

TANZANIA / JUDGMENT

WILE MAGEME VS SADO

Ownership by minor

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SHINYANGA SUB REGISTRY AT SHINYANGA LAND APPEAL NO. 17576 OF 2024 (Arising from Judgment in Land Application No. 43/2021 from the District Land and Housing Tribunal of Maswa dated 10/06/2024) BETWEEN WILE MAGEME..... APPELLANT VERSUS SADO MBEGU JIDAYI.....RESPONDENT

JUDGMENT

2nd October & 25th October, 2024. MASSAM, J:- Dissatisfied with the decision of the District Land and Housing Tribunal for Maswa, the appellant has filed this appeal with a total of four grounds of appeal namely:

1. That, the trial learned chairman erred in law and fact while he failed to appreciate the fact that the appellant father had intended his daughter(appellant) to have a right in the suit property such intention being manifested in the property document (Exhibit M '1') and until her father met his death such right has never ever being extinguished. 1
2. That, having found that the landed suit property belonged to the deceased applicant's father who passed away in 2015, surviving with him a widow (respondent) and five children, the trial learned chairman erred in law and fact to entertain deceased's (appellant father) estate and awarded the property to the respondent, without being probate and administration proceedings.
3. That, without prejudice to what has been stated in paragraph 2above, the learned chairman erred in law and fact to award the suit property to the respondent notwithstanding that such relief was not sought by the respondent.
4. That, the learned chairman erred in law and fact to hold that the respondent had contributed to the acquisition of the suit property with the appellant deceased father, whereas there is no evidence for the proposition, only that the respondent was an invitee. When the matter was called for hearing, both parties appeared in person, unrepresented. Before going to the merit of the appeal, it is apposite to briefly state the background-giving rise to this appeal. The appellant herein filed an application against the respondent on the

claim that, she is the lawful owner of the disputed house and land located at plot No. 41 2 Block "L" situated at Nyalikungu urban area at Maswa Township. The appellant further stated that, she was allocated by the District Land officer at Maswa since on 7th day of June 1990 and on 5/04/2015 after demise of her father, the respondent who was the second wife of her father occupied her plot and claimed the ownership of the same. Among others, the appellant sought for reliefs that the tribunal declared her as the lawful owner of the disputed house and land. On other side, the respondent stated that she is lawful owner of the said plot claimed by the appellant as she used to live in the same house with the father of the appellant since then. In it finding the trial tribunal dismissed the application on the reason that, the application has no merit and the disputed house and land is the lawful property of the respondent herein and the transfer of suit land done by the appellant is unlawfully and is void. Aggrieved, the appellant filed an appeal to this court based on the ground submitted herein above. In disposing this appeal, the parties argued the appeal orally and the same will be considered during the determination of the merit of the appeal. 3 Arguing in support of her appeal appellant said that she was aggrieved with the decision of the Maswa District Land and Housing Tribunal which declared respondent as the owner of the said land while she had title deed on disputed plot. Also, the appellant prayed this court to declare her as the owner of the house and the land which had a dispute. She argued further that she was given the suit plot with her father in 1990 when she was standard seven. Her father promised to built a house for her. More on that appellant said that her father stayed there as the tenant while waiting to built his own house and he stayed there until on 2015 when he passed away. Finally, appellant said that her father lived in that house since 2005 to 2015 when he passed away and prayed this court to consider her prayers. On the other side, respondent argued that they built that house on 2005 with her husband and on 2010 they started to live therein. Respondent added that her husband was the father of the appellant and they lived there until on 2015 when her husband passed away, who he left her with five children. 4 Moreover, the respondent argued that they continued to live there until on 2021 when appellant filed a case against her concerning that house. Her husband had a title deed which had a name of appellant that's why appellant went to the land office and changed the name from her husband to her name. Since 2021 they started to prosecute this case to date. Lastly respondent argued that appellant is chasing her out from her house which she built with her husband and her husband was paying the land rent in that house with his name Mahizi Lugubila. In her rejoinder appellant said that she was paying land rent and not her father and on 2021 she paid Tzs 41,650/= with the name of Fabian Mageme Mahizi. She prayed this court to consider her prayers and she admits that her father built the house on 2005 and lived with respondent until on 2015 when he passed away. Having heard the oral submission from both parties this court will now determine whether the appeal is merited or not. Starting with the first ground of appeal that, the trial learned chairman erred in law and fact while he failed to appreciate the fact that the appellant father had intended his daughter (appellant) to have a right in the suit property such intention being manifested in the property 5 document (Exhibit M 1) and until her father met his death such right has never ever being extinguished. Appellant argued that she was given the suit plot with her father in

1990 through letter of offer dated on 7/6/90. However, the respondent argued that they built that house on 2005 with her husband and lived there until her husband died on 2015. From the above evidence, it is quite clear that the suit land is surveyed; therefore, the entry point is Section 2 of the Land Registration Act, Cap 334 [R: E 2019]. It reads; "Registered land means the land in respect of which an estate has been registered." The provision of the law above indicates that the prima facie proof of ownership of land is a registration and, in our country, most cases, by Letters of offer or Certificates of Title. Further, in *Salum Mateyo v Mohamed Mateyo* [1987] TLR 111, it was held that: "... proof of ownership is by one whose name is registered". In addition to that, the Court of Appeal in *Nacky Esther Nyange vs. Mihayo Marijani Wilmore and Another*, Civil Appeal No. 2017 of 2019 (Tanzlii), it held that; 6 "...the Certificate of Title is conclusive proof of ownership of land". From the above cited cases, the following are the essential requisites for the ownership of the surveyed land; One, the owner of the land must be registered and, as indicated earlier in most cases, by Certificate of Title or Letters of Offers. Two, the Title deed is the conclusive proof of ownership. Thus, the question is whose name is registered and who has the title deed. From the evidence on record exhibit M1 (letter of offer) it is quite clear that the one whose name is registered in the Land registrar is the name of Fabian Mageme Mahize as the guardian of the Wille Mageme (Mtoto) and the appellant had certificate occupancy with Tittle Number 78123 issued on 15th February 2022. Therefore, from what respondent had testified, that suit plot belonged to her husband, no documentary evidence was produced in court to authenticate her allegation; and this weakens her case and the issue that they constructed the house there with her husband is not the proof of ownership. Moreover, once the property that has been transferred to a child becomes a child's property and the parent remains a mere trustee with no power to deal with that property in a manner that is prejudicial to the 7 interest of the child. Thus, a child had good title over the land. See the case of *Jumanne Chimpaye vs. Daud Mohamed Mkwaje*, Misc. Land Appeal No. 06 of 2020, High Court at Kigoma Registry (unreported), where it was held thus; "it is the appellant who has the better title over the dispute land and no any other who could properly pass that title other than him." However, from the records, the evidence shows that the respondent and the appellant's father built the house on the suit land and not as alleged by the appellant that her father built the same on her behalf and they lived there as tenants. This court is of the view that the respondent and the appellant's father built the house on the land which was belonged to the appellant for their own risk and what is attached to the land becomes part of the land. See the meaning of the Land under section 2 of the Land Act Cap 113, doctrine of *quicquid plantatur solo solo cedit*, and case of *Karanja Waihenya v. S. Marai* (1981) TLR 86. From those finding, I agree with the appellant that she is lawfully owner on the suit property that was given by her father and such right was has never ever being extinguished before he died. See the case of *Hilda Rwejuma vs Philbert Mlaki*, Matrimonial Cause Appeal No. 5 of 8 2018 High Court at Bukoba. I am inclined to answer that the suit land is the property of appellant and therefore nothing could be done on the suit land without the consent of the owner. See the case of *Elias Evans vs TPB Bank PCL and 2 others*, Land Case No. 5 of 2017 HC (Land Division) at Dar es salaam. Based on above analysis. I find that the first ground of

appeal has merit and because the appellant was declared the lawful owner of the disputed plot and house. I think no need of tackling the rest grounds of appeal. That, being told this appeal is allowed. The decision of the trial tribunal of Maswa District Land and Housing Tribunal is quashed and set aside. The appellant is declared the lawful owner of the disputed land and the house. In regard to the nature of the case no order as to costs. It is so ordered. Dated at Shinyanga this 25th day of October, 2024. R.B. Massam. JUDGE. 9

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