

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MWANZA
AT MWANZA

LAND APPEAL No. 47 OF 2010

[Arising from Musoma District Land and Housing Tribunal Land application No 60 of 2008]

FADHILI ISMAIL HASSAN MACHUMU.....APPELLANT

VERSUS

AMINA JUMA.....RESPONDENT

JUDGMENT

MRUMA, J.

The respondent Amina Juma was the successfully party in an application instituted by the appellant in the District Land and Housing Tribunal of Musoma District in Mara Region. The application was in respect of a house on plot No 89 Block B Nyasho B within Musoma Municipality. The Appellant who was

the applicant had alleged that the plot and the house thereon belonged to his late father Ismail Hassan Machumu and he was an administrator of the estate of his late father who passed away in Mwanza in 2007.

The appellant averred that at is capacity as the administrator of the estate of the late Ismail Hassan Machumu, he had given notice to the respondent and other tenants to give vacant possession of the house but to his dismay, the respondent has ignored him. He alleges that the act of the respondent occupying the house and collecting rent from other tenants has caused him and other survivals of the deceased to suffer including the widow of the late Ismail Hassan Machumu. He prayed the District Tribunal to order the respondent to give vacant possession and hand over all the rents she had collected to him.

The respondent in her written statement of defence filed in the Tribunal contended that the house was the property of the late Fatuma Panya Mtunga who was the grandmother of the applicant. That the grandmother of the applicant/appellant had registered the suit house in the name of the applicant/appellant's father for convenience purposes only.

That the estate of Fatuma Panya Mtunga included the suit house and was divided to her heirs namely, Juma Machumu (elder son), and Ismail Machumu (father of the appellat). That Juma Machumu got three rooms one in main house and two in the rear house. Ismail Machumu got two rooms of the main house.

The trial tribunal held that the issue of ownership had not been established. It ordered the application to be struck out and advised the applicant to reinstitute it if he so wishes and join one David Manyama who according to the respondent was also

administering the estate of the late Fatuma Panya Mtunga the suit house inclusive.

In his appeal to this court the appellant is complaining that the judgment of the trial tribunal is against the weight of evidence and that the tribunal incorporated extraneous matters.

Before I deal with the grounds of appeal, I feel it pertinent to review the historical background of the matter and how the parties found themselves in this court.

Fadhil Ismail Hassan Machumu the appellant herein is the elder son of the late Ismail Hassan Machumu who passed away in August 2007. On the other hand Amina Juma the respondent herein is the wife of Juma Hassan Machumu who passed away in 2008. Ismail Hassan Machumu and Juma Hassan Machumu were brothers from the same mother Fatuma mtunga @ Mama Panya who died in 1998.

After the death of Fatuma Mtunga @Mama Panya Stephen Daudi Manyama was appointed by the Musoma Urban Primary Court in Administration Cause No 31 of 2003 to administer her estate. Among the properties which were listed as forming part of the estate of the late Fatuma is a house on Plot No 89 Nyasho area in Musoma Municipality i. e. the suit house. Following his appointment, the administrator distributed the suit house to the two heirs of the late Fatuma Mtunga @Mama Panya namely Juma Hassan Machumu (the husband of the respondent) and Ismail Hassan Machumu (the father of the appellant).

Following the death of Ismail Hassan Machumu in August 2007 which is about four years after the death of Fatuma Mtunga (his mother), the present applicant Fadhil Ismail Hassan Machumu was on 28th July 2008 appointed the administrator of his father's estate by the Mwanza Urban Primary Court in Administration Cause No 9 of 2008. Among the properties listed as forming part of the estate of the late Ismail Hassan Machumu

is the suit house on Plot No 89 Nyasho area in Musoma Municipality.

In his undated letter to all “*tenants*” which was copied to the District Land and Housing Tribunal of Musoma District and which was received on 4th August 2008, the appellant gave all “*tenants*” seven days notice to vacate the suit house claiming that the suit house belonged to the estate of his deceased father and that he was acting in his capacity as the administrator of his deceased’s father estate. It is this letter which sparked the present proceedings.

In his testimony before the District Land and Housing Tribunal of Mwanza, the appellant said that the suit house belongs to his late father. His father died in 2007 and in 2008 he was appointed by Mwanza Urban Primary Court to administer the estate of his late father. To quote his own words he said:

"I was appointed on 5th September, 2008 by administrative [sic] Primary court of Mwanza urban to administer the property of my deceased father including the suit premises No 89 Block B Nyasho area in Musoma"

From the appellant's own words he was appointed by the Mwanza Urban Court in September 2008. This means that he was appointed five years after Stephen David Manyama (DW2) had been appointed by the Musoma Urban Primary court to administer the estate of Fatuma Mtunga @ Mama Panya in which the suit house is listed.

The first question I asked myself in the proceedings its legality.

It seems plain to me that the appellant instituted these proceedings on the basis of the administration letter granted to him by Mwanza Urban Primary Court in Administration cause No

9 of 2008. According to the Mwanza Urban Primary Court register (which I had an opportunity to inspect) the said administration cause was filed on 16th January 2008 Vide ERV Receipt No 31620240 and it was granted on 28th July 2008.

The issue here is whether it was proper to include house on Plot No. 89 while it was already in Admin Cause No. 31 of 2003

Secondly in his application to that court the appellant had attached death certificate of Ismail Hassan Machumu who was 72 years at the time of his death and a memorandum of a clan meeting which appointed him to administer the estate of his father.

My concern on these two documents (i.e. death certificate and an extract of minutes of a clan meeting) is this; the death certificate indicates that Ismail Hassan Machumu died on 5th September 2007 at the age of 72 years old. His mother Fatuma Mtunga @ Mama Panya who died nine years earlier, i. e. 1998

was 68 years old at the time of her death. This means that Fatuma Mtunga was five (5) years older than Ismail Hassan Machumu. Had the mum passed away in 2007, she would have been 77 years old while the son Ismail Hassan Machumu was 72 years.

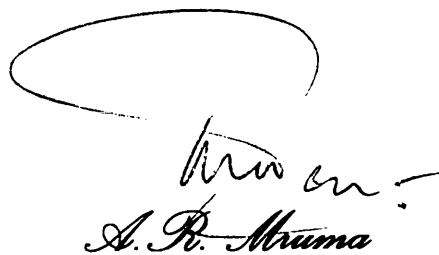
Thirdly, the list of clan members who attended the meeting which appointed the appellant is quite different from those who attended the meeting which appointed Stephen David Manyama in respect of the estate of Fatuma Mtunga despite the fact that the parties are claiming to be close relatives. I think that is where the problem started.

Now because the suit house was listed in Administration cause No. 31 of 2003 as part of the estate of the late Fatuma Mtunga and an administration letter was granted to Stephen David Manyama to administer the said estate the suit house inclusive, it was wrong in my opinion for the appellant to include

the same property in administration cause No 9 of 2008 as part of the estate of Ismail Hassan Machumu on account that a grant had already been made in respect of the same property.

The proper forum for the appellant to take was and still is to challenge the inclusion of that house in the estate of Fatuma Mtunga.

In the event therefore the appeal is dismissed with costs.

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JUDGE

At Mwanza

20th September, 2012

Date : 20th September, 2012

Coram : Hon. A.R. Mruma, J.

For Appellant: Present

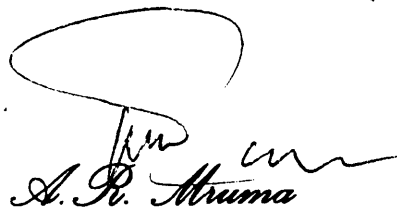
For Respondent: Present

B/C : Rose

Court:-

Judgment delivered this 20th day of September, 2012.

Right of Appeal Explained.

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JUDGE

At Mwanza

20th September, 2012