

**THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(RAMADHANI, J. A.; MUNUO, J. A.; And KILEO, J. A.)**  
**CIVIL APPEAL NO. 55 OF 2000**  
**SALIMA HUSSEIN ... APPELLANT**  
**VERSUS**  
**HUSSEIN IBRAHIM SADIKI & SONS ... RESPONDENT**  
**(Appeal from the Judgment of the High Court of**  
**Tanzania at Dar es Salaam,)**  
**(Bubeshi, J.)**  
**dated the 26<sup>th</sup> day of November, 1999**  
**in**  
**Civil Case No. 251 of 1994**

**JUDGMENT**

.....

2 October, & 16 November, 2006.

**RAMADHANI, J.A.:**

This is a very protracted litigation having started twenty three years ago as Probate and Administration Causes No. 95 of 1983, at Kariakoo Primary Court, Dar es Salaam on 21<sup>st</sup> November, 1983, for the estate of Fatma d/o Sefu, a Shafei Moslem, who died intestate. On 3<sup>rd</sup> December, 1983, that court appointed Said Mohammed Harriz the administrator and ordered the auction of the assets, one of which was House No. 28 on Plot No. 27, Block 20, Kipata Street, Kariakoo, Dar es Salaam (the suit premises).

On 8<sup>th</sup> March, 1987, the premises were bought by the respondents in an auction at a price of shs. 1,700,000/= which was fully paid. The consent for transfer was given on 28<sup>th</sup> April, 1987, and the

respondent was issued with a short term right of occupancy. As the respondents were awaiting the grant of a long term right of occupancy, which they had applied for, two prospective claimants, Sofia Said and Yusuf Mohammed Musa, went to court challenging the distribution of that estate. That dispute finally came to this Court as Civil Appeal No. 25 of 1991 and on 28<sup>th</sup> February, 1992, it was decided that Yusuf was a heir but Sofia was not.

Despite that judgment, and just three months after it, on 30<sup>th</sup> May, 1992, Sofia Said executed a deed transferring the premises to the appellant, Salima Hussein. Consent to the said transfer was given on 5<sup>th</sup> July, 1993. However, the transfer of the premises to Sofia Said herself was done by the Kariakoo Primary Court on 16<sup>th</sup> June, 1993, purportedly on the strength of the judgment of this Court of 28<sup>th</sup> February, 1992, which, as already pointed out, had declared Sofia NOT an heir. Thus Sofia Said was purportedly given a title after she had purportedly transferred the property to the appellant.

- That was the background in which the respondents, Hussein Ibrahim Sadiki & Sons, took the appellant, Salima Hussein, to the High Court in Civil Case No. 251 of 1994 seeking a declaration that they are the owners of the suit premises. BUBESHI, J. granted that prayer:

On the evidence and particularly the decision of the Court of Appeal, Sofia Said was not the direct heir and could not, therefore, have title to pass to the defendant. This fact is clearly spelt out in the decision of the Court of Appeal. Now, between the two who has a better title to

the suit premises? I think the answer is not far to find. In my considered view, the plaintiff's title which has remained un-revoked by the Ministry of Lands remains valid.

Before us Mr. Moses Maira, learned counsel, was for the appellant while Mr. Mustapha Chandoo, learned advocate, represented the respondents. Mr. Maira abandoned his fourth ground of appeal and, so, three grounds remained: First, the plaint was defective as it omitted the description of the plaintiffs and so, should not have been entertained. Second, the effect of the judgment of the Court of Appeal in Civil Appeal No. 25 of 1991 was not taken into account. Third, in the absence of fraud, the person whose name appears on the title deed is the owner.

We are of the decided view that this appeal hinges on the second ground of appeal: what did the Court of Appeal decide in Civil Appeal No. 25 of 1991?

Mr. Maira told the Court that Sofia Musa acted as an agent of Yussuf Mohammed Mussa who had been declared a heir by the Court of Appeal in Civil Appeal No. 25 of 1991. That statement was from the bar and was not supported by any iota of evidence at the trial.

Mr. Chandoo pointed out three matters: One, the appointment of Said Mohammed Harriz, as the administrator, was not revoked by this Court. Two, when this Court made its decision the suit premises had

already been sold to the respondents and this Court did not annul that sale. Three, the transfer of a right of occupancy erroneously portrays that this Court appointed Sofia Said to be the administratrix and that she later sold the suit premises to the appellant.

The suit premises, as already said, were sold to the respondents at an auction on 8<sup>th</sup> March, 1987, while Civil Appeal No. 25 of 1991, was filed well over three years after the sale and the judgment was given on 28<sup>th</sup> February, 1992, almost five years after the sale. So, this Court was well aware of the sale but neither annulled it nor revoked the appointment of Said Mohammed Harriz as the administrator.

Then this Court was loud and clear that Sofia Said was not an heir of the estate of the deceased Fatuma d/o Sefu. This Court pointed out three principal classes of heirs in Islamic Law:

The first principle class is called "sharers" or "Koranic heirs" of which, as stated, there is only one in this case, i.e. Mgeni Hemedi. The second is called "Residuaries" or "Asabah" and looking at the Table of Residuaries in Mulla's Principles of Mohamedan Law, 14<sup>th</sup> edition at page 69A, there is only one such heir among the claimants in this case i.e. the second appellant, Yusuf Mohamed Musa, he being an agnate nephew of the deceased. The third class is commonly referred to as "Distant Kindred" and this is the class to which the rest of the claimants, including the first appellant, Sofia Saidi, belong.

The Primary Court of Kariakoo was utterly wrong to be a witness to the assertion that this Court in Civil Appeal No. 25 of 1991 appointed

Sofia Said administratrix and that she then transferred the right of occupancy to the appellant. In fact that appeal dealt with who was the heir and NOT who was to be an administrator or an administratrix.

We are, therefore, of the decided view that had the judgment of this Court not been deliberately distorted so as to lead to the ends purported to have been attained, there would not have been Civil Case No. 251 of 1994 before BUBESHI, J. at all.

So, we dismiss the appeal with, costs upholding BUBESHI, J. that the respondents are the lawful owners of the suit premises. Sofia Said had no colour of right to the estate of Fatma d/o Sefu and she, therefore, could not pass any title to the appellant. We order that any title deed given to the appellant be revoked and cancelled by the relevant authorities as it was fraudulently obtained.

DATED in DAR ES SALAAM, this 30<sup>th</sup> day of October, 2006.

A. S. L. RAMADHANI  
JUSTICE OF APPEAL

E. N. MUNUO  
JUSTICE OF APPEAL

E. A. KILEO  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



  
N.P.Z. CHOCHA  
**AG. DEPUTY REGISTRAR**