

TANZANIA / JUDGMENT

# FATUMA MUSSA RINGO Vs

COURT  
TANZLIIDECIDED  
21 August 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA (DODOMA SUB REGISTRY) AT DODOMA LAND APPEAL NO. 7380 OF 2024 (Originating from the decision of the District Land and Housing Tribunal for Dodoma at Dodoma in Land Application No. 20 of 2018 dated 06/03/2024) FATUMA MUSSA RINGO..... APPELLANT Versus REHEMA HASHIMU SAID..... RESPONDENT

## RULING

Date of last order: 21st August, 2024. Date of Judgment: 27th Sept, 2024. E.E. KAKOLAKI, J. The appellant herein by way of petition of appeal filed on 05/04/2024 is inviting this Court to consider her appeal seeking to displace decision of the District Land and Housing Tribunal for Dodoma at Dodoma in Land Application No. 20 of 2018, that was handed down on 06/03/2024 declaring the respondent herein (applicant before the Tribunal) a lawful owner of the suit premises located at Plot No. 7 Block 'I' Uhindini – Dodoma City while ordering her (respondent) or her agents to vacate from the suit land and bear the all costs of the case. In her petition of appeal she has fronted seven grounds of appeal praying the Court to quash and set aside the Tribunal's judgment and its orders, the grounds which for the purposes of this ruling I do not intend to reproduce. The appeal is sternly resisted by the respondent pressing for its dismissal for want of merit. 1 A brief background story giving rise to this appeal as discerned from the record is simple to narrate. Before the District Land and Housing Tribunal for Dodoma at Dodoma, (the DLHT) in Land Application No. 20 of 2018, the appellant was sued by the respondent as administratrix of the estate of late Mussa Ringo (her father) for continued unlawful occupation of the house in Plot No. 7 Block 'I', Uhindini within Dodoma Municipality (now City) allegedly bought by the respondent from Tanzania Building Agency through the Permanent Secretary Ministry of Works. It appears after both parties were heard on the merit of the matter, the trila Tribunal on 22/10/2022 through Hon. H. E. Mwihava (Chairman) entered judgment in favour of the respondent declaring her a lawful owner of the suit premises and the appellant as trespasser who was also ordered to pay the respondent Tshs. 9,600,000/0 as rent arrears claimed by the respondent since the year 2010. Not amused the appellant as adminstratrix of the estate of the late Mussa Ringo successfully knocked doors of this Court by way of appeal in Land Appeal No. 93 of 2019 when the Court invoked its revisional powers under section 43(1)(b) of the Land Dispute Courts Act [Cap. 216 R.E 2019] in its judgment handed down on 22/02/2022 and proceeded to quash trial Tribunal's judgment of 22/10/2019 for failure to include assessors opinions while

ordering afresh judgment to be composed after assessors' opinions are read to parties. In compliance with the above Court's order and given the fact that by then the learned chairperson H.E. Mwiha who had composed the quashed 2 judgment had been transferred to another duty station J. F. Kanyerinyeri, learned chairperson took over and composed the judgment, once again in favour of the respondent as alluded to above hence the present appeal. At the hearing of this appeal both parties appeared represented as the appellant hired services of Mr. Detrick Mwesigwa while the respondent enjoying representation of Mr. Ezekiel Amon Mwakapeje, both learned counsel. Hearing proceeded in the form of writing and both parties complied with the filing schedule of submissions as ordered by the Court. Having heard parties on the merit of the appeal and in the course of composing its judgment this Court noted a defect in the petition of appeal as the same was filed by Fatuma Mussa Ringo in her personal capacity and not as administrator of the estate of Mussa Ringo as sued before the trial Tribunal. Since parties before the Tribunal were Rehema Hashimu Said and Fatuma Mussa Ringo (As Administrator of the estate of the late Mussa Ringo) and not Fatuma Mussa Ringo in her personal capacity, the Court wanted to satisfy itself first as to whether by preferring the appeal in her personal capacity the same is competent before the Court. Parties were therefore summoned and introduced to the issue raised by the Court suo motu before were asked to address it on the said issue in which they complied and appeared on 23/09/2024 well represented by their respective advocates this time Mr. George Vedasto appearing for the appellant. 3 Addressing the Court on the said issue Mr. Vedasto while conceding on missing of the title addressing appellant's capacity as Administratrix of the estate of the late Mussa Ringo as it was in the pleadings and the impugned ruling and drawn order he was quick to add that, the same was an omission which to him was not fatal for not accessioning any prejudice to the respondent nor confusion. He argued, in her reply to the written submission by appellant, the respondent described the appellant by her capacity as administrator of the estate of the late Mussa Ringo hence corrected the error as it was the case in Chang Qing International Limited Vs. TOL Gas Limited, Civil Application No. 292 of 2016 (CAT) where the names of Respondent were improperly stated in the affidavit with an omission of letters 'ES' but correctly stated in the counter affidavit by the respondent and the Court of Appeal held that, the counter affidavit corrected the error by rendering proper citation of the respondent's names hence not fatal and ignored it. He added that, similar position was taken by the Court of Appeal in the case of Israel Malegesi and Another Vs. Tanganyika Bus Service, Civil Application No. 172/08/of 2020 (CAT) where the applicants had failed to indicate their status in the notice of motion as administrators of the estate in which the respondent raised a preliminary objection arguing that the application was incompetent for being preferred in the names of strangers. He said, dismissing the preliminary objection the Court having invoked the principles of overriding objectives and reasoned that, since applicants' status 4 was stated in the affidavit supporting the Notice of motion then the omission was not fatal but curable one. The applicant were therefore ordered to amend their application and the matter proceeded with hearing on merit. In view of the above authorities Mr. Vedasto implored the Court to invoke the overriding principles by ordering amendment of the petition of appeal under Order XXXIX Rule 3(3) of the CPC by insertion of the appellant's status in both memorandum of appeal, the submission in chief and rejoinder submission so as to read (As Administratrix of the estate of the late Mussa

Ringo) and then proceed to determine the appeal on merit since there is no confusion on the identity of the appellant. In response to the submission by the appellant Mr. Mwakapeje for the respondent argued that, failure by the applicant to file the appeal in her proper capacity vitiates the entire proceedings especially in this appeal already heard on merit. He explained, the principle was firmly stated in the case of Malietha Gabo Vs. Adam Mtengu, Civil Appeal No. 485 of 2022 (CAT) Tanzlii where the Court of Appeal held, that failure to sue the party in his capacity as administrator of estate vitiated the proceedings before the lower court and High Court hence quashed and set them aside. In this application he contended, since the appellant has appealed in her own capacity and not as administratrix of the estate of the late Mussa Ringo, she has gone against all proceedings before the Tribunal where she was sued as administratrix of the estate of the late Mussa Ringo in which no competent appeal can be said to exist or stand. He therefore prayed this appeal be struck out for being incompetent. In rejoinder Mr. Vedasto contended that, the case relied on by the respondent refers to the party whose status was not stated right from the initial stage of the case something which is different from the present matter in which the appellant's capacity was mistakenly omitted hence slip of pen. He said, there is no allegation by the respondent of her failure to identify the party hence that case is distinguishable in the circumstances of this case. In winding up the learned counsel repeated his prayer for this Court to invoke the principle of overriding objective as held in the case of Chang Quing International Investment Limited (supra) and ignore the omission for not occasioning injustice to the respondent, hence proceed to determine the appeal on merit after insertion of the appellant's status in the petition of appeal, submission in chief and rejoinder submission. I have dispassionately considered rival submissions by the parties and took time to revisit the record and the cases relied on by each party. From the submission parties are at one on the status of the appellant in this appeal that she preferred it in her personal capacity and not as administrator of estate of the late Mussa Ringo as appearing in the pleadings and the ruling of the trial Tribunal subject of this appeal. While Mr. Mwakapeje is of the submission that the omission is fatal and incurable for vitiating the whole proceedings in this 6 appeal after hearing both parties on the merit of the appeal, Mr. Vedasto holds a contrary view in that, it is curable since it is a slip of pen that did not occasion any injustice to the respondent who properly described appellant's status in her reply submission, hence an invitation for the court to amend the documents by inserting appellant's status as administratrix of the estate of the late Mussa Ringo and proceed to determine the appeal on merit. Having keenly considered Mr. Vedasto's submission and the cases relied on I decline the invitation to amend the titles in petition of appeal, appellant's submission in chief and rejoinder submission to reflect appellant's capacity as administratrix of the estate of the late Mussa Ringo on the advanced ground that the omission to indicate appellant's status is a slip of pen and did not prejudice or occasion any injustice or confusion to the respondent who cured it by describing the said status properly in the title of her reply submission. The reasons I am so doing is no far-fetched as one, the omission to describe appellant's status as administratrix of the estate of the late Mussa Ringo does not amount to slip of pen for identifying the appellant as Fatuma Mussa Ringo in personal capacity and not as administratrix of the estate of the late Mussa Ringo. If it was misspelling of her names or omission of some letters then I would agree that it was a slip of pen. The case of Chang Qing International Investment Limited (supra) relied

on by the appellant I hold is distinguishable from the fact of this case as in that case there was omission by missing letter 'ES' in the word GAS which was correctly spelt in the affidavit 7 in reply by the respondent forming part of the pleadings unlike in the present matter where there is complete departure on the capacity of the appellant in this appeal. Equally the case of Israel Malegesi and Another (supra) is also distinguishable from the facts of this case as the applicants therein were held not strangers to the case as their failure to state their status as administrators of the estate was not fatal for being stated in their affidavit that formed part of the application, while in the present matter appellant's status is not stated anywhere by the appellant be it in the petition of appeal or submission in chief and rejoinder submissions. Secondly, reading from the records it is not clear whether appellant's failure to state her status is an omission or a calculated move as such defect does not only appear in the petition of appeal, submission in chief and rejoinder submission as claimed by Mr. Vedasto but also in appellant's letters with reference No. VK/FE/1/18 and No. VK/GS/2/23 both of 12/03/2024 to the Hon. Chairperson in charge of the District Land and Housing Tribunal for Dodoma duly written by appellant's advocate one Ditrick Mwesigwa from VK & Company Advocates requesting for perusal of case file and supply of certified copies of the Judgment, decree and proceedings in respect of Land Application No. 20 of 2018, respectively. From those unchallenged facts I fail to discern as to how such continuous reference of the appellant in her personal capacity can be terms as omission hence slip of pen as Mr. Vedasto would want this Court to believe. 8 Thirdly, in the two cases relied on by the appellant, parties were not yet heard by the Court on the merit of their cases thus making it possible amendment of documents in the records while in the present matter the appeal is already heard on merit. It is trite law that, bringing appeal or suit in the name of a stranger invalidates it or vitiates the proceedings for rendering the appeal incompetent. See the cases of CRDB Bank PLC (formerly CRDB

(1996) Ltd) Vs. George Mathew Kilindu, Civil Appeal No. 110 of 2017 and Malietha Gabo (supra) (both CAT) Tanzlii. As the present appeal wrongly preferred by the appellant in personal capacity is invalid and it is already heard on merit, I hold there cannot be any room for amendment of documents as prayed by Mr. Vedasto since to hold otherwise is tantamount to blessing amendment of a nullity. In view of the above finds, this court is satisfied that, the appellant preferred this appeal in wrong capacity as she ought to have done so as administratrix of the estate as sued before the Tribunal. It is settled law that, the only person who can act as representative of the deceased is the grantee of the letters of administration of estate. See the case of Malietha Gabo (supra). In the present case since the appellant preferred an appeal not in her capacity as grantee of the letters of administration of the estate of the late Mussa Ringo but rather in personal capacity, I find the omission invalidates the appeal and renders it incompetent before this Court. Consequently the appeal is struck 9 out for want of competence. The appellant is at liberty to refile the appeal subject to law of limitation of actions. I order each party to bear own costs, since the issue terminating the appeal was raised by the Court. Order accordingly. Dated at Dodoma this 27th of September, 2024. E. E. KAKOLAKI JUGDE 27/09/2024. Court: The Ruling has been delivered at Dodoma today on 27th day of September, 2024, in the

presence of Mr. Grace Fungo, advocate for the appellant, the appellant in person, Mr. Ezekiel A. Mwakapeje, advocate for the Respondent , the respondent in person and Ms. Veradina Matikila, Court clerk. Right of appeal explained. E. E. KAKOLAKI JUGDE  
27/09/2024. 10

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

|                 |                                                                                                                                                                                                                                                                                               |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ORIGINAL SOURCE | <a href="https://media.tanzlii.org/media/judgment/319020/source_file/fa60ada506eb70e0/FATUMA_MUSSA_RINGO_Vs_REHEMA_HASHIMU_SAID.pdf">https://media.tanzlii.org/media/judgment/319020/source_file/fa60ada506eb70e0/FATUMA_MUSSA_RINGO_Vs_REHEMA_HASHIMU_SAID.pdf</a>                           |
| CASE PAGE       | <a href="https://chat.esheria.ai/case-law/tanzania/fatuma-mussa-ringo-v-rehema-hashimu-said-CapacitytoSue-tanzlii-2024--6a3ea5243b1caa9129819ccb">https://chat.esheria.ai/case-law/tanzania/fatuma-mussa-ringo-v-rehema-hashimu-said-CapacitytoSue-tanzlii-2024--6a3ea5243b1caa9129819ccb</a> |

Prepared on 14 October 2026 · Esheria