

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**  
**LAND CASE No. 10 OF 2015**

**HASSAN SAID** (Administrator of the Late Ramadhani Mohamed Sozigwa).....**PLAINTIFF**

Versus

**1. MWANAISHA JUMANNE**.....**1<sup>st</sup> RESPONDENT**  
**2. TIBTUS MICHAEL MWACHA**.....**2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

24<sup>th</sup> December, 2019 - 12<sup>th</sup> February, 2020.

**J. A. DE-MELLO J;**

The Plaintiff, **Hassan Said**, as an **Administrator of the Estate** of the late **Ramadhani Mohamed Sozigwa** passed on in **13<sup>th</sup> May, 1991**. He is claiming against the Defendants for **Judgment** and, **Decree** for the following orders:-

**(a) Declaration that, the farm in dispute is part of the Estates of the late Ramadhani Mohamed Sozigwa and such be handed over to the Plaintiff in order to distribute to the beneficiaries.**

**(b) Declare null and void the Sale transaction of the said farm entered into between the defendants.**

**(c) General damages 10,000,000/= for mental harassment.**

**(d) Cost of this suit.**

**(e) Demolition of the suit house erected thereon.**

**(f) Any other relief(s) this Honorable court may deem fit.**

Before the commencement of the hearing of the suit and, **three (3) issues** were framed and, agreed by Counsels, as follows:-

- 1. Whether the disputed land is part and, parcel to the Estate of the late Ramadhani Mohamed Sozigwa?**
- 2. If the issue number one is in affirmative, whether the Sale of disputed land from the first Defendant to second Defendant was lawful?**
- 3. To what other Relief(s) are parties entitled.**

At the hearing of this suit the Plaintiff was represented by **Counsel Kyaruzi Alexander**, whereas; the first **Defendant** enjoyed the service of **John Mushi**, and the second **Defendant** in care **Cleophas Manyangu**. At the commencement of the hearing of the suit, the **Plaintiff** passed on while this suit was in progress, as **Twaha Ushindi** was appointed on his stead as the Administrator of his Estate, the suit inclusive. **Counsel Kyaruzi** lined up and, summoned four (4) witnesses namely; **Twaha Ushindani**, marked as **PW1**, **Kesi Said** marked as **PW2**, **Mwinyikondo Juma**, marked as **PW3** and, **Kijakazi Ramadhan** and, **Mohamed**, marked as **PW4**. I however, find it logical to remind ourselves, albeit briefly, the summary of facts surrounding this matter as portrayed by both sides. It all revolves from a piece of land, otherwise known as a Farm located at **Kerege Bagamoyo** in **Coast Region** in which the Plaintiff claims it to belong the deceased estate. Against that premise is the first **Defendant**, as Administratrix of

the late **Jumanne Mohamed Sozigwa**, who entered into contract for the sale of the said suit land for the total amount of **One Hundred and Fifty Million Tanzanian Shilings (TShs. 150,000,000/=)** to the second Defendant. In view of proving their cases, the Plaintiff tendered and which the Court admitted the following exhibits;

**Exhibit PI-** Letter of Appointment, as Administrator of the Estate of the late **Ramadhani Mohamed Sozigwa**, dated on 23<sup>rd</sup> June, 2017 from Primary Court of Bagamoyo.

On their part, the first Defendant tendered the following exhibits;

**Exhibit D1**, Agreement for Sale of farm located at Kerege

**Exhibit No.B** a copy of Judgment for Appointment as Administratrix of the late **Jumanne Mohamed Sozigwa**.

**Twaha Ushindani, PW1** testified that, the disputed suit farm is the property of **Ramadhani Mohamed Sozigwa** who is his uncle, residing in Mwananyamala Dar Es Salaam. The in due course of his life he purchased the suit land at Kerege popularly known as **Kwa Kikwete**, way back in the year. with the intention of moving his aged mother one Kijakazi Mohamed, his grandmother **Binti Myongo**, mother to **Jumanne Mohamed Sozigwa** and built a house for them to reside. In the year 1988 **Jumanne Mohamed Sozigwa, Kijakazi Mohamed** and **Ramadhan Mohamed Sozigwa** passed away, while in **1990 Jumanne Mohamed Sozigwa** also passed on. **In 1992** and following road expansion the deceased children living in Mwananayamala were informed of the notice who hurriedly came to evaluate the farm and the House including cashewnuts and, coconut trees. They even received a share out of the proceeds as

compensation but later to find out the house to have been demolished. They later came to know a buyer allegedly, from the first Defendant who disposed the farm to him. **PW2 Kesi Saidi** and an adjacent neighbour corroborated the , the farm to belong to the late **Ramadhani Mohamed Sozigwa** having witnessed him as a friend to his father all through his childhood until before he passed on. He grew up hearing from his father how the deceased bought that, piece of land all in quest of relieving his mother and brother from residing interior far from basic facilities. **Mwinyikondo Juma, PW3** a Street leader shared a similar version but one who went father to describe the vendor of the suit-land to the deceased, named **Muungwana**. He even testified to be beneficiary of a piece of land where he currently reside given to him as a gift by the deceased. He witnessed the house being built as the deceased mother one, **Kijakazi**, the deceased younger brother and a father to the first Defendant, one, **Twaha**, and their children moving in. On cross examination **PW3** stated that, the deceased worked for gain in and resided in Mwananyamala Dar Es Salaam all his entire life until his demise. He shared what the previous witnesses had in as far as road expansion took effect with the family being beneficiaries of government compensation in the year 1992. It all arose in the year 2009 when the deceased children petitioned a Probate suit at **Kinondoni Primary Court** and only to find out the first defendant and their first cousin has sold the farm to the second Defendant and without their knowledge. **Kijakazi Ramadhani Mohamed PW4** born in **Kerege Bagamoyo** confirmed the farm to belong to her late father, **Ramadhani Sozigwa**. Prior they resided in **Uyanika** a

remote village with no basic facilities but moved to Kerege just adjacent to the road in a house built by the deceased. At the time the father passed on, she further alludes, she was a girl below eighteen but in the year **1992** she with the rest of the deceased children. Not measured she estimated the land to be of **five (5) acres**. She too claimed foul play on the part of their cousin **DW1 Mwanaisa Jumannne Sozigwa** who illegally robbed them of their inheritance. **Mwanaisa Jumannne Sozigwa, DW1**, testified the land to belong to his father, the late **Jumannne Mohamed Sozigwa**, her being duly appointed as the Administratrix of his Estate. The property, she recalls to have been a barren land upon bought in way back in **1966** where the house was built as the family resided. That following his demise in **1988**, she took over his Estate following her appointment as the Administratrix of the late **Jumannne Mohamed Sozigwa**. Currently the ownership is in the name of **Mwanaisa Sadick Abdallah** and his brother **Masoud**, notwithstanding the sale partly conclude and to the tune of **TShs.150,000,000/= (Tanzanian Shillings One fifty million)**, with an advance of **TShs. 50,000,000/=** by the second Defendant. She too was a beneficiary of compensation that **PW4, Kijazi** received the same from the government. **DW2 Maliki Seif Mwenegoha** a nephew of the late **Ramadhani Mohamed Sozigwa**, recalled the shifting of the late **Jumannne Sozigwa** in **1940's** from **Uyanika** to **Kerege** where he acquired the suit land and resided there until his demise in 1988. He was even conversant of **Ramadhani Sozigwa Mohamed** to be a Public servant and, retired in **Mapinga** area. That, upon the demise of **Jumannne Mohamed Sozigwa** he was in attendance and, never claimed

the suit land to belong to him which then translated into **Jumanne Mohamed Sozigwa** property. **DW3 Sadick Jumanne Mohamed**, the son of the late **Jumanne Mohamed Sozigwa**, alleged the farm to belong to their late father, **Jumanne Mohamed Sozigwa**. He even was assured of this from his aunt one **Habituri Mohamed Sozigwa** confirmed that the disputed land was belongs to **Jumanne Mohamed Sozigwa** as he wondered why now considering **Kijakazi Mohamed Sozigwa, Kalunde Mohamed Sozigwa, Mawazo Mohamed Sozigwa and Ramadhani Mohamed Sozigwa** were all as present when **Mwanaisha** was appointed as Administratrix. That it was his father the said **Jumanne Mohamed Sozigwa** who spent most of his life time in Kerege, the farm in dispute and their bread winner. **DW3** left **Mapinga** after the death of his father but could visit and reside at Kerege at any time it being their home. He wondered how **Mwinyikondo PW2** built a house adjacent there and was aware of the demolition that in **1992** while in Mapinga himself. **DW4 Tribus Mwacha**, is the victim now at crossroad having advanced **TShs. 50,000,000/=** out of **TShs. 150,000,000/=** of the agreed consideration value with the first Defendant the said **Mwanaisha**. He tendered a sale agreement as **exhibit D1** which the Court admitted. He narrated all the ground work he conducted to ensure he is on the right deal and to confirm the first Defendant as the lawful Administrator of the deceased father **Jumanne Mohamed Sozigwa**. The Defendant even took her to the Primary Court to confirm this. That he even met with **Mwinyikondo Juma PW3** who assured **DW1** to be lawful administrator. Similarly, was the Village leaders at Kerege. The foregoing

is all about the evidence given by both sides, which in **Balance of Probability** will assist the Court in determining who the rightful and legal owner is. Other than exhibits tendered, none of the parties tendered any document to show the unanimous appointment of the first defendant other than her appointment from **Bagamoyo Primary Court**. In turn two appointments were tendered by the Plaintiff for the deceased **Ramadhani** and of which the Plaintiff assumed his role. There is also ample evidence uncontroverted by both that, it is **Kijazi** who collected compensation for the road expansion and who distributed the same to all. This proves her recognition as the daughter of the deceased for their father's land. The claim by **DWI** does not augur well if this truly was the case. She or any other relative of his father **Jumanne** could have be responsible. The alleged sale if genuine had no reason to be confidential as it appears if she was appointed the Administrator as alleged. **PW4 & PW3** outsider with one a beneficiary of an adjacent piece of land while the other a local leader authority out it very clear as to who sold the land to the deceased **Ramadhani**. This alone confirms the late Ramadhani to be original the purchaser of the suit land and from one Muungwana, built the house to accommodate his mother and, brothers with their children from **Ukani to Kerege**. He was a public servant and, earning a decent income to be able to acquire land. Never and little did he thought that one of his own would turn out against and acted as she did. There is therefore sufficient evidence from the Plaintiff's side that overwhelms that of the Defendants proving the suit under **section 110 (1) of the Evidence Act [Cap. 6 R.E 2002]**

**“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of the facts which he asserts must prove that those facts exist.”**


**Section 110(2) of the Evidence Act [CAP 6 R.E 2002]**

**“When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”**

None of the Defendants witness not even one local leader of official from Court was brought to condense their case with a view of controverting the above findings.

I find this suit to be meritorious as proceed to declare that the farm subject to this suit is part of the **Estates of the late Ramadhani Mohamed Sozigwa** whose lawful heirs under the administration of the Plaintiff are legally privy and entitled. I further declare null and, void the alleged Sale transaction of the said farm entered into between the Defendants as the money alleged to be advanced be refunded to the alleged buyer, the second Defendant. Considering the parties being blood relatives, I order for no costs.

It is so ordered.

  
**J. A. DE-MELLO**  
**JUDGE**  
**18/02/2020**