

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 21 OF 2005

ELIKAO E. MANZEWA

BY HER ATTORNEY ROMAN E. MOSHA.....PLAINTIFF

VERSUS

BAKARI MAHIZA.....1ST DEFENDANT

COMMISSIONER FOR LANDS.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

B.R. MUTUNGI, J.

I have been forced to make this ruling upon Mr. Rweyemamu counsel of the plaintiff having brought PW1 Roman Eliapend Mosha to testify. PW1 was in fact proceeding to give testimony from where he had left way back on 19/11/2008 after the presiding Judge Chinguwile by then had adjourned the hearing.

PWI proceeding before me was giving testimony on the strength of a power of Attorney granted to him on behalf of the plaintiff one Elikao E. Manzewa.

As the case was proceeding and on being examined in chief by his counsel, PWI touched on the issue of the power of attorney granted to him and proceeded to pray that the court admits the same as an exhibit.

It is at this juncture that both the counsel's of the defendants raised their objections as to the tendering of the power of attorney document in that it does not get into the mind of anyone that the witness is proceeding on the power of attorney yet the plaintiff herself is in attendance. The power of attorney serves no purpose in the given situation.

Be as it may be the power of attorney itself is impregnated with irregularities which makes it incompetent before the law and it should be rejected. The defendant's counsels in the circumstances prayed that PWI should be stopped from giving further evidence and the plaintiff herself should first be allowed to give evidence and if there

will in the event appear to be a need for him to testify then he be allowed to do so on a latter date.

The plaintiff's counsel was in disagreement to the above suggestion by the defendants counsels (Miss Mgutto for first defendant and Kevin state attorney for 2nd and 3rd defendants) and insisted that PWI should be allowed to proceed to give evidence as the power of attorney that he now holds was not only for the purpose of instituting the present suit but was a general power of attorney which he used to acquire the disputed plot on behalf of the plaintiff who was away by then.

The plaintiff's counsel further argued that he was not the counsel in charge of the conduct of this case from the very beginning and so he should be left to proceed in the same style as his predecessor counsel had done by letting PWI to proceed to give evidence and the power of attorney be admitted in evidence.

It is upon this confusion on the way forward in regards to the prosecution of this case that the court is to give its ruling.

I have perused through the file to see as to what actually transpired on the day of commencement of the trial 19/11/2005. Upon Mr. Uronu then the plaintiff's counsel introducing his witness the court inquired as to the Locus standi of PWI. The record reads:-

MR URONU: I have one witness today. He is called Roman Eliapenda Mosha.

COURT: Is he appearing as a witness or representing another under a power of attorney.

MR URONU: He is one of the witness.

It is thus very clear that from day one PWI was appearing as a mere witness and not in his capacity as a representative of the plaintiff. It then follows that it will be awkward and absurd to have PWI testifying under the ambit of the power of attorney at this juncture. It is wrong for the plaintiff's

counsel into going into the merits of the power of attorney which has no relevancy in the circumstances.

This is why even on PWI praying to tender the letter of offer issued to the plaintiff, the same was objected to which objection was sustained on grounds that as the plaintiff was to appear then the letter of offer would be tendered by her. There is thus no relevancy of tendering the power of attorney as I have already stated it serves no purpose I would thus rule that dispute the irregularities embodied in the power of attorney itself but the same is to be rejected and hence the objections raised are sustained. As to the way forward I give guidance to the effect that as much as I appreciate that Mr. Rweyemamu learned counsel is new to the case but he should proceed from where his colleague left and treat PWI as a witness and examine him on facts which were not touched on before and relevant to him. As the plaintiff is already present and ready to proceed with her case, she should be allowed to testify and defend her case in her personal capacity.

It is so ORDERED

B.R. MUTUNGI

JUDGE

25/7/2012

Read this day of 25/7/2012 in presence of Mr. Rweyemamu for plaintiff and Miss Mgutto and Kevin for 2nd, 3rd and 4th defendants respectively.

B.R. MUTUNGI

JUDGE

25/7/2012