

IN THE HIGH COURT OF TANZANIA
AT DODOMA

DC CIVIL APPEAL NO. 2 OF 2016

(Misc. Civil Application No. 12 of 2015, Original Dodoma RM's Court Probate and Administration Cause No. 25 of 1989 and Misc. Application No. 22 of 2013)

RAMADHANI SALUM KIMOLO.....APPELLANT

VERSUS

AMANI PAULO MALYA.....RESPONDENT

JUDGMENT

27/09/2016 & 15/12/2016

A. MOHAMED, J.

The appellant was aggrieved by the decision in Misc. Civil Application No. 12 of 2015 from the Dodoma District Court which ruled in favour of the present respondent. The respondent had filed that application contesting the eviction order issued against him in the ruling in Civil Case No. 22 of 2013.

For an easy appreciation of this matter, the facts are that Chief Salum Kimolo died intestate in 1947. One Abdul Salum Kimolo was appointed the administrator of his estate until his appointment was revoked in a ruling by G.M.B. Meda RM, in Probate and Administration Cause No. 1 of 1982 at the RM's Court in Dodoma. Abubakar Salum Kimolo replaced Abdul Salum Kimolo thereafter as the administrator of Chief Kimolo's estate. Abubakar died in 2012.

Thereafter in 2013, Ramadani Salum Kimolo the appellant was appointed as the administrator of Chief Salum Komolo's estate vides Misc. Civil Application No. 22 of 2013. He promptly issued a 14 days' notice to the respondent to vacate from the house on Plot No. 4 Block 11 Mwagaza Avenue in Dodoma Municipality which he claims is part of Chief Salum Kimolo's estate. However Abdul Salum Kimolo had sold the house to one Ahmed Issa who in turn had sold it to Amani Paulo Malya, the respondent. That sale was held to be lawful by the Court of Appeal of Tanzania in Civil Appeal No. 4 of 1993 in which the appellant challenged the disposition by Abdul Salum Kimolo to Ahmed Issa where the present respondent was one of the three respondents.

The appellant has the following grounds of appeal:

1. That the Senior District magistrate erred in failing to comprehend the Court of Appeal's decisions in Civil Appeal No. 10 of 1993 was solely on the propriety of the purported sale but not about the legal ownership of the suit property.
2. That the Senior District Magistrate erred in failing to comprehend the suit house was not legally transferred to Ahmed Issa and so he could not pass the title to the respondent.

3. That the Senior District Magistrate failed to comprehend the suit property at all times has remained to be the property of the late Chief Salum Kimolo and therefore the disposition from Ahmed Issa to the respondent is unlawful as it no permit from the Dodoma Municipal Council.
4. That the Senior District Magistrate erred in failing to comprehend that the sale by the former Administrator of Chief Kimolo's estate Abdul Salum Kimolo was improper as Abdul's powers were revoked on 31/10/1988 in Probate and Administration Cause No. 1 of 1982 and thus the sale between Abdul Salum Kimolo and Ahmed Issa was invalid. Therefore Ahmed Issa could not dispose the house to the respondent.

The appeal was argued by way of written submissions. Submitting on the 1st ground of appeal, the appellant emphasized that the Court of Appeal of Tanzania did not address the question of ownership of the suit plot but the legality of the sale. He was of the view when that Court held that good title passed to the purchaser, it had in mind that the buyer had no good knowledge and was deceptive. He stressed there has never been such a case in the Court of Appeal.

His second ground of appeal is to the effect that the suit house was not legally transferred to Ahmed Issa by Abdul Salim Kimolo. And

therefore Ahmed Issa could not pass title to the present respondent. He invoked the doctrine of “**buyer beware**”.

The appellant's third ground of appeal is to the effect that since neither Ahmed Issa nor the respondent obtained permits or consent from the Municipal Land Officer, the 1st and 2nd dispositions were ineffectual.

On the 4th ground, the appellant argued the first sale to Ahmed Issa by Abdul Salum Kimolo, the first administrator, was ineffectual as Abdul Salum Kimolo's administrative powers were revoked by Hon. G. M. B. Meela, RM on 31/10/1998 in Probate and Administration Cause No. 1 of 1982 and therefore the initial sale to Ahmed Issa ceased. Consequently Ahmed Issa's disposition to the present respondent was unlawful.

He ended by alleging this court's decision per Mwalusanya, J. (as he was then) as well as the Court of Appeal's decision (Omar, JA as he was then) were concocted by unscrupulous people to deny him his rights.

In response to the appeal as a whole, the respondent pointed out that this court in Civil Appeal No. 15 of 1990 as well as the Court of Appeal in Civil Appeal No. 10 of 1993 decided in his favor as he was a bona fide purchaser for value of the suit property. He supported his position on the question of a bona fide purchaser with the Court of

Appeal's judgment in **Peter Adam Mboweto Vs. Abdallah Kulala and Another [1981] TLR 335.**

The respondent went on to state the appellant's appointment as an administrator of Chief Kimolo's estate was time barred. The said the former administrator died on 20/12/2012 whilst the appellant was appointed on 5/4/2013 following his Misc. Application No. 22 of 2013 in the District Court of Dodoma which was filed after almost 200 days contrary to the Law of Limitation Act [Cap 89 RE 2002] that directs an application to be made within 60 days under Part III, item 21 to the Schedule of the same.

He further submitted that the appellant's claim for land is also time barred as the cause of action arose in 1993 which is almost 23 years to date. Further, the respondent maintained this court is barred to entertain the appeal by the principle of it being *functus officio* as this court ruled that Abdul Salum Kimolo, then administrator legally sold the suit property to Ahmed Issa. He referred this court to **Bibi Kisoko Vs. Minister for Land, Housing and Urban Development and Another [1983] TLR** where the Court held *inter alia* that;

"... in matters of judicial proceedings, once a decision has been reached and made known to parties, the adjudicating tribunal thus becomes functus officio"

Lastly he pointed out that once an issue of fraud or forgery is raised, as was held in **Omari Yusuf V. Rahma Ahmed Abdulkadir**

[1987] TLR 113, that allegation has to be established on a higher degree of probability than which is required in ordinary civil cases.

In his rejoinder submissions, the appellant stated that as he had no locus in the referred High Court and the Court of Appeal cases, they should be treated with contempt. He assailed the two judgments and requested this court to avail them to him. Lastly he maintained that a party who alleges must prove as is provided under Section 112 of the Tanzania Evidence Act [Cap 6 RE 2002] and demanded the respondent to prove the existence of the two judgments.

After hearing the parties contentions and having reviewed the lower court's records, I find the only question to be answered by this court is whether the Court of Appeal conclusively determined that the first administrator Abdul Salum Kimolo lawfully disposed of the suit property to Ahmed Issa.

I am satisfied this question was answered by Omar, JA (as he then was) in a judgment in Civil Appeal No. 10 of 1993 where the court held that Abdul Salum Kimolo as the administrator of the late Chief Salum Kimolo had lawfully disposed of the house on Plot No. 4 Block 11 Mwangaza Area to Ahmed Issa. The Court of Appeal upheld the decision of Mwalusanya, J. (as he was then) in Civil Appeal No. 15 of 1990. I am further satisfied these were decisions were of this court and that of the Court of Appeal of Tanzania.

In the light of the above concurrent decisions, I am satisfied Ahmed Issa derived good title from Abdul Salum Komolo which he passed to the present respondent.

After the foregoing, I find the appeal devoid of merit and I dismiss it with costs.

Before parting with this appeal let me add that I am also in agreement with the respondent's arguments that the appellant's Misc. Application No. 22 of 2013 was time barred for being brought after 200 days from the death of Abubakar Salum Kimolo. I am also content the appellant's claim for the suit property has been time barred. I further note that the law sets a 6 month limit for an administrator of an estate to file an inventory of the division of an estate to heirs. In the present case there was no application for extension of that time by the appellant.

It is so ordered



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A. MOHAMED

Judge

15/12/2016

The right of appeal explained.



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A. MOHAMED

Judge

15/12/2016