

TANZANIA / JUDGMENT

MASUNGA JUDGMENT

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA CIVIL APPEAL NO. 20361 OF 2024 (Originating from Civil Appeal No. 27342 of 2024 in the District Court of Ilemela and Probate Cause No. 39 of 2023 at Buswelu Primary Court) WILLIAM MASUNGA (The Administrator of the Estate of the Late Masunga William Sogoni).....APPELLANT VERSUS EMMANUEL WILLIAM.....RESPONDENT

JUDGMENT

29th October & 13th December, 2024 KAMANA, J. The center of controversy in this matter revolves around Plot No. 151 Block KV located at Kirumba Valley, Ilemela District in Mwanza. Having been appointed by this court to be the administratrix of the estate of the late William Busigasolwe through Probate Cause No. 02 of 2003, Ms. Modesta Ndaki listed the plot as part of the late Busigasolwe's estate. Unfortunately, Ms. Ndaki died on 11th April, 2023 before completing her duties as an administratrix leaving some properties undivided to the heirs. 1 Given that, Emmanuel William, the respondent, instituted in this court Probate Cause No. 15 of 2023 seeking to be appointed as the administrator of the estate of the late Busigasolwe to replace the late Ms. Ndaki to administer the unadministered properties. On 5th October, 2023 the Primary Court of Buswelu appointed the appellant William Masunga to be the administrator of the estate of the late Masunga William Sogoni who happened to be the son of the late Busigasolwe through Probate Cause No. 39 of 2023. In the discharge of his duties, the appellant listed Plot No. 151 Block KV located at Kirumba Valley, Ilemela District in Mwanza as forming the late Sogoni's estate. This did not go well with the respondent who objected to the listing of Plot No.151 Block KV located at Kirumba Valley, Ilemela District in Mwanza as the late Sogoni's estate. In his view, the listing of such a plot was contrary to the established principles as the said plot was already listed in the late Busigasolwe's estate in Probate Cause No. 2 of

2003. The respondent held the view that if the appellant thought that the plot in question was the property of the late Sogoni, the proper recourse was to object to its listing by filing an application under Probate Cause No. 2 of 2003. This was vehemently opposed by the appellant. Having heard the competing arguments, the primary court 2 dismissed the objections raised by the respondent. It went on to order that the appellant should continue to hold the office of the administrator of the estate of the late Sogoni. It further ordered

that the respondent should hand over to the appellant the Certificate of Title of Plot No. 151 Block KV located at Kirumba Valley, Ilemela District in Mwanza on the ground that the said certificate bears the name of the late Sogoni as the owner. The primary court's decision did not please the respondent who preferred an appeal to the District Court of Ilemela. After hearing the arguments of both parties, the district court held that Probate Cause No. 39 of 2023 which appointed the appellant as administrator of the estate of the late Sogoi was erroneously instituted as there was Probate Cause No. 2 of 2003 in respect of the late Busigasolwe's estate and the appellant's efforts to continue with the administration of such estate after the demise of Ms. Ndaki. Further, the district court faulted the primary court for determining the ownership of the plot in question without jurisdiction. The appeal was allowed. The decision did not amuse the appellant. He preferred one ground of appeal to the effect that the first appellate court erred in law and facts for considering extraneous matters resulting in erroneous judgment. The appeal was disposed of by way of written submissions. Expounding the ground of appeal, Mr. Innocent Michael, learned Counsel for the appellant, contended that the filing of Probate Cause No. 39 of 2023 was justified as was the only way the appellant could have a locus standi to claim the rights or interests of the late Masunga William Sogoni. Given that, he held the view that it was incorrect for the first appellate court to nullify and subsequently quash the proceedings and ruling that appointed the appellant as the administrator of the estate of his late father. Mr. Michael contended further that it was not proper for the first appellate court to equate the order of the primary court that the respondent should surrender the certificate of occupancy to the appellant as a determination of the ownership of the plot in question. He augmented that there was no dispute as to the ownership of the plot as an official search speaks for itself that the plot belonged to the late Masunga William Sogoni. Responding, Mr. Fidelis Mteweale, learned Counsel for the respondent, contended that the first appellate court was right to nullify proceedings and orders that appointed the appellant as the 4 administrator of the estate of the late Sogoni as there was no property to administer. He argued that the proper recourse was for the appellant to object to the proceedings already filed with respect to the disputed plot. He strengthened his argument by citing the case of *Mwanahawa Muya v. Mwanaidi Maro* [1992] TLR 78 in which it was held that letters of administration are not to be granted when they have been already granted in respect of the same estate. On the determination of ownership, Mr. Mteweale contended that the first appellate court was right to hold that the primary court had no jurisdiction to determine the issue of ownership. He held the view that the jurisdiction to determine the ownership of land rests on the land courts. He argued that since the primary court is not a land court, its orders were a nullity. He bolstered his stance by citing the case of *Malietha d/o Gabo v. Adam s/o Mtengu*, Misc. Land Appeal No. 21 of 2020-HC (Unreported) in which it was held that a primary court when exercising probate and administration jurisdiction has no power to determine matters relating to ownership of land. I have given a thorough thought to the competing arguments and authorities cited by the learned Counsel for both parties. The issue that invites my determination is whether the appeal is meritorious. 5 So far as the nullification of the proceedings of the primary court that appointed the appellant as

the administrator of the estate of the late Sogoni is concerned, I hasten to state that the first appellate court misdirected itself. The Probate Cause No. 39 of 2023 at the Buswelu Primary Court was in respect of the late Masunga William Sogoni who joined his ancestors on 6th February, 1998. As opposed to such Cause, Probate Cause No. 2 of 2003 before this Court was in respect of the late William Busigasolwe who died in 2001. Those being two different probate causes concerning two distinct persons who are deceased, it is untenable for the appellant to object to the listing of the property he claims to be of his late father without being appointed as administrator of the estate of his late father. It is by being an administrator, the appellant could list the disputed plot as forming his father's estate. Without being an administrator, the appellant lacks locus standi to protect his father's estate either by filing an objection under Probate Cause No. 2 of 2003 including the subsequent Probate Cause instituted by the respondent, or by initiating a suit claiming ownership in a proper court. In this, I am fortified by the position of the Court of Appeal in the case of Malietha Gabo v. Adam Mtengu, Civil Appeal No. 485 of 2022-CAT (Unreported) in which it was stated: 6 'We are fortified in that regard because the only person who can act as a representative of the deceased, is the grantee of the letters of administration.' By the way, I wonder whether, at the time of raising the objection to the listing of the Plot in question in Probate Cause No. 39 of 2023, the respondent was already appointed to administer the unadministered property of the late Basigasolwe. If he was already appointed, I have no qualms. If he was not, the primary court misdirected itself to allow a person who is not an administrator to contest on behalf of the deceased person unless he was claiming the title by inheritance or by purchasing from the administrator of the estate, which is not the case. Concerning the cited case of Mwanahawa Muya (Supra) with due respect to Mr. Mteweale, the said case is inapplicable in the circumstances of this case. In the cited case, the deceased was one person in the name of Al-Hadji Karama Maro. In this case, there are two deceased persons. In the cited case, two persons instituted two different probate causes in respect of the same deceased's estate. Opposite to the cited case, in this case, two different persons instituted two different probate causes over the estates of two different persons. Of interest is 7 that in this case one property is listed in two different probate causes as belonging to the deceased persons separately. This brings me to determine the issue of whether the first appellate court was justified in concluding that the primary court had no jurisdiction to determine the ownership of the plot in question by ordering the respondent to hand over to the appellant the certificate of title of the disputed property. In this, I agree with the first appellate court that when sitting as a probate court, the primary court is not vested with the powers to determine the ownership of land. However, when a person claims the right to inherit the land in question or to have purchased the same from the administrator of the estate, the probate court is clothed with the jurisdiction to determine the ownership when such probate cause is yet to be closed. See: Mgeni Seifu v. Mohamed Yahaya Khalfani, Civil Application No. 1 of 2009- CAT (Unreported). In the circumstances of this case, the respondent when objecting to the listing of the disputed property did not assert that he had the right to inherit the disputed property or to have purchased the same from the administrator of the estate of the late

Busigasolwe. If that would be the case, the primary court would have jurisdiction to 8 determine the ownership of the disputed property. Given that, it was not correct for the primary court to conclude that the disputed property forms part of the late Sogoni's estate. That being the case, the decision of the first appellate court so far as quashing the appointment of the appellant as the administrator of the estate of the late Sogoni's estate is quashed and set aside. I uphold the decision of the primary court that appointed the appellant as the administrator of the late Sogoni's estate. Concerning ownership of the disputed property, I concur with the decision of the first appellate court that the primary court sitting as a probate court had no jurisdiction to determine the ownership of land. This is because, before the probate court, there was no claim relating to inheritance so far as the disputed property is concerned or purchase of the same from the administrator of the estate or any claim of title over the disputed property. The appellant is at liberty to contest the listing of the disputed property in the estate of the late Busigasolwe by objecting to Probate Cause No. 2 of 2003 if he claims the title by inheritance or purchase from the administrator of the estate or by any means. Otherwise, he, in 9 the capacity of the administrator of the late Sogoni's estate, may institute a suit in a court with jurisdiction. The appeal is partly allowed to the extent stated herein. I order no costs. Order accordingly. Right to Appeal Explained. DATED at MWANZA this 13th December, 2024. KS KAMANA JUDGE 10

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