

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
LAND CASE NO. 89 OF 2016**

**BUKOMBE ABDALLAH HASSAN.....PLAINTIFF
VERSUS
EVOD MALLYA.....DEFENDANT**

JUDGMENT

Date of Last Order: 21/10/2019

Date of Judgment: 31/10/2019

S.M. Kulita, J.

The Plaintiff one BUKOMBE ABDALLAH HASSAN filed this suit against the Defendant one EVOD MALLYA claiming for the following:-

- (1) Declaratory order that the Plaintiff as the administrator of estates of the late ABDALLAH HASSAN is the legal owner of all that parcel of land comprised on Plot No. 13 BLOCK "C" Ndanda Street, Kariakoo area, Ilala Municipality within the city of Dar es Salaam registered under Ref. No. ILA/MEMP/2016/13/RAT.
- (2) Perpetual Injunction restraining the defendant by himself or his agents from interfering with possession and use of the parcel of land.

(3) Costs of the suit.

The Plaintiff is represented by the Learned Counsel Daniel Msemwa while the Defendant is represented by the Learned Counsel Amon Ndunguru, Advocates.

The only witness for plaintiff's case one Bukombe Abdallah Hassan (PW.1) who is also the complainant in this matter testified that he lives in the disputable house. He said that the said house was the property of his late father Abdallah Hassan who had passed away in Dar es salaam on 17/8/2014 and he was appointed by Kariakoo Primary Court to be the Administrator of his estates on 25/10/2016. He is therefore the legal representative, legal owner and beneficiary in the estates of the deceased, Abdallah Hassan.

The witness stated that among the properties left by the deceased is that said house. He said that he has the documents to prove the ownership of the said house by his father. He tendered to court the **Letter of offer** which was received and admitted as Exh.P₁.

PW₁ further stated that his conflict with the Defendant started in November, 2016 whereby the Defendant and his group of people (men) arrived at his residence and told him that they are auctioneers assigned a duty by the Ilala District Land and Housing Tribunal (DLHT) to evict him and his tenants from the house and take vacant possession of the house.

PW₁ stated that those persons never submitted any

document to him which shows that the tribunal had actually made the said order against him. However, he made a follow up at the tribunal and acquired the relevant document. It was an **Order from Ilala District Land and Housing Tribunal for the Application No. 153 of 2005** between Evod Mallya (defendant) versus Mrs. Mwaibula and 2 Others, namely Amina Said and Farida Feisali. PW₁ said that in that said order of the tribunal which was received by this court as Exh. P.2 he is not mentioned as among the parties. He said that what the Defendant was doing was an attempt to take over the said property. PW₁ said that due to that fear he decided to lodge this case at High Court. He said that those persons named as Respondents in Exh. P₂ were his tenants by that time. He considered the attempt by the defendant to evict him as a fraud deliberately planned to dispose him.

PW₁ prayed for the court to declare him the lawful owner of the property and to permanently restrain the Defendant and or his agent from interfering with his peaceful enjoyment of the land. He also prays for costs.

In the cross examination by the Defendant's Counsel PW₁ stated that the disputable property has never been sold. He said that late Abdallah Hassan was the 2nd owner of the property after purchasing it from the person whom he (PW₁) does not remember. Pw₁ also stated that he doesn't know if the Defendant purchased the house in a public auction. He said that he had never known that there was a case at the

DLHT that's why he had never filed the objection proceedings thereat.

That was the end of the plaintiff's case. There was no defence case as the Advocate for the Defendant withdrew himself from representing his client while the defence was about to start. After three consecutive sessions passing without attendance of the defendant the court closed the case and scheduled the matter for judgment.

From the evidence that have been adduced the following issues are to be determined;

- (1) Who, between the parties, is the lawful owner of the house located on Plot No 13. Block "C" Ndanda Street, Kariakoo area, Ilala Municipality within the City of Dar es Salaam.
- (2) To what relief(s) are the parties entitled.

The above mentioned issues are collectively analysed as follows; The fact that the plaintiff is the administrator of estates of the deceased, late Abdallah Hassan it is a rebuttable presumption that he is the legal owner of the property(s) left by the deceased. The letter of offer (Exh.P₁) tendered by the plaintiff (PW₁) has been in his possession since he was appointed to be the administrator of estates by Kariakoo Primary Court on the 25/10/2014.

The Plaintiff was unaware of the Defendant's move the

dispose him from the premise. The Defendant's attempt to evict the Plaintiff's tenants from the suit house made the plaintiff to note that there was a deliberate plan to dispose him from the said premise hence filed this suit. The defendant's act to abandon the case implies that he has noticed that the matter has no merit on his side.

For the said reasons therefore, it is evident that the lawful owner for the house located on Plot No. 13 Block "C", Ndanda street Kariakoo area, Ilala Municipality within the City of Dar es Salaam is the Plaintiff. The perpetual injunction to restrain the Defendant by himself or his agents from interfering with possession and use of the said parcel of land is hereby granted.

In upshot the suit is decided on favor of the plaintiff as stated. Defendant to bear the costs.



S.M. Kulita

JUDGE

24/10/2019