounds of appeal. The first ground is that the trial Chairperson for reasons known to herself confused matters adduced before her because what was in controversy was not ownership of Plot No. 84 Block "N" but ownership of residential house specifically identified by TRA reference No. IMC 00378290.

In his submissions Mr Rutagatina, advocate for the appellant stated that the confusion started in the framing of issues whereby the first issue read as "*Je mdai ni mmilki halali wa eneo bishaniwa?*" (whether the applicant is the lawful owner of the suit area?). That by basing on the word "*eneo*" (area), the trial Tribunal shifted from the appellants' house which was the

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pillar of the appellant's complain. That according to the wording of the appellant's pleadings, the disputed house is the house identified by Ref. No. IMC 00378290 located along Tabata Kimanga Street within the neighbourhood of Plot No. 84 Block "N" Tabata area in Dar es Salaam.

In reply to the first ground, Mr Ogunde, counsel for the respondent submitted that this ground is misconceived. That under Section 110 of the Evidence Act Cap 6 R.E 2022, the appellant was duty bound to prove the allegations that she bought Plot No 84 Block N Tabata jointly with Frank Martin and that the said plot was sub divided into two. That the appellant admitted in cross examination that she and her brother Frank Martin jointly bought a piece of land measuring about 1/2 acre but the sale agreement was written in the name of Frank Martin alone. She conceded that house No. IMC 00378290 was assigned sometimes between the year 2016 and 2017 and the same was simply by Tanzania Revenue Authority (TRA).

He said further that the appellant did not prove that the second house is identified as House No. IMC 000378290 and that she owns the same. That the trial Chairperson did not confuse matters adduced before her because the issue she was called upon to resolve was whether the applicant is the lawful owner of the disputed piece of land which is Plot No 84 Block "N"

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and House No. IMC 000378290 is found on the said plot. That the decision of the trial Chairperson was based on evidence on record as the appellant failed to prove that she is the owner of the disputed plot.

The counsel for the appellant rejoined and mostly reiterated his submission in chief.

Before I start determining the issues by analyzing the adduced evidence both oral and documentary, I would like to emphasize a cardinal principal of law that it is the one who alleges who has mandatory obligation to prove their allegations. This is embedded under Section 110(1), (2) of the Evidence Act, Cap. 6 R.E 2022 which provides;

110(1); whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

110(2) when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Guided by the said principle of law, I feel that I should point that in civil cases, the law places a burden of proof upon a person who desires a Court to give judgment in his or her favour and such a person who states the existence of facts has to prove existence of those facts. Such fact is said

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to be proved when in civil matters, its existence is established by a preponderance of probability. (See the decision of the Court of Appeal case of **Ernest Sebastian Mbele vs. Sebastian Sebastian Mbele**, Civil Appeal No.66 of 2019 CAT Iringa (Unreported) in which this cardinal principal on proof on balance of probabilities was set.

In the first ground the appellant claims that the Chairperson confused the matters which were adduced before her as what was in controversy was not ownership of Plot No. 84 Block 'N' but ownership of a residential house specifically identified by House No. IMC 000378290. However, having gone through the evidence adduced by the appellant and her witnesses during the trial, there was no any proof which was produced by either of the witness to prove that the appellant was the lawful owner of the house in dispute.

It is my view that in the claim for ownership of land, mere verbal words are not enough to establish the ownership particularly where there is dispute over the ownership of the claimed land. In her evidence, the appellant claimed to be the owner of the house in dispute. She said that she jointly purchased the suit plot with her brother Frank Martin Shekilango and that the sale agreement was written in the brother's name. Even if the sale agreement could have been written in both names of the

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alleged purchasers, it was not produced in court to prove the purported purchase.

The appellant claims that she has been paying building rent to TRA and her house is recognized and identified by No. IMC 00378290. However, she did not produce any documentary proof on the claims, no TRA receipts to prove on the payments, no any letter or anything to prove that the disputed house was identified by Ref. No. IMC 00378290.

According to the evidence adduced during the trial, the appellant and her brother bought one piece of land upon which the two houses were built. The appellant living in one house and her brother and his family living in another house. The appellant was paying the building rent to TRA on the house in which she was living but the payment to TRA are not proof of ownership of the land. Even if the payment could have been proof of ownership, the appellant failed to prove that she was indeed paying the said rent to TRA as no any proof was produced beside the words of mouth of the appellant.

SM2 Frank Martin's evidence cemented that house identified as Ref. No. IMC 00378290 is actually within Plot No 84 Block "N". In his evidence he said that in the year 1990 the land he has jointly purchased with his sister was surveyed but he was not present and the land was surveyed as one

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Plot. That he unsuccessfully made follow up to the surveyors to come and separate the two plots. "*Nilifuatilia wapimaji ili watenganishe viwanja hivi viwili lakini haikufanikiwa*"

Therefore by this evidence, it was obvious that the disputed house is within Plot No 84 Block "N". Furthermore, the witness admitted that in the sale agreement on the purchase of the disputed land, his name was the sole name appearing as the purchaser. (although the agreement was never produced in Tribunal)

On the claim by the counsel for the appellant that the issue in dispute was on house identified by Ref. No. IMC 00378290, and not Plot No 84 Block "N", I find that the said house could not be separated from the Plot No. 84 Block N as the house is within the said plot. On the claim that the first drawn issue shifted from the appellant's house, I am not in agreement of that. According to the records, two issues were drawn before the hearing. The first issue was; 'who is the lawful owner of the disputed area' and the second issue was the reliefs' entitlements of the parties. The trial Chairperson determined the first issue basing on the evidence adduced during the trial. And according to the evidence as I have already analysed above, the house in dispute is within Plot No 84 Block "N" Tabata, Ilala. The evidence adduced by both appellant and Frank Martin showed that

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the plot was in the name of Frank Martin and no documentary evidence was produced to prove that the disputed house identified by Ref. No. IMC 00378290 was owned by the appellant.

At page four (4) of the impugned judgment, it shows that the trial Chairperson did consider the disputed house and did not shift from the said house as it is claimed by the counsel for the appellant in his submission. At page four, the Chairperson stated;

*"kwa ushahidi tulioupokea na maombi ya mdai, ni dhahiri kwamba mdai anaomba kutamkwa mmiliki halali wa eneo bishaniwa inayojulikana kuwa kiwanja Na. 84 Block 'N' Tabata, Ilala, DSM **nyumba Namba IMC 00378290...**" (emphasis added).*

To sum up, the appellant failed to prove the ownership of a residential house specifically identified by TRA reference No. IMC 00378290. The first ground has no merit and is dismissed.

On the second ground, it was claimed that the trial Chairperson misconstrued applicant's three exhibits and was unreasonably misguided by Exhibit P1 while the appellant was neither privy to spouses matrimonial difficulty nor shared spouses marital relationship. According to the submissions by Mr Rutagatina, the appellant is contesting the decision of Hon. Msafiri.JC, RM who decided that the disputed house is

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the matrimonial property. The decision was admitted during trial as exhibit P1 and the appellant blamed the trial Chairperson who like others before her, adopted the said decision as a guide in determination of the land dispute which was before her.

In reply, Mr Ogunde submitted that the trial Chairperson did not misconstrue the appellant's three exhibits and was not misguided by exhibit P1 which was introduced in evidence by the appellant herself. That the appellant counsel has put a lot of energy in challenging the decision of Matrimonial Cause No.13 of 2008 by the Ilala District Court and Misc. Civil Application No. 281 of 2018 by the same court both admitted as exhibits P1, P2 as if this appellate court was sitting on appeal of the said decisions. He added that the trial Chairperson was right to decide that it has no jurisdiction to decide the legality of the decisions given in the said courts. The counsel urged the court to dismiss this ground of appeal.

In rejoinder, Mr Rutagatina reiterated the submissions in chief and added further that the intention of the appellant was to show that the court in exhibit P1, the decision of Hon. Msafiri, RM misconstrued ownership of the disputed ownership of disputed residential property.

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During the trial, the appellant tendered a judgment of Matrimonial Case No. 13 of 2008 at Ilala District Court between Paulina Frank (now the respondent) and Frank Martin (not a party to this appeal). The judgment was admitted as exhibit P1. The suit was decided in favour of Paulina Frank whereby the disputed house was declared a matrimonial property.

The appellant, in attempt to challenge the decision of Matrimonial Cause No. 13 of 2008 which she was not a party, she instituted Misc. Civil Application No. 281 of 2018 and jointly sued Frank Martin and Paulina Frank. The suit was filed before the District Court of Ilala. The suit was dismissed on the raised preliminary objection that it was res judicata. The ruling was admitted during the trial as exhibit P2.

The appellant through her advocate submitted that the trial Chairperson was misguided by the above decisions. However, I agree with the findings of the trial Chairperson that the fate of the disputed property had already been determined by the court in Matrimonial Cause No. 13 of 2008 and therefore the Tribunal had no jurisdiction to determine on the matter.

I have read the whole evidence adduced during trial and I have seen no evidence that the decision of Hon. Msafiri, RM in Matrimonial Cause No. 13 of 2008 was ever altered or quashed or reversed by any court.

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Therefore the trial Tribunal being not the appellate court could not have reversed or set aside the judgment and ruling in exhibits P1 and P2 as it has no jurisdiction to do so.

The counsel for the appellant has stated that the intention of producing exhibits P1 was to show how Hon. Msafiri, RM misconstrued ownership of the disputed property. However, even if this court could have agreed that decision in exhibit P1 was misconstrued, this appeal is not about the decision of Msafiri, RM in Matrimonial Cause No 13 of 2008 but it is about the decision in Application No. 270 of 2020 by the District Tribunal.

In addition, even if this court could have jurisdiction to look into and determine the decision on exhibit P1, as already found in the first ground, the appellant failed to prove her ownership of the disputed property. I also find this ground of appeal to have no merit and it is dismissed.

On the third ground, it is claimed that the trial Chairperson relied on extraneous matters contrary to drawn up issues. The counsel for the appellant submitted that the trial Chairperson erred when she picked on exhibit P.4 and raised queries concerning the identity of the disputed house. That the trial Chairperson put aside the actual issue she was expected to resolve and concentrated on Msafiri, RM opinions to which she was not directed. That there is urgent need to separate two tracts of

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land identified as Plot No 84 Block "N" and IMC 00378290, Tabata Kimanga in Ilala District.

The counsel for the respondent submitted in contention that exhibit P4 which was alleged to be the Will of Marius Makua was introduced in evidence by the appellant herself. That the Will contradicted the evidence of Evangelina Makua (SM1) and Frank Martin (SM2). That the purported Will did not mention the disputed house to be among the property of the late Marius Makua. The counsel insisted that the trial Chairperson did not rely on extraneous matters. He invited the court to dismiss this ground.

The appellant's counsel rejoined by reiterating the submission in chief.

As I have already gone through the evidence which was adduced during trial, Evangelina Makua (SM1) and her brother Frank Martin (SM2) by their evidence, they admitted that the disputed house IMC 00378290 was within Plot No 84 Block "N". Therefore, since the appellant was the one who instituted the suit and brought oral evidence that the disputed house was within the said plot, then the trial Chairperson did not error to find so as she based her determination and findings on the evidence before her.

Even this appellate court cannot separate the two as the counsel for the appellant would like to as the evidence shows clearly that the disputed

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house IMC 00378290 is within the piece of land surveyed and registered as Plot No 84 Block "N". On the visit of the locus in quo, the allegations by the counsel for the appellant in his submissions are unfounded and misleading as the appellant was the one who withdrew her request to the Tribunal to visit the locus in quo. In addition, the visit to locus in quo was discretion of the Tribunal and not mandatory.

About the extraneous matters as claimed by the appellant through her counsel, I also found them to be misconceived as the trial Chairperson was determining on exhibit P4 (KM4) which was introduced in court by the appellant herself through her witness SM3. I agree with the submissions by the counsel for the respondent that KM4 contradicted the evidence of SM1 and Sm2 about the ownership of the disputed house. KM4 introduced new evidence that the house in dispute was owned by one Marius Sefu Makuwa who was alleged to be the husband of the appellant and that he has bequeathed the disputed house to the appellant and her children. However during their evidence, appellant herself and her brother insisted that the house in dispute lawfully belonged to the appellant and she constructed it on her own using her hard earned money. The appellant never said in her evidence that the house in dispute belonged to her husband or that she shared it jointly

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with her husband. Therefore the introduction of KM4 which was purported to be the Will of the husband of the appellant was in contradiction of already adduced evidence by the appellant herself.

Furthermore, the trial Chairperson did not err when she questioned the identity of the house named in exhibit KM4 as "*kuna nyumba Tabata Kimanga*", (the house at Tabata Kimanga). Since the issue in dispute was the disputed house then it was imperative for the trial Chairperson to satisfy herself whether the merely stated and unidentified house at Tabata Kimanga is the same house identified as IMC 00378290 and which is located within Plot No 84 Block "N". The trial Chairperson correctly found that the house named in alleged Will of one Marius Sefu Makuwa in KM4 was not identified to be the same as the house in dispute as the merely stating 'house at Tabata Kimanga' could be any house at Tabata Kimanga and not the disputed house. I agree with the counsel for the respondent that there was no extraneous matter introduced by the trial Chairperson during the trial and I dismiss this ground.

Since the fifth ground of appeal is also questioning the trial Chairperson's determination of exhibit KM4, to avoid repetition, I find it to have no merit for the reason already explained above. The trial Chairperson has already correctly found that the house named in KM4 was not identified

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to be the same as the disputed house which is the subject of the dispute between the appellant and the respondent, hence the claim of the respondent was not on the house which was alleged to be bequeathed to the appellant by her late husband but the claim was on the disputed house identified as IMC 00378290 which is located within Plot No 84 Block "N", Tabata Kimanga. I also dismiss this ground.

In the fourth ground, the appellant claim that the trial Chairperson failed to resolve the conflict of evidence between SM2 Frank Martin and respondent touching and concerning ownership of the disputed house and how the said house was constructed. Mr Rutagatina submitted on this ground that Frank Martin SM2 and the respondent SU1 spoke differently concerning the disputed house. That while SU1 claimed that the disputed property is matrimonial one and insisted on its division between the two, SM2 insists that the disputed house is not matrimonial property but it belongs to the appellant.

The counsel submitted further that during the evidence SM1 requested the Tribunal to order the respondent to prove that she owns the house with No. IMC 00378290 but when the respondent took her turn in defence, left the applicant's request un-replied.

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Mr Ogunde responded and submitted that the conflicting evidence only comes from the witnesses of the same party not from opponent parties. That at the trial, SM1 was the witness of the appellant while SU1 was the respondent, hence the two could not have adduced similar evidence.

In this ground I entirely subscribe to the submission by the counsel for the respondent. It was not expected that the evidence of SM2 who was the brother of the appellant and was supporting her claim, could have been similar to the one of the respondent. These were two opponents parties hence their evidence was inevitably contradictory.

About the request of the appellant during the trial that the respondent should prove the ownership of disputed house, the counsel knows the cardinal law that it is the one who alleges who has to prove. What the appellant was trying to do was to shift the burden of proof to the respondent while she herself has failed to prove her ownership of the disputed property. The trial Tribunal could not have decided the case of the appellant basing on the weakness of the respondent case. I find this ground to have no merit and I dismiss it.

On the sixth ground, it is claimed that the trial Chairperson condemned the applicant for failure to produce any documentary evidence in support of purchase of the purchase of the disputed house when the respondent's

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evidence was mediocre. That it was on record that the respondent was not involved in the purchase she purports to have participated.

Mr. Rutagatina submitted on this ground that the evidence in proof of any fact can be made orally or by an affidavit. That there is sufficient oral evidence on the subject matters adduced by both purchasers of the disputed plot of land in absence of the respondent. That there has never been complaint from anybody accusing SM1 and SM2 as thieves or trespassers of the disputed land. That the fact that there was sale agreement executed in the name of Frank Martin suffice to operate as remedy to the Chairperson's demand for documentary evidence.

Mr Ogunde submitted in response that the appellant had duty to produce evidence of ownership of the disputed house which is located in the registered land. That the appellant claimed that her house was assigned by TRA with a number IMC 000378290 and given documents of ownership. That she was bound to produce the proof to support her claims.

The counsel for the appellant reiterated his submission in chief.

This need not detain me. The appellant gave evidence that she is the owner of the disputed house. That the disputed house was constructed on land which was jointly purchased by the appellant and Frank Martin

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SM2. It was claimed further the sale agreement on the purchase of the land was in the sole name of Frank Martin. That sale agreement was not produced in court. Furthermore, there was evidence that the appellant and SM2 jointly purchased the piece of land. SM2 said that the land was surveyed and registered as Plot No 84 Block "N", Tabata Kimanga. But there was more evidence from the appellant and SM2 that they divided the land into two, each one of them building on his/her portion. However, when the land was surveyed it was surveyed as one plot. In the circumstance were there is judgment of the court declaring the plot a matrimonial property, it was imperative that the appellant produce documentary evidence to prove her ownership. In such circumstances, the Tribunal could not have relied only on the words of the appellant and SM2 without any documentary evidence to back their claims. I find that the trial Chairperson did not error in her findings on the need of documentary proof. I dismiss this ground.

The counsel for the appellant prayed for the leave of the court to make the amendment of the petition of appeal and add the seventh ground of appeal. The prayer was granted. In the seventh ground, the appellant claim that the trial Chairperson failed to consider Section 4(1) of the Land

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Disputes Courts Act and the Law of Limitation Act, Cap 89, Part 1 on suit duration to recover land.

In the submissions, Mr Rutagatina stated that the trial Tribunal failed to consider Section 4 of the Land Disputes Courts Act which ousts civil jurisdiction of Magistrates Courts established by the Magistrates Courts Act, Cap 11 R.E 2019. That Ilala District Court is one of the Magistrates Courts hence its jurisdiction to determine on appellant's residence is highly questionable.

Mr Rutagatina submitted further that the second aspect relates to the Law of Limitation Act whose Part 1 Item 22 restricts suit to recover land to twelve years. He said the appellant has been in effective occupation of suit premises since the year 1990 and that the 12 years came to end in 2002. That Matrimonial Cause No. 13 of 2008 came later on hence it cannot operate retrospectively. He invited this court to give consideration on the two aspects as part of petition of appeal.

In response, Mr Ogunde submitted that the suit property was declared a matrimonial property in Matrimonial Cause No. 13 of 2008 therefore Section 4(1) of the Land Disputes Courts Act did not oust jurisdiction of Ilala District Court to make orders of division of matrimonial assets. That, on second aspect of the issue of the Law of Limitation Act, the counsel

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for the respondent failed to grasp the intention of the counsel for the appellant since appellant was the one who instituted the suit before the Tribunal hence the issue of time limit will be against the appellant.

The counsel for the appellant reiterated on his submissions in chief and insisted that the civil jurisdiction of Districts Courts is ousted from dealing with land affairs.

It is undisputed that under Section 4 of the Land Disputes Courts Act, the Magistrates Courts have no jurisdiction to entertain any matter under the Land Act and the Village Act.

However in the instant matter obviously the counsel for the appellant is either unknowingly or deliberately twisting the facts of the dispute. This is an appeal from decision of the District Land and Housing Tribunal for Ilala in Application No. 270/220. The appellant was the one who instituted the suit claiming to be declared the owner of the disputed house. It happens that the disputed house was also subject matter in the Matrimonial Cause No 13 /2008 before the District Court of Ilala whereby the same was declared a matrimonial property. The appellant is challenging that but unfortunately, there is no any appellate or revisional order which has reversed the order of the District Court of Ilala. *Atle*

During the trial before the Tribunal the appellant produced the judgment of Ilala District Court as an exhibit and throughout this appeal by the grounds of appeal and the appellant's submissions before this court, she is challenging the decision of Ilala District Court in Matrimonial Cause. In her judgment, the trial Chairperson correctly found out that the Tribunal has no jurisdiction to alter or reverse the decision of Ilala District Court.

In agreement with the findings of the trial Chairperson, I have already find that this court is not sitting as an appellate court to determine the decision of Ilala District Court in Matrimonial Cause No. 13 of 2008. Hence even if the said court had no jurisdiction to adjudicate the matter on the matrimonial dispute and division of matrimonial assets (which I am of the firm view that it had), then this court and this appeal is not proper forum to determine it. Therefore, the trial Chairperson didn't have to consider the provisions of Section 4 of the Land Disputes Courts Act as they don't apply in the circumstances.

As for the provision of the Law of Limitation Act, since it was the appellant who instituted the matter in the first place, then the said provisions operates against her rather than in her favour. The counsel of the appellant is confusing and misconstruing the facts. I find this ground of appeal to have no merit and it is dismissed.

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Before concluding, I would like to state on the claims raised by the counsel for the appellant in his rejoinder submission that the reply submission by the respondent was filed on 28/5/2024 instead of 27/5/2024 the date which was scheduled by the court order. That the reply submission was filed out of time without leave of the court and therefore it should be struck out/ expunged on record.

I have gone through the records of the online filing and it is clear that the reply submissions by the respondent was filed on 27/5/2024, which was within the time prescribed by the court. I therefore have disregarded the appellant's claims.

In upshot, I find all seven grounds of appeal to lack merit for the reasons I have carefully, lengthy and meticulously explained hereinabove and I dismiss the entire appeal with costs.



A.MSAFIRI

JUDGE

19/6/2024