

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: MWANDAMBO, J.A., KIHWELO, J.A., And MGONYA, J.A.)

CIVIL APPEAL NO. 54 OF 2021

ABDUL RAHIM JAMAL MOHAMED

(Suing through his lawful Attorney

Fauzia Jamal Mohamed) **APPELLANT**

VERSUS

WATUMISHI HOUSING

COMPANY LIMITED **RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania,
at Dar es Salaam**

(Masabo, J.)

dated the 16th day of December, 2019

in

Land Case No. 93 of 2015

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RULING OF THE COURT

15th February & 05th March, 2024

MGONYA, J.A.:

The appellant, Abdulrahim Jamal Mohamed (suing through his lawful attorney Fauzia Jamal Mohamed) was aggrieved by the decision of the High Court at Dar es Salaam (Masabo, J.), in Land Case No. 93 of 2015 delivered on 16th December 2019 against him. For reasons which shall become apparent soon, we shall not deal with the merits of the appeal.

For easy appreciation of the matter, it is necessary to delve into the background facts of this case. On 18th September, 2014 the appellant

entered into a contract with respondent for the sale of plots No. 194, 195 and 196 in Block 25 located at Gezaulole, Kigamboni, Temeke District in Dar es Salaam region at a consideration of TZS. 660,420,000/=. The purchase price was to be paid in two installments of 80% after concluding the contract and 20% after the handover of the certificates of title in the respondent's name.

The respondent paid 80% of the price as agreed and later the appellant handed over the certificates of title in respect on Plot No. 195 and 196. Thereafter, the appellant demanded payment of the remaining 20% but the respondent refused to pay on the ground that, the certificate of title on plot No. 194 was yet to be handled over. Subsequently, the appellant instituted Land Case No. 93 of 2015 claiming for the balance of TZS. 179,342,240/=.

In its judgment delivered on 16th December, 2019 the trial judge found no merit in the appellant's case and dismissed it with costs. Dissatisfied with the judgment, the appellant lodged the instant appeal.

When the appeal was called on for hearing on 7th February, 2024 the hearing could not proceed due to unstable health of Mr. Malimi, the appellant's counsel. The hearing was adjourned to 15th February, 2024. In the meantime, the Court directed the appellant's counsel to address it

on the validity of the power of attorney and its scope on the rescheduled hearing date.

On the resumed hearing, Ms. Ritha Chihoma learned counsel represented the appellant whereas Ms. Happiness Nyabunya learned Principal State Attorney and Daniel Nyakiha, learned State Attorney appeared for the respondent.

When invited to address the Court on the validity of the power of attorney, Ms. Chihoma stated that, the power of attorney appearing on page 156 of the record of appeal, was registered under the Registration of Documents Act, Cap. 117 whereby, the donor appointed one Fauzia Jamal Mohamed, the donee to be a true and lawful attorney on his behalf to commence, prosecute, defend any action or actions relating to landed properties described as plots No. 195 and 196 Block 25 Gezaulole, Kigamboni, Temeke in Dar es Salaam.

Ms. Chihoma readily conceded that since the powers conferred thereto was in respect of registered land, the power of attorney ought to have been registered under section 96(1) of the Land Registration Act (hereinafter to be referred as LRA) and not Cap. 117. The learned counsel was of the view that, since the instrument was registered under a wrong

law, the donee had no *locus standi* to prosecute the matter before the trial court as well as before this Court.

When probed by the Court whether the appellant could have validly appointed the donee resident in the same jurisdiction with the donor to represent him in Court, and whether the power of attorney would apply to the disputed plot No. 194, Ms. Chihoma was candid that it was improper. Therefore, she invited the Court to exercise its power of revision and nullify the proceedings of the High Court under section 4(2) of the Appellate Jurisdiction Act (the AJA).

For her part, Ms. Nyabunya concurred with Ms. Chihoma's submission and invited the Court to strike out the appeal with costs.

On our part, having examined the record of this appeal, as we have indicated earlier, the dispute emanated from the contract which involved disposition of registered land as recognized by section 96 (1) of LRA which provides:

*"96. -(1) The Registrar shall, on the joint application of the donor and the donee of a power of attorney which contains any power to make applications under this Act to effect dispositions of, or otherwise to act in relation to **registered land**, file such power of attorney, and every such application shall be in writing in the prescribed*

form and shall be executed and attested in the manner required for deeds by sections 92 and 93”.

[Emphasis supplied]

That said, it goes without saying that the donor and donee messed up in registering the power of attorney under the Registration of Documents Act while the dispute emanated from the disposition of the registered land. That rendered the power of attorney invalid to the extent it involved the power to dispose the registered land. However, that is not our main concern in this appeal.

It is evident from the power of attorney that both the donor and donee are from the same address in Dar es Salaam; within the jurisdiction of the trial court and this Court. The issue for consideration is thus, whether a person who is in the court's jurisdiction could appoint another person by a power of attorney to prosecute a case in court on his behalf. Ms. Chihoma was candid that, that could not be proper in law and we agree with her. The learned advocate conceded too that, that by itself rendered the proceedings before the trial court invalid. Besides, counsel agreed also that, at any rate, the power of attorney was in respect of plot No. 195 and 196, but the donee exceeded her power by prosecuting the case involving plot No. 194 whose registered owner was the donee herself.

Additionally, Ms. Chihoma conceded further that since the donor was resident in Tanzania, he could not appoint the donee to appear for him in this appeal which was contrary to rule 30 (2) of the Rules. From the totality of the above infractions, Ms. Chihoma and Ms. Nyabunya were in agreement that the proceedings before the High Court were a nullity and urged the Court to nullify them, quash the judgment and set the decree aside.

With respect, we agree with the learned counsel as we are satisfied that notwithstanding the provisions of Order III rule 2(a) of the Civil Procedure Code (the CPC) which allows court representation through an attorney, that provision must be limited to persons outside the jurisdiction of the court. As alluded to earlier, both the donor and donee of the power of attorney were within the same jurisdiction of the court. Accordingly, the prosecution of the suit by Fauzia Jamal Mohamed as an attorney of the appellant was highly irregular. Any of her actions in the trial court was invalid. That extended to her exceeding the scope of the power of attorney by prosecuting her own case in respect of plot No. 194.

In the event, we are constrained to invoke the Court's power of revision under section 4 (2) of the AJA as urged by the learned counsel. Accordingly, we nullify the proceedings before the High Court in Land Case No. 93 of 2015, quash the judgment and set aside the decree emanating

from it. That said, there could have been no competent appeal to this Court and so we strike it out the purported appeal with costs.

Order accordingly.

DATED at DAR ES SALAAM this 05th day of March, 2024.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Ruling delivered this 05th day of March, 2024 in the presence of Ms. Queen Sambo, learned counsel holding brief for Ms. Rita Chihoma for the Appellant and Ms. Shaely Richard, learned counsel holding brief for Mr. Joel Maeda, State Attorney for the Respondent, is hereby certified as a true copy of the original.



A. S. Chugulu
A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL