

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MOSHI**

**(CORAM: SEHEL, J.A., KEREFU, J.A. And MLACHA, J.A.)**

**CIVIL APPEAL NO. 8 OF 2021**

**AISHA JUMA LEMA** (The Administratrix  
of the estate of the late **MWANAISHA SELEMANI**) ..... **APPELLANT**

**VERSUS**

**LUCY EDWARD LEMA**..... **1<sup>st</sup> RESPONDENT**

**LODRICK EMMANUEL URONU**.....**2<sup>nd</sup> RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Moshi)**

**(Fikirini, J.)**

**dated 5<sup>th</sup> day of March, 2018**

**in**

**Land Case No. 17 of 2015**

\*\*\*\*\*

**RULING OF THE COURT**

7<sup>th</sup> & 13<sup>th</sup> December, 2023

**SEHEL, J.A.:**

This purported appeal traces its origin to Land Case No. 17 of 2015 instituted by the appellant against the respondents in the High Court of Tanzania at Moshi (the trial court). In that case, the appellant sued the respondents on the ownership of a house situated on Plot No. 23, Block K, second III Bondeni Street within Moshi Municipality with a Certificate of Title No. 25491, Land Office No. 266672 (the

disputed house), initially registered in the name of Zubeda Selemani (Zubeda).

The appellant's claim against the respondents was that; the 1<sup>st</sup> respondent who was the administratrix of the estate of the late Zubeda bequeathed to herself the disputed house whereas she is not legally entitled, as per Sharia Law, to bequeath a Muslim property. The appellant therefore alleged fraud on part of the 1<sup>st</sup> respondent and claimed that the 1<sup>st</sup> respondent illegally transferred the disputed house to the 2<sup>nd</sup> respondent.

According to the plaint, the appellant claimed that Zubeda and Mwanaisha Selemani (Mwanaisha) were blood sisters and they were both adopted by the late Sheikh Selemani Abdilah, and that, the late Sheikh Selemani Abdilah converted Zubeda and Mwanaisha to Islam. Thereafter, in 1950s, the late Sheikh Selemani bequeathed the disputed house to the two sisters but, later on, it was registered in the name of Zubeda. That, Mwanaisha and Zubeda were peacefully residing in the disputed house until when Zubeda passed on in 1969.

The appellant further averred that, upon the death of Zubeda, Mwanaisha remained the sole owner of the disputed house, and that,

the appellant was residing with Mwanaisha, her aunt, until her aunt met her death in July, 2007. It was further alleged that the 1<sup>st</sup> respondent applied and was granted letters of administration of the estate of the late Zubeda in the Probate and Administration Cause No. 232 of 2005. Having obtained the letters, the appellant claimed, the 1<sup>st</sup> respondent transferred the title of the disputed house into her name and then sold it to the 2<sup>nd</sup> respondent. In that respect, the appellant sued the respondents seeking for declaratory orders that the late Mwanaisha be declared a lawful owner of the disputed house and that the subsequent sale and transfer to the 2<sup>nd</sup> respondent be declared null and void. The appellant also sought for an order that the Registrar of Titles or his Assistant be directed to rectify the Certificate of Title of the disputed house; an eviction order and perpetual injunction against the 2<sup>nd</sup> respondent and his agents; general damages and costs of the suit.

On the other hand, in the joint Written Statement of Defence, the respondents disputed the appellants' claims averring that, the late Zubeda was the sole owner of the disputed house and at no time, Mwanaisha became the owner of the same. It was further averred

that the appellant was a mere tenant in the disputed house and had no blood relationship with the late Zubeda.

Having heard the evidence of the appellant, Aisha Juma Lema (PW1) which was supported by the evidence of Mohamed Abdillahi Sulemani (PW2) and the evidence Lucy Edward Lema (DW1) and Lodvick Emanuel Uronu (DW2), the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively, the trial court found that the 1<sup>st</sup> respondent who was the administratrix of the estate of the late Zubeda lawfully transferred the disputed property to the 2<sup>nd</sup> respondent. It further held that the 2<sup>nd</sup> respondent was a *bonafide* purchaser. Accordingly, the appellant's suit was dismissed with costs.

Aggrieved with the decision of the trial court, the appellant filed an appeal to this Court. However, for the reason to be apparent soon, we shall not reproduce the grounds of appeal herein.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented, whereas, the respondents had the legal services of Ms. Jane James, learned advocate.

From the record of appeal, it appeared to us that the appellant sued the 1<sup>st</sup> respondent on her personal capacity instead of being sued as administratrix of the estate of the late Zubeda. We therefore invited parties to address us on the propriety or otherwise of the proceedings of the trial court.

The appellant being a layperson, did not have anything useful to address the Court. Basically, she contended that she sued the 1<sup>st</sup> respondent because she sold the disputed house that belonged to the late Mwanaisha while she had no legal right to sell it. She argued that the disputed house was donated to Zubeda and Mwanaisha by the late Sheikh Selemani Abdillahi, and that, upon the demise of Zubeda the disputed property remained in the ownership of Mwanaisha whom she is administering her estate. She therefore urged the Court to allow her appeal.

Ms. James was very focussed on her submission. She submitted that it was wrong for the appellant to sue the 1<sup>st</sup> respondent in her personal capacity while she was dealing with the deceased's estate as appointed administratrix of the estate of the late Zubeda. Relying on the case of **Susan S. Waryoba v. Shija Dalawa**, Civil Appeal No. 44

of 2017 [2019] TZCA 66 (11 April, 2019; TANZLII), she contended that the appellant ought to have sued and cited the 1<sup>st</sup> respondent in her legal representative capacity, that is, Lucy Edward Lema (administratrix of the estate of the late Zubeda Selemani). She further contended that the failure of the appellant to cite the 1<sup>st</sup> respondent in her capacity as the administratrix of the estate of the late Zudeda Selemani in a dispute involving the deceased's estate was wrong. She, accordingly, urged the Court to nullify the proceedings, quash and set aside the judgment and struck out the appeal. She did not press for costs.

Having heard the contending submissions, we find that the issue for our determination is the propriety or otherwise of the proceedings in the Land Case No. 17 of 2015 that was commenced and tried against the 1<sup>st</sup> respondent in her personal capacity.

We wish to start our deliberation with the legal position regarding a person who had been granted letters of administration. Section 71 of the Probate and Administration of Estate Act, provides a direction on a person to whom letters of administration had been granted that:

*"After any grant of probate or letters of administration, no person other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been revoked or annulled."*

The above provision of the law was considered in the case of **Malietha Gabo v. Adam Mtengu**, Civil Appeal No. 485 of 2022 [2023] TZCA 17318 (8 June 2023; TANZLII). In that appeal, the Court was faced with akin situation and said:

*"...in the event the appellant was the administratrix, it was irregular for the respondent to initiate a case against the appellant in her own capacity instead of pursuing action against her as the administratrix of the late Gabo Mtengu. 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 as provided under the provisions of section 71 of the Probate and Administration of Estate Act..."*

See also the case of **Omary Yusuph (legal representative of the late Yusuph Haji) vs. Albert Munuo**, Civil Appeal No. 12 of 2018 [2021] TZCA 605 (25 October 2021; TANZLII).

In the present appeal, we have earlier on stated that the appellant sued the 1<sup>st</sup> respondent alleging that the 1<sup>st</sup> respondent, as administratrix of the estate of the late Zubeda, fraudulently distributed the deceased's estate to herself. This is reflected at paragraphs 12, 13, 14, 15 and 16 of the appellant's plaint. For clarity, we do hereby reproduce the said paragraphs:

*"12. That vide [Probate and Administration Cause] No. 232/2005, the 1<sup>st</sup> [respondent] applied for and was granted letters of administration of the late Zubeda Selemani despite protest from members. Copy of the letters of Administration is annexed herein and marked P3 forming part of this plaint.*

*13. That, on diverse dates January, 2008, a letter of offer of a right of occupancy was issued in the name of the said Lucy Edward Lema. Copy of the said letter of offer is annexed herein and marked P4 which the [appellant] shall crave leave to refer to.*



*14. That, the 1<sup>st</sup> [respondent] as administrator fraudulently distributed the deceased's estate to herself as if she was the lawful and or sole beneficiary thereto. Copy of Form No. VI evidencing the same is annexed herein and marked P5 which the [appellant] shall crave leave to refer to. The said Mwanaisha Selemani the blood sister and occupier of the suit premises during the lifetime of Zubeda Selemani and for over 30 years after the death of Zubeda Selemani was deprived her right.*

*15. That, the 1<sup>st</sup> [respondent] is not entitled legally as per Moslem Law to inherit the property of a Moslem.*

*16. That, the [appellant] vide Misc. Civil Application No. 1/2008 applied to Moshi District Court for orders that the 1<sup>st</sup> [respondent] be compelled to distribute the deceased's estate to beneficiaries."*

It is therefore glaring from the above paragraphs of the appellant's plaint in Land Case No. 17 of 215 that the appellant was well aware of the legal status of the 1<sup>st</sup> respondent. She knew that the 1<sup>st</sup> respondent was an administratrix of the estate of the late Zubeda including the disputed house which the appellant claimed ownership.

In other words, the disputed house came into the hands of the 1<sup>st</sup> respondent as an administratrix of the estate of the late Zubeda whom before her demise was the owner of the same; the disputed house is not personal property of the 1<sup>st</sup> respondent.

Nevertheless, the appellant decided to institute a suit against the 1<sup>st</sup> respondent as if she is the owner of the disputed house instead of suing her as an administratrix of the estate of the late Zubeda. In that respect, we entirely agree with the submission of Ms. James that the act of the appellant suing the 1<sup>st</sup> respondent in her personal capacity while the disputed house was subject to the administration of the estate of the late Zubeda vitiated the entire proceedings of the trial court. Accordingly, we find that the proceedings of the trial court were a nullity.

In the end, we invoke our revisional powers under section 4 (2) of the Appellate Jurisdiction Act and proceed to nullify the entire proceedings of the High Court, quash its judgment, set aside the decree and strike out the present appeal which emanated from nullity proceedings of the High Court and if the appellant still desires to pursue this matter, may commence action against the 1<sup>st</sup> respondent

in accordance with the requirement of the law, subject to the Law of Limitation Act. In the circumstances, we order that each party to bear own costs.

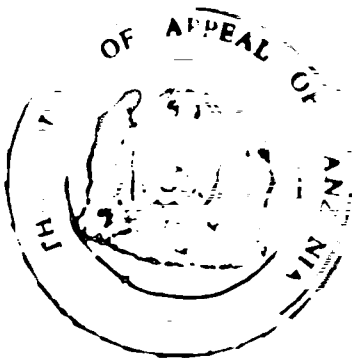
**DATED** at **MOSHI** this 13<sup>th</sup> day of December, 2023.

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

L. M. MLACHA  
**JUSTICE OF APPEAL**

The Ruling delivered this 13<sup>th</sup> day of December, 2023 in the presence of appellant in person and Mr. Emmanuel Karia, learned advocate for the respondents, is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**