

TANZANIA / JUDGMENT

MWAKATOBÉ safi

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13 November 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND APPEAL NO. 717 OF 2024 (Being an Appeal from the Judgement and Decree of the District Land and Housing Tribunal of Ilala at Ilala in Land application No. 225 of 2021 (Hon A. R Kirumbi Chairman) Delivered on 13th day of November 2023) ESAU GODWIN
MWAKATOBÉ..... APPELLANT VERSUS JUMA MZEE JUMA.....
RESPONDENT

JUDGEMENT

Date of Last Order: 24/06/2024 Date of Judgement 30/07/2024 S. D. MWAIPOPO, J This is an Appeal filed by one Esau Godwin Mwakatobe, the Appellant herein against Juma Mzee Juma, the Respondent herein, challenging the Judgement and Decree of the District Land and Housing Tribunal of Ilala at Ilala in Land Application No. 225/2021 delivered by (Hon A.R Kirumbi Chairman on 13th day of November 2023. Initially the Appellant filed an Application before the DLHT of Ilala praying for the following reliefs;

- i. A declaration that the disputed unsurveyed landed property located at Tabata Kimanga, Tembo Mgwaza street, Block "N" within the city of Dar es Salaam is owned by the Applicant.
- ii. A declaration that the intended disposal of the disputed property by the Respondent is illegal.
- iii. An order for permanent injunction restraining the Respondent, their privies, agents or whomsoever acting on their behalf from trespassing, dealing anyhow including taking possession, selling of the disputed properties, eviction of the Applicant, demolition and disturbance in using the suit properties or approaching the disputed land.
- iv. The costs of this suit be provided for.
- v. Any other orders or reliefs that the Hon. Tribunal may deem fit. In responding to the Application, the Respondent filed a Written Statement of Defence to dispute the allegations, accompanied by the Notice of the preliminary objection, containing two preliminary objections as follows;
 1. The matter is hopelessly time barred

2. The Applicant is suing a wrong party who has already discharged his office under the Probate and Administration of Estate Act Following the disposal of the preliminary objections, which were both dismissed, the matter proceeded for hearing on merit Tribunal whereby two issues were formulated as follows;
 1. Kama mdai ni mmiliki halali wa nyumba bishaniwa.
 2. Nafuu wadaiwa wanazostahili. 2 After hearing the parties the Tribunal issued the decision in favour of the Respondent by dismissing the Application and ordered each party to bear its own costs. Aggrieved by the Judgement and Decree of the Tribunal, the Applicant has filed four grounds of appeal before this court as follows;
 1. The trial chairman erred in law and fact concluding the issue in dispute in favour of the Respondent in reference to the property not in dispute.
 2. That the trial Chairman erred in law and fact by holding that the Appellant was not a lawful owner despite ample evidence to prove ownership.
 3. That the trial chairman erred in law and fact when he misdirected himself by concluding that exhibit P3 was the forged document and was fraudulently procured.
 4. The trial Chairman erred in law and fact by failure to properly analyse the evidence and ended the matter in favour of the Respondent. The Appellant thus prayed for the following reliefs;
 - a) The Appeal to be allowed and the decision of the DLHT be quashed and set aside.
 - b) The Appellant be declared the owner of the disputed property.
 - c) Costs of this appeal to be provided for by the Respondent. At the commencement of hearing both parties were represented. The 3 hearing of the Appeal proceeded by way of written submissions pursuant to the timetable drawn by the court. However, for the reasons that will be apparent shortly, I will not reproduce the written submissions of the parties. In the course of composing the Judgement and while going through the written submissions of the parties I have observed that the Appellant filed an Application before the Tribunal against Juma Mzee Juma, as an administrator of the estate of Bahati H. Gomba. However, for the reasons not known to the Tribunal, the names of the parties in the Judgement do not reflect the Application which was filed before the Tribunal indicating that Juma Mzee Juma was being sued before the Tribunal as an administrator of the estate of late Bahati Gomba. This error or omission is contrary to the ruling issued by the Tribunal on 14/1/2022, recorded in the proceedings, dismissing the second preliminary objection raised by the Respondent, challenging the capacity of the Respondent as an administrator of estate of late Bahati Gomba. Furthermore, para 1 of the Judgement of the Tribunal affirms this position. It states as follows; "Nyumba iliyopo eneo la Tabata, Kisukuru mtaa wa Ternbo Mgwaza Kitaiu "N" ndio chanzo cha mgogoro huu. Mdai Esau Godwin Mwakatobe ameshtaki mdaiwa Juma Mzee Juma (kama msimamizi wa mirathi wa marehemu Bahati H. Gomba". 4 However,

despite the fact that both, the Land Application no 225/2021 and the contents of its Judgement refer to the Respondent as an administrator of estate of the late Bahati Gomba, the parties appearing on the title of the Tribunal's decision and the Appeal filed herein in court do not correctly reflect the capacity under which the Respondent is being sued. I have perused a copy of the Application filed in the Tribunal by the Appellant on 14/9/2021 and noted that parties which were sued were; Esau Godwin Mwakatobe - Applicant Vesus Juma Mzee Jumac(The Administrator of the estate of Bahati H.Gomba. Further; I have also observed that the record of the Judgment of the Tribunal has just erroneously cited parties in their own capacities of the Applicant and Respondent respectively and so is also the appeal filed by the Appellant before this court. In both documents, it is shown that Juma Mzee Juma is being sued by the Appellant in his own capacity as the Respondent and not as the administrator of the estate. As already stated herein above, this is contrary to the decision of the Tribunal itself rendered on 14/1/2022, overruling the preliminary objection raised by the Respondent, that he was the wrong person to be sued as an administrator since he had already closed up the inventory. The Tribunal overruled the said objection on 14/1/2022. It held and I quote as follows; 5 Kuhusu Kipengele cha pili cha pingamizi, suala la kama mjibu maombi ameshafunga mirathi ya marehemu au la ni suala linalo hitaji ushahidi hivyo kukosa sifa ya kuwa pingamizi la kisheria kama iliyoamriwa katika kesi ya Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd 1969 (SA) 696.... Pingamizi la awali la kisheria lililowekwa na mjibu maombi linakataliwa." Based on the finding of the Tribunal itself I don't see the reason as to why the Tribunal did not reflect this on its own record i.e. the Judgement. Furthermore, the Appellant in this appeal, has proceeded to file the appeal against the same Respondent Juma Mzee Juma without indicating that he is being sued as an administrator of the estate of late Bahati H. Gomba. Since the alleged properties of the late Bahati are still being contested in court and there is no dispute about her death and both parties are aware of the said fact, it is my firm position that, Tribunal ought to have set its record clear and that the Appellant ought to have filed the Appeal against Juma Mzee Juma as an administrator of estate of late Bahati Gomba and not Juma Mzee Juma in his own capacity as seen in the 6 appeal and the Judgement of the lower court. It is matter of procedure and law that, once a person who has capacity to sue or be sued in his or her own behalf dies then the legal representative or the administrator of the estate must be appointed to sue or be sued on his or her own behalf. See the case of Lutaha Shilangonga Vs. Maulid Hassan Hango Land Case Appeal No. 11/2023 Tabora. Therefore, based on the analysis above, and the fact that the defect has been compounded by the Tribunal itself, which having ruled out the preliminary objection raised by the Respondent, it ought to have ensured that parties appear as per its ruling on the preliminary objection and the Land Application filed before it and not against it. Since the intention of the Tribunal was to have the Respondent sued as the administrator of the estate, as it is stated in the Ruling which appears in the proceedings and the introductory part of its judgement, I remit the file to the Tribunal for rectification of the errors appearing on its decision in Land Application no. 225 of 2021, on the title of the parties so that they appear as they were sued by the Appellant before the trial court. 7 Similarly, I proceed to strike out the appeal for not suing or joining

the Respondent as an administrator of the estate of late Bahati Gomba, as envisaged before the Tribunal. Then, thereafter the Appellant will be at liberty to institute the appeal after the rectification of the errors on the records of the Tribunal. The circumstances of this case are such that each party shall bear its own costs. Dated at Dar es Salaam this 30th Day of July 2024
D. MWAIPOPO JUDGE 30/07/2024 8

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Prepared on 14 October 2026 · Esheria