

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY**

AT DAR ES SALAAM

LAND CASE NO 68 OF 2016

**REHEMA SENGA MLELA (as Administratrix of the
Estate of the late ZAINABU MAULID TEWA).....PLAINTIFF**

VERSUS

AMINA TEWA SAID TEWA.....DEFENDANT

JUDGMENT

MGETTA, J:

The two blood sisters sharing the same womb (mother), but having different fathers, are contestants in this suit. The Plaintiff, Rehema Senga Mlela, the elder sister is fathered by the late Senga Mrisho Mlela; while, the defendant, Amina Tewa Said Tewa, the young Sister is fathered by the late Tewa Said Tewa. According to their testimonies, both are currently residing within the same compound in the house located on plot No.202, Block W, Magomeni Mikumi, Kinondoni Municipality, (henceforth **the suit house**), which is a bane of their dispute.

Acting as administratrix of the estate of the late Zainabu Maulidi Tewa (henceforth **the late Zainabu**), their mother, on 24th August, 2016 the

plaintiff presented for filing of this suit claiming against the defendant for the following reliefs:

1. A declaration that the suit house is part of the estates of their mother, the late Zainabu.
2. Perpetual injunctive order restraining the defendant, and her workmen, agent or any other person acting on her behalf to transfer the suit house in her own names.
3. Costs of the suit be borne by the defendant.
4. Any other orders that this Court may deem just and fit to grant.

In her written statement of defence, the defendant vehemently denied the allegation against her. She requested this court to dismiss the suit with cost.

When the trial commenced, Mr. Michael Mkenda, the learned advocate appeared for the plaintiff; while, the defendant at the beginning was being represented by the late Delphiner Kimbori, the learned advocate. Following her death, Ms. Margareth Ringo, the learned advocate, took over and represented her up to the end of the trial. The framed and agreed issues were as hereunder:

1. Who is the lawful owner of the suit house.
2. To what reliefs are the parties entitled.

During the trial, the plaintiff testified as plaintiff witness No.1 (PW1) and then called two more witnesses namely Fadhili Tewa Said Tewa, who testified as PW2, and Ally Maulid Mgaya, who testified as PW3. In defence, the defendant testified as defendant witness No1 (DW1) and one Yusuf Bin Sabith as defendant witness No2 (DW2).

In brief, the following is the testimonies given by the plaintiff side. PW1 Rehema (68 years) testified that she is elder to the defendant (60 years) and both are staying in the suit house. She is in the suit house since 2003. She stated that Zainabu passed away in 2015 and she was appointed by clan members and then by the court (exhibit P1) to administer her late mother's estate which included the suit house.

She went on explaining how the late Zainabu obtained the suit house. She said after the late Zainabu sold her house at Kariakoo she had inherited as sole heiress, on 29.9.1992 she purchased a *banda* from the late Saidi Ally, which she later on developed and became the suit house. That purchase transaction was witnessed by Magomeni Primary Court as per exhibit P2 (Hati ya mauzo ya Nyumba Plot Na. 202 Block "W"). PW1 Rehema went on producing on offer dated 17.7.2003 and title deed No. 82212 showing that the suit house is in the names of the late Zainabu and the court admitted them as exhibit P3 and P4 respectively.

She ended by saying that the suit house belonged to the late Zainabu and not to the defendant's father, the late Tewa Saidi Tewa (henceforth **the late Tewa**); and, it does not form part of the estate of the late Tewa. She however added that it was the late Zainabu who opened Administration Cause in High court praying to be allowed to administer the estate of her husband, the late Tewa; the prayer which was granted. At that time she was in the company of the defendant. She stated further that the estate of the late Tewa was not distributed as there was a dispute. It was the defendant who complained to the Registrar of High Court, Dar es Salaam District that the late Zainabu had failed to distribute them. The late Zainabu replied to the Registrar, High Court as per exhibit P5, that she was unable to distribute some of her husband's estate namely plot No. 4 Msasani Beach and a Farm at Mbagala due to unavoidable circumstances. She died before accomplishing that duty of distributing the estate of her late husband.

When cross examined by Kimbori, the learned advocate for the defendant, the Plaintiff averred that before shifting to the suit house in 2003, she was staying at Kariakoo and the defendant was staying at Msanga street, Magomeni. She shifted from Kariakoo to the suit house in order to be near to her elderly mother, the late Zainabu.

On his part, PW2 Fadhili asserted that his father, Tewa Said Tewa passed away on 31/3/1998 and left some properties such as a plot at Msasani Beach and a farm and/or sawmill machine at Mbagala area. Following his death, the late Zainabu was appointed as administratrix of his estate, the estate which was never been distributed to date due to same other problems. He insisted that the suit house does not form part of the estate of the late Tewa; but rather belongs to the late Zainabu as the title deed explain by itself.

In his evidence, PW3 Ally shows that he know the disputants as his uncles, the daughters of his sister, the late Zainabu. What he also knows is that the late Zainabu told him that she purchased a *banda* which she developed and became a suit house by using her own resources after she had sold her own house No. 29 Pemba Street, Kariakoo in 1990s. He did not recall when she purchased the said *banda*. Hence, the suit house forms part and parcel of the estate of the late Zainabu, he insisted.

The above is a brief evidence given by the plaintiff side. The following is what was adduced by the defendant side.

DW1 Amina asserted that she resides in the suit house together with the plaintiff. She said it is family house. She was staying there for a long time with her father, mother, relatives, children and tenants. In her

testimony, she insisted the suit house is family house, but the title deed is in the names of her late Zainabu, her mother. After the death of her father, the suit house was handed over to her. She produced form No. 27, exhibit D1 and exhibits D2, D3, and D4 to support her assertion. On the strength of those documents she prayed to be declared as owner of the suit house, despite her admission that the title deed is showing that the suit house is in the names of the late Zainabu. On his part, Dw2 Yusufu just stated that he appeared before this Court just to confirm that the suit house belonged to the defendant.

The foregoing is all about the evidence given by both sides.

I have gone through the exhibits tendered by the defendant and found that all do not lead evidence to prove that she is owner of the suit house. Even her oral evidence shows that the suit house was a family house and the title deed is in the names of the late Zainabu. On the other side, there is sufficient evidence showing from the plaintiff side proving to balance of probability that the suit house belong to the late Zainabu, and therefore forming part and parcel of her estate after her death. The exhibits, to wit exhibit P4, the title deed tendered by the plaintiff supports the plaintiff's evidence. Furthermore, the evidence of the defendant and that of PW2

Fadhili and PW3 Ally corroborates PW1 Rehema's evidence that indeed the suit house belongs to the late Zainabu.

As there is no strong evidence from the defendant side to controvert the above finding, I find this suit meritorious. I thus proceed to declare that the suit house is part and parcel of the Estate of the late Zainabu Maulid Tewa. I further issue a perpetual injunctive order restraining the defendant, her workmen and/or agents or any other person acting on her behalf from transferring the suit house into her own names. Considering that the two disputants are blood relatives as sisters, each party has to bear its own costs.

It is so ordered.



J.S.MGETTA
JUDGE
01/10/2019

COURT: Typed judgment is delivered today this 1st day of October, 2019 in the presence of Mr. Michael Mkenda, the learned advocate for the plaintiff and in the presence of Ms. Margareth Ringo, and the learned advocate for the defendant.



J.S. MGETTA
JUDGE
01/10/2019

COURT: Right of appeal to the Court of Appeal is fully explained



J.S. MGETTA
JUDGE
01/10/2019