

TANZANIA / JUDGMENT

maria amanda lobo administratrix of the estate of dominic lobo vs ibrahim juma ismail in the power of attorney of sultan hakim u 2004 tzhc 58 24 april 2004

COURT
TZHCDECIDED
24 April 2004

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DC) CIVIL APPEAL NO. 16 OF 2003 (Originating from Tanga District Court Civil Case No. 52 of 2000) MARIA AMANDA LOBO (Administratrix of the estate .APPELLANT or' Dominic. Lobo) VERSUS: IBRAHIM JUMA ISMAIL [(In the power of Attorney I.....RESPONDENT of Su'tan Hakim u)

JUDGMENT:

MKWAWA, 3.: This is an appeal against the decree and judgment of the District Court: of Tanga in Civil Case No. 52 of 2000. The latter court ruled in favour of one Ibrahim Juma Ismail who is the attorney of one SULTAN HAKIMU and did award him a sum of T.Shs. 200,000/- being arrears of salary and costs of the suit. The appellant, namely, MARIA AMANDA LOBO who is the administratrix of the estate of the late DOMINIC LOBO was aggrieved by aforesaid decision of the District Court and hence lodged this appeal. A five-point memorandum of appeal was filed. At the hearing of the appeal, the appellant was represented by Mr. Mrcmba, learned advocate, and the respondent was represented by one IBRAHIM JUMA ISMAIL who asserted that he was an attorney of one SULTAN HAKIMU. It is no denying that the first ground of appeal when considered in its ordinary sense, as it appears on record, has no legs to stand on. This state of affairs drove me to look into the spirit of that ground of appeal. In my considered view, if I may put it in a nutshell, it is in respect of the competency of the suit before the trial District Court. In other words, its competency is being questioned. The instant respondent's attorney, namely, IBRAHIM JUMA ISMAIL avers that he is suing as an attorney on the strength of the power of attorney (Exh. P.1) that he has with him. It can be gleaned from the record of the trial District Court that on September 6, 2000 it dismissed the preliminary objection raised by Mr. Mramba that the instant Respondent could not in law sue as an attorney so long as the donee, that is, SULTAN HAKIMU was living in Tanzania. (See: NAIMAN MAIRO V. N. K J. ZABLON (1980) T.L.R. 274). The trial District Court, as is amply demonstrated in its ruling (Mchauru, RM.) dated September 14, 2000, stated, inter-alia as page 2 in paragraph three of the typed script, that "....Civil Case no. 30 of 1999 was transferred to this court following one of the parties intimating before the

primary court, that he/she intended to engage an advocate to represent him/her. So in my opinion, the power of attorney is to extend also to this new case which is a result of the transfer of a case in respect of which the power of attorney was intended to serve." (The emphasis is supplied). It is, however, common ground that the instant appeal has its genesis in Civil Case No. 52 of 2000. It is further common ground that the latter is quite independent from the original suit, namely civil case No. 30 Of 1999, which was filed before the Tanga Urban Primary Court. The suit before the District Court of Tanga, that is, Civil Case No. 52 of 2000 was filed on March, 2, 2000 as it is evident from the record of the District Court. The power of attorney (Exhibit P .I) that was granted to IBRAHIM JUMA ISMAIL, that is, the donee by his son, the donor, was in respect of Civil Case 130 of 1999 and not Civil Case No. 52 of 2000 which has given rise to the instant appeal. This is amply demonstrated in paragraph 3 of the aforesaid power of attorney (Exh. P .I) which has the following averment:- "3. KWAMBA, madhumuni ya kiapo hiki ni kuthibitishia kuwa nimemteua ndugu IBRAHIM JUMA ISMAIL kuwa ndiye WAKALA wangu katika shauri hili la Madai Na. 130/99 Mahakama ya Mwanzo Mjini, Tanga kuliendesha hadi mwisho." It follows from the foregoing, as night follows day, that had Civil Case No. 130 of 1999 been transferred to the District Court and has become Civil case no. 52 of 2000 the instant Respondent, being the donee of the aforesaid power of attorney could have proceeded with the case in the trial District Court. But, this was not so in the matter now before this court. As a result of the foregoing, the instant Respondent is in law a complete stranger to whatever was before the appellant and his son, namely SULTAN HAKIMU. He could not, therefore sue on behalf of the latter. (See: TARLOCK SING NAYER V. STERLING GENERAL INSURANCE COMPANY LTD (1966) E.A. 144 (k) which followed the oft-quoted, and infact celebrated, principle in the case of DUNLOP PNEUMATIC TYRE CO. LTD. V. SELF RIDGES (1915) A.C. 847). It is on the basis of the foregoing and not from what Mr. Mramba had asked this court to consider, that I find and hold that the matter was not competently before the trial court. The District Court should have struck out the suit there and then. In the result, I hereby declare the proceedings before that court a nullity'. The claimant, that is, SULTAN HAKIMU is at liberty to file his claim in a court of competent jurisdiction, of course, subject to the law of limitation. Parties to bear thetr-own costs. It is so ordered. v v* «* I <*•.. /* DATED at Tanga on this 24th day of April, 2004. ' ' ' ' \K - / (JJ.MKWAWA) JUDGE

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