IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SHINYANGA SUB REGISTRY

AT SHINYANGA

PC. CIVIL APPEAL NO. 20240222100000 3516

(Arising from Civil Appeal zno.46 /2023 before Shinyanga District Court, Zahoro -SRM, the same arise from Civil Case No. 27 of 2023 before Shinyanga Urban Primary Court- D.W.Mgonja -RM)

GODLIVER JOSEPH .....APPELLANT

VERSUS

GEORGE JOSEPH .....1ST RESPODNENT

JAFARI SHARIF .....2ND RESPONDENT

JUDGMENT

18th March & 22nd April 2024

F.H. MAHIMBALI, J

In the instant appeal the appellant and one George Joseph (1st Respondent) were spouses, whereby their marriage after it had undergone turbulences was declared broken down irreparably necessitating the grant of divorce before the trial Court; consequently the order for division of matrimonial properties was issued but not effected as ordered by the trial court. Being the case, the appellant instituted civil claims for the recovery of her properties before the trial Court valued at

Tshs 4,136,000/=. It was further alleged that the second respondent disposed the said properties.

The trial court after a full consideration entered its judgment in favour of the appellant on the account that the properties which were under custody of the second respondent were unlawfully detained hence are to be released and given to the appellant. Aggrieved by the decision of the trial Court, the second respondent appealed to the first appellate court, the same after it had heard the parties on merit, the appeal was allowed and the decision of the trial Court was quashed and set aside.

The appellant was unhappy with such decision hence this appeal, containing a limbs of four grounds of appeal which in a thorough digest all fall into the question of evidence for being not considered and not properly evaluated.

During the hearing of the appeal, the appellant and the second respondent appeared in person and unpresented. Arguing for the appeal, the appellant prayed for the court to adopt her grounds of appeal to form part of her submission and be considered in deliberation. She therefore prayed for the appeal to be allowed and the decision of the first appellate court be set aside for being erroneously reached.

On the side of the Respondent, he submitted that what the appellant has stated is not true. He was the overseer of the house in which the appellant's husband had rented. Actually, it was him who was collecting the said rents from the tenants and send them to him. Thus, despite the fact that the appellant had been married to Mr. George, she being a stranger to the said contract, as her husband was indebted by the owner of the said house on default of rent payment, as overseer, he was just holding the said properties lawfully. He thus prayed that the appellant's appeal be dismissed with costs.

In rejoinder the appellant stated that the 2nd respondent's claims are not true. There is no proof that the respondent had been supervisor of the said house in collecting the said rent. She pressed for her appeal to be allowed and if there is rent debt then the first respondent is the one indebted.

Upon scanning the trial Court records, petition of appeal and the submission of the parties, I have now to determine this appeal and the issue for consideration is whether this appeal is merited.

In a closer digest, I have found that the 2nd respondent denied giving the properties to the appellant on the account that he owes rent the 1st respondent (husband of the appellant) amounting Tshs 700,000/=.

And thus, since he was supervisor of the house which was rented by the 1st respondent, he is not ready to surrender the properties until is paid the claimed amount. Therefore, since there was an order of WEO to detain those properties, the 2nd respondent cannot give it to the appellant.

> " *Mimi simdai mdai katika shauri hili bali namdai mdaiwa wa 1 George Joseph, kwasababu alikua amepanga ngokolo kwenye nyumba ambayo mimi ndiye mwangalizi, alikaa kwa muda mrefu na pasipo kulipa na hatimaye aliondoka mwezi wa 7/2022"* see page 12 of the trial Court Proceedings.

The similar version has been repeatedly said by the 2nd respondent when countering this appeal.

Now, the issue for deliberation is, were the claims by the appellant at the trial court disputed?

It is noted that the claims by the appellant at the trial court were due to non-surrender of the properties following the objection by the 2nd respondent. In nutshell, it seems the first respondent had no interest with the properties, that's why did not object despite of being served with summons.

Since the claims by the appellant at the trial court were weighed and founded, I do not see the reasons for the 2nd respondent to detain the properties of the appellant given by the court.

The 2nd respondent had no locus stand to claim for against the appellant rather he has to claim against the 1st respondent. This is vivid when the 2nd respondent stated that he does not owe the appellant but he owes the 1st respondent. See the case of: **Lujuna Shubi Ballonzi vs The Registered Trustee of CCM** (1996) TLR 203.

Therefore, the suit for rent could be initiated against the 1st respondent and not to detain the properties which had court's directives.

However, I keenly associate myself with the findings of the trial court when determined that the WEO and the 2nd respondent had no locus stand to determine rent matters rather only the Land Authorities as correctly argued by the learned trial Magistrate. See Sections 3 (1) and 13 of the Land Disputes Courts Acts, Cap 216 RE 2019. See also the case of: **Edward Kubingwa vs Matrida A. Pima,** Civil Appeal No.107 of 2018 (CAT – unreported)

I am thus in controversy with the findings of the 1st appellate Court on the account that since the center of the dispute was not about ownership but it was all about the detention of the properties by the 2nd respondent.

The 1st appellate court was supposed to rule out as to whether the conduct by 2nd respondent was justifiable. I think as correctly argued herein was not right. The ownership of the properties was already determined during matrimonial proceedings.

" *baada ya kesi ya talaka kuisha nilipewa hati ya kwenda kutoa vile vitu, hakimu alinipa hati ya Kwenda kwa kumpelekea dalali wa mahakama ambaye ni Abajaja, tukaenda hadi kwenye hiyo nyumba tuliyokuwa tunaishi na tulimkuta mke wa mdaiwa wa 2 ambaye alituzuia Kwenda kuchukua vile vitu na akasema kwamba vipo lakini hataturuhusu tuvichukue kwani mdaiwa wa 2 alivizuia visitoke* "

From the extract above, it is therefore vivid that the properties were handled to the appellant by the order of the court. There was no need once again of proof of ownership of the properties as ruled by the 1st appellate Court, since the court order was in place.

I should admit that, since the appellant had been faced with resistance when she went to take her properties then was correct to file civil suit and claim for the properties. But the same would have been done in executing file rather than filing a fresh case.

With the above analysis, the appeal by the appellant has merit and consequently is hereby allowed. The decision of the first appellate Court is hereby quashed and set aside. Order of the trial Court is upheld. The second respondent to forthwith handover the said properties to the appellant. Any claim of right against the first respondent should be legally channeled against him on how to recover the claimed amount, if so is right.

No orders as to costs

It is so ordered.

DATED at Shinyanga this 22nd day of April, 2024.

F.H. Mahimbali

Judge