

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MMILLA, J.A, MWANGESI, J.A AND MWAMBEGELE, J.A.)

CIVIL APPEAL NO. 176 OF 2018

BARNABAS MSABI NYAMONGE APPELLANT

VERSUS

**ASSISTANT REGISTRAR OF TITLES
SHUFAA JAMBO AWADHI] RESPONDENTS**

(Appeal From the decision of the High Court of Tanzania at Dodoma)

(Kalombola, J.)

dated the 17th day of April, 2018

in

Land Appeal No. 58 of 2016

JUDGMENT OF THE COURT

27th & 30th August, 2019

MWAMBEGELE, J. A.:

This is an appeal from the judgment and decree of the High Court in Land Appeal No. 58 of 2016 which was pronounced on 17.04.2018 here at Dodoma. To appreciate the decision we are going to make herein, we find it apt to set, albeit briefly, the material factual background to the appeal. It is this: the appellant Barnabas Msabi Nyamonge was a long time tenant to the house standing on Plot No.

4, Block 4, Street No. 11 in Dodoma Municipality (now Dodoma City, but for the purpose of this judgment, we will keep on referring to it as Dodoma Municipality) comprised in CT No. 1671 DLR. The house (hereinafter referred to as the disputed house) belonged to a certain Kannah Jambo Awadhi, now deceased.

Upon the death of the said Kannah Jambo Awadhi, Shufaa Jambo Awadhi; the second respondent herein, through *Shauri la Mirathi No. 34/2006*, was, on 16.10.2006, appointed by the Primary Court of Dodoma at Chamwino as Administratrix of his estates (see p. 97 of the record). The disputed house was one of the properties under the estates of the deceased. In a somewhat bizarre twist of things, through a case christened *Shauri la Mirathi No. 34B/2006*, the same Primary Court of Dodoma at Chamwino, on 08.04.2014, appointed one Hassan Jambo Awadhi (now also deceased) as administrator of the estates of the deceased Kanna Jambo Awadhi in place of the second respondent. The reason ascribed to that state of affairs was that the second respondent failed to perform her duties as administratrix. The second respondent was ordered by the court to return all the documents related to her appointment.

Consequent upon his appointment, he (Hassan Jambo Awadhi) transferred the title to the appellant vide a document titled "TRANSFER OF A RIGHT OF OCCUPANCY". This document appears at pp. 23 and 51 of the record of appeal and that transaction was, allegedly, blessed by all the heirs of the late Kannah Jambo Awadhi – Hassan Jambo, Imani Jambo and the second respondent - through a document titled "*KUUZA NYUMBA ZOTE TATU ZA PLOT NA. 4 BLOCK NO. 4; PLOT NO. 12 BLOCK NA. 25 NA PLOT NO. 63 BLOCK NO. 25*" appearing at p. 21 of the record. The first respondent, consequently, rectified the Land Register (henceforth the Register) on 12.12.2014; that is, from the name of Kannah Jambo Awadhi to the appellant's; Barnabas Msabi Nyamonge (see p. 28 of the record).

At a later stage, the second respondent wrote a complaint letter to the District Court seeking its indulgence to revise and nullify the proceedings of the Primary Court of Dodoma at Chamwino in *Shauri la Mirathi No. 34B/2006* which appointed Hassan Jambo Awadhi as administrator of the estates of the late Kannah Jambo Awadhi in her stead. Consequently, the District Court of Dodoma at Dodoma called the record of the Primary Court and opened Civil Revision No. 4 of

2015 and with a view to seeing whether there was any incorrectness, illegality or impropriety complained of in its record. The District Court, on 29.07.2015, nullified the appointment of Hassan Jambo Awadhi and restored the second respondent as administratrix of the estates of the late Kannah Jambo Awadhi. That order was delivered on the said date in the presence of the second respondent.

Following the restoration referred to in the foregoing paragraph, the second respondent applied to the first respondent to have the Register rectified accordingly. Consequently, the first respondent, acting under the powers bestowed upon him by section 99 (1) (f) of the Land Registration Act, Cap. 334 of the Revised Edition, 2002 (hereinafter referred to as the Land Registration Act), rectified the Register accordingly by cancelling the name of the appellant and restored the name of Kannah Jambo Awadhi (see pp. 35 - 37 of the record).

The appellant was not happy with the action taken by the first respondent. Thus, under the provisions of section 99 (1) of the Land Registration Act, petitioned to the High Court by way of an appeal as

appearing at p. 40 of the record. The appeal was premised on two grounds in a Petition of Appeal couched thus:

**"IN THE HIGH COURT OF UNITED REPUBLIC
OF TANZANIA
AT DODOMA**

LAND APPEAL NO. 58 OF 2016

**(From the Decision and Order of the Assistant Registrar of Titles of Dodoma
made Under Section 99 (1) of Cap. 334)**

BARNABAS MSABI NYAMONGE APPELLANT

VERSUS

THE ASSISTANT REGISTRAR OF TITLES RESPONDENT

PETITION OF APPEAL

The Appellant above named having been aggrieved by the decision of the Assistant Registrar of Titles of Dodoma Land Registry in rectifying the Land Register by changing the ownership of the property situated on Plot No. 4 Block 4, 11th Street, Madukani area, Dodoma Region and registered under Certificate of Titles No. 1671 DLR in the name of Barnabas Msabi Nyamonge to read the name Kannah Jambo Awadh, hereby appeals against the said decision and orders on the following grounds:

1. **THAT**, Assistant Registrar of Titles erred in law in deciding to cancel the name of the Appellant from the Register without satisfying himself that the alleged revision was legally done and as to whether the Appellant was given the right to be heard.

2. **THAT**, the Assistant Registrar of Titles erred in law in cancelling the Appellant's name from the Register without regard to the fact that the appellant purchased the property in issue legally and with consideration.

WHEREFORE, the Appellant prays to this Honourable Court to set aside the decision and orders of the Respondent make an order for re-inserting the name of the Appellant in the Land Register with costs.

Dated this 14th day of August, 2016.

Sgd

.....
ADVOCATE FOR APPELLANT

Presented for filing this 16 day of August, 2016.

.....
REGISTRY OFFICER

DRAWN AND FILED BY:

R.K. RWEYONGEZA & CO,
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COPY TO BE SERVED UPON:

THE ASSISTANT REGISTRAR OF TITLES
DODOMA LAND OFFICE
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DODOMA."

The High Court (Kalombola, J.) dismissed the appeal. The learned Judge upheld the course taken by the first respondent and upheld as correct the decision of the District Court in Revision No. 4 of 2015. Undeterred, the appellant has come to this Court on appeal. His Memorandum of appeal is anchored on three grounds, namely:

1. That, the Honourable Judge erred in law in failing to decide that the decision of the Assistant Registrar of Titles was bad in law as it was based on an order of Revision by the District Court after the death of the Administrator who has already transferred the property in issue to the Appellant;
2. That, the Hon. Judge erred in law failing to decide that the revocation of grant of letters of administration could not affect the validity of the sale of the property which was purchased bonafide for value; and
3. That, the Honourable Judge erred in law in deciding that it was necessary to obtain consent of heirs before the sale was done.

When the appeal was placed before us for hearing on 27.08.2019, the appellant appeared in person and was represented by

Mr. Elias Michael Machibya, learned advocate. While the first respondent was represented by Ms. Alice Mtulo, learned State Attorney, Messrs George Nyangusu and Emmanuel Safari, learned advocates, joined forces to represent the second respondent. The parties to the appeal had earlier on filed their respective written submissions and reply written submissions which they sought to adopt as part of their oral submissions.

We wish to state at this juncture that for reasons that will be apparent in the course of this judgment, we will summarize the arguments of the parties in respect of the first ground only, which we think is sufficient to dispose of this matter.

It was Mr. Machibya who kicked the ball rolling in clarification of the grounds of appeal. In respect of the first ground, the learned counsel submitted that the matter was entertained by the District Court when it was out of time in that the seller was appointed administrator of the estates of the late Kannah Jambo Awadhi on 08.04.2014 and the decision of the District Court in Civil Revision No. 4/2015 which nullified the proceedings of the Primary Court which

appointed him is dated 29.07.2015. That revisional order was made out of time contrary to section 22 (4) of the Magistrates' Courts Act, Cap. 11 of the Revised Edition, 2002 (henceforth the Magistrates' Courts Act), he submitted. In the premises, the learned counsel went on, the first respondent erred in relying on it to rectify the Register and the High Court erred in blessing that course of action.

He added that in the revisional proceedings referred to, the appellant and Hassan Jambo Awadhi were not heard thereby offending the provisions of section 22 (3) of the Magistrates' Courts Act which obliges the court to make such order after hearing the parties before making adverse orders. Likewise, he argued, the first respondent ought to have heard the parties before making any order under section 99 (2) (a) of the Land Registration Act, Cap. 334 of the Revised Edition, 2002 (henceforth the Land Registration Act). He added that the first respondent ought to have made sure that the registered person whose name was to be cancelled from the Register, was a party to the suit on which he pegged his decision. For this proposition, the learned counsel made reference to our decision in

Nizar Shell L'Adawy Muhanna v. Registrar of Titles and Another [1995] TLR 217.

Prompted, Mr. Machibya submitted that the interpretation of subsection (4) of section 22 by the High Court to the effect that the limitation period should start to run from the date of filing of an inventory, would lead to absurdity.

Responding to the first ground of appeal, Ms. Mtulo submitted that the High Court was correct to uphold the decision of the first respondent which was made under section 99 (1) of the Land Registration Act. She submitted that the appellant should have challenged the decision of the District Court rather than that of the first respondent. On whether or not the matter before the District Court was time barred, the learned State Attorney submitted that it was not because the inventory thereof had not been filed yet.

For the second respondent, Mr. Nyangusu submitted in respect of the first ground of appeal that the High Court was quite right to hold that the revisional proceedings before the District Court were not time barred in that no inventory had been filed yet.

In a short rejoinder, Mr. Machibya reiterated what he stated in his submissions in chief and added that the appellant was not heard by the first respondent but was notified by the first respondent vide a notice appearing at p. 35 which was accompanied with the final decision to rectify the Register.

Having recounted the material background facts of the appeal before us and having also summarized the submissions by the parties, we should now be in a position to confront the grounds of appeal to determine the matter before us. We embark on the first ground which is a complaint to the effect that the High Court erred in law for failing to hold that the decision of the second respondent was bad in law as it was based on an order of Revision by the District Court after the death of the administrator who had already transferred the disputed house to the appellant. Encapsulated in this ground is the question of jurisdiction; that the District Court entertained the application for Revision when time within which it could be so entertained and heard had elapsed. The learned counsel for appellant cited to us section 22 (4) of the Magistrates Courts Act to buttress the proposition. We reproduce the subsection as under:

"(4) No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject of a revisional order under this section."

[Emphasis added].

This argument arose in the High Court as it was the subject of the first ground of appeal reproduced above. The same argument arose before us. The High Court, in resolving whether the revisional proceedings before the District Court were time barred had this to say at p. 149 of the record:

"... the appellant blames the Registrar of Titles who cancelled his name from the register without affording him right to be heard and without satisfying himself that the revision was legally done".

The learned High Court Judge then reproduced the provisions of section 22 (1) the Magistrates' Courts Act which bestows upon the District Court with powers to:

"... call and examine the record of any proceedings in the primary court established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings."

The High Court then found and held that, under the provisions of section 22 (1) of the Magistrates' Courts Act, the District Court had jurisdiction to correct mistakes of the Primary Court by way of revision. She proceeded at p. 150:

"But the counsel for the appellant submitted the same revision was time barred as per section 22 (4) of the Magistrates' Courts Act"

The High Court Judge reproduced subsection (4) as we have done above and observed at pp. 150 – 151:

*"It is true under this provision of Law the Court cannot make revision on the proceedings after expiration of twelve months from the termination of the proceedings, **but it is clear that the present matter never terminated as the inventory was never filed in Court as it is required by Law.** In that regard the appellant cannot say that the matter had terminated. **In that premises the revision was not time barred as it was alleged by the appellant.** Therefore the District Court had powers to revise the same in accordance with the Law."*

Mr. Machibya argued before us that the interpretation of the subsection as done by the High Court was never correct and that it led to absurd results. We have closely examined the provisions of subsection (4) of section 22 of the Magistrates' Courts Act reproduced above. We have done so in the context of the whole section, its plain meaning and the intent and object of the legislature in making such an

enactment. Having so done, we think Mr. Machibya is right. It is an elementary principle of statutory interpretation that the plain meaning rule is to be resorted to first. That is what we have done. The court will only be entitled to employ other principles of statutory interpretation if the plain meaning rule would lead to absurdity. This is not the case in the matter before us. If anything, we think, the interpretation of the provision under discussion suggested and taken by the High Court would lead to absurd results. We demonstrate hereunder.

In the case at hand, giving a plain meaning interpretation of the words "termination of such proceedings in the primary court", we do not think the legislature intended to peg the limitation period after an inventory is filed. That meaning, as Mr. Machibya rightly observed, would lead to absurdity. That interpretation, we respectfully think, would have the meaning of defeating the object and purpose for which the very subsection was meant to serve. That is to say, as already stated, the interpretation of section 22 (4) of the Magistrates' Court Act as suggested and applied by the High Court leads to an absurd result, which, in our considered view, was not the intention of the legislature. The absurdity we have in mind here, is best

demonstrated by the conduct of the second respondent in the matter at hand. She was appointed administratrix of the estates of the late Kannah Jambo Awadhi in 2006. The law, under Rule 10 (1) of the Primary Courts (Administration of Estates) Rules – GN No. 49 of 1971, obligated her to file a statement of assets and liabilities and accounts of the estate within four months. The Rule reads:

"(1) Within four months of the grant of administration or within such further time as the liabilities court may allow, the administrator shall submit to the court a true and complete statement, in Form V, all the assets and liabilities of the deceased persons' estate and, at such intervals thereafter as the court may fix, he shall submit to the court a periodical account of the estate in Form VI showing therein all the moneys received, payments made, and property or other assets sold or otherwise transferred by him."

That was not done for eight good years at the time the late Hassan Jambo Awadhi complained to the Primary Court for her nonperformance. This demonstrates our sentiments that pegging the

twelve months' limitation prescribed by section 22 (4) of the Magistrates' Courts Act would bring absurd results. By the term absurdity here, as stated in the persuasive decision in the neighbouring jurisdiction of **Republic v. Kenya Anti-Corruption Commission and others ex parte Okoth** [2006] 2 EA 275, we simply mean contrary to sense or reason.

The order to appoint Hassan Jambo Awadhi in place of Shufaa Jambo Awadhi; the second respondent herein, was made by the Primary Court of Dodoma at Chamwino on 08.04.2014. In the light of the discussion above, that is the date from which the twelve months' limitation prescribed by section 22 (4) of the Magistrates' Courts Act should be reckoned. The District Court made the revisional order under discussion on 29.07.2015. That was beyond the twelve months' limitation prescribed by section 22 (4) of the Magistrates' Courts Act. The revisional order made therefore was a nullity and the rectification order by the first respondent which pegged the rectification process on that illegal order was also a nullity. The High Court erred in not so finding. It is our considered view that upon receipt of the complaint letter by the second respondent, the District Court should have

advised her to file a formal application after seeking and obtaining extension of time to do so.

For the foregoing reasons, we find merit in the first ground of appeal. Having so done, we think, as already alluded to above, this appeal can be disposed of on this ground only. In the premises, we refrain from making a decision on the remaining two grounds, for, that course of action will be tantamount to going into an academic endeavour which we reserve for some other opportune moment. However, under the powers bestowed upon us under section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 of the Revised Edition, 2002, we hereby nullify the proceedings of the District Court of Dodoma in Civil Revision No. 4 of 2015, the consequent rectification of the Land Register by the first respondent as well as the decision of the High Court in Land Appeal No. 58 of 2016 pronounced on 17.04.2018. If the second respondent so wishes, she should start the process of challenging the appointment of the late Hassan Jambo Awadhi afresh in accordance with the law.

In the upshot, this appeal is allowed to the extent explained above. As the dispute revolves around a family matter, we make no order as to costs.

Order accordingly.

DATED at DODOMA this 30th day of August, 2019.

B. M. MMILLA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

The Judgment delivered this 30th day of August, 2019 in the presence of Mr. Elias Michael Machibya, counsel for the Appellant and Ms. Neema Mwaipyana assisted by Ms. Mariam Matovolwa both State Attorneys for the first Respondent and Mr. Elias Michael Machibya holding brief for Mr. Emmanuel Safari for the second Respondent is hereby certified as a true copy of the original.



S. J. Kainda
S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL