

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

PC CIVIL APPEAL No. 70 OF 2020

FATUMA ABDALLAH MAGOGA @ SIKUDHANI.....1st APPELLANT

JOHN CURTIUS MSIGALA.....2nd APPELLANT

Versus

MBARAKA HASSAN MAGOGA (Administrator of Estates
of the Late Abdallah Selemani Magoga).....**1st RESPONDENT**

SAPHIA SELEMANI ABDALLAH (Administratrix
Of Estates of the Late Abdallah Selemani Magoga.....**2nd RESPONDENT**

JUDGMENT

20/8/ - 22/9/2020

J. A. DE-MELLO, J;

The Primary Court held in favour of the Respondents, which aggrieved the Appellants, who then applied for **Revision** at the **District Court of Kinondoni in Probate & Administration Cause No. 27 of 2018** which upheld the lower Court decision. Four grounds of Appeal as listed hereunder are on record;

- 1. That, the Hoinourable Magistrate erred in law and in fact by making contradicting decision when approving the decision of Primary Court of Kinondoni in Mirathi No. 27 of 2018.**

2. That, the Honorable Magistrate erred in both in law and fact by failure to step into the shoes of the trial court and properly analyze evidence and make reasoned decision.
3. That, the Honorable Magistrate erred in law in approving decision of the primary court which was based on illegal decision of the Ward Tribunal for Kinondoni that House no. 518 and 519 at Kinondoni shamba, Ade Estate, Dar es salaam are part of the estates of the late Abdallah Selemani Magoga (deceased).
4. That, the Honourable Court erred in law and in fact by failure to nullify the decision of Primary court Magistrate when ordering the parties to refer their dispute to Land Court for determination of ownership of the disputed Houses No. 518 and 519 built on one plot at Kinondoni Shamba.

Appellants are enjoying the services of **Advocate Tibanyendera**, while the Respondents are un-represented, which then paved way for grant of written submissions, for the lay respondents to outsource legal aid assistance.

Submitting jointly on the **1st** and **4th** ground of Appeal, Counsel is of a firm view that the decision of **District Court for Kinondoni** contains contradictory decisions by approving the decision of Primary Court in **Mirathi No. 27 of 2018**, depicting material error in the Primary Court decision which the District Court opted not to address which could nullify the lower primary Court's impugned decision. This is evidenced by order of the filing a land case before land Court, for house on **Plot No. 518** and **519**, the properties of the late **Abdallah Selemani Magoga**,

leading to two contradicting decision on the same subject matter. In as far as the second ground of Appeal is concerned, Counsel submits that no single evidence had been brought forward to prove that, the suit property ever belonged to the late **Abdallah Selemani Magoga**. It is the Appellants who advanced sufficient documents, including decision of the **District Land and Housing Tribunal which** declared the suit property to belong to the late **Anastazia Bernard Temba**, in as far as the Residence License had, declaring her as a sole owner. She has been managing the houses by collecting rent and, after her death, it is her children, including the Appellants, who took over. Further that, the reliance by the **District Court of Land case no. 188 of 2017**, and which had no jurisdiction, rendered the decision fatal, he observed. It was wrong for both the Primary as well as the District Court to rely on the decision of Ward Tribunal in establishing ownership of the land Constituting **Houses No. 518 and 519** situated at **Kinondoni Shamba**.

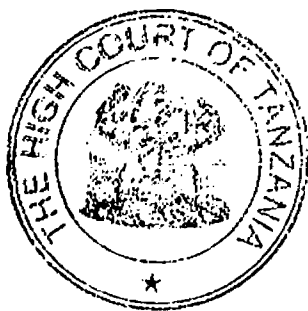
Attacking the Appeal the Respondents informed this Court that, the deceased left three children namely; **Fatuma, Mtupeni** and, **Juma** while the **2nd Respondent** is the deceased's blood sister. Further that, on his demise, the late **Abdallah Selemani Magoga** who died in **1987**, left no wife following earlier divorce but, even the second, who died in mid 1980. The deceased built two houses in **Plots no. 518 and 519 Kinondoni Shamba** and, another house in **Kinondoni Moscow on Plot No. 188**. He passed on while residing on house situated at **Plot 519 at Kinondoni shamba**, while the divorced wife, one **Anastazia Bernard Temba** lived in Kilimanjaro. Following the death, the clan meeting appointed the **1st Appellant**, the elder daughter of the

deceased and, the **2nd Respondent**, as co-Administratrix of the deceased's estates. It is here then that, the former divorced wife emerged, trespassing into the deceased's house in **Plots No.518 and 519 Kinondoni Shamba** where she tempered with the Titles to reflect her names **Anastazia Bernard Temba**, notwithstanding the truth that, the two houses situated in **Plot No. 518 and 519 Kinondoni Shamba** belonged personally to the deceased **Abdallah Selemani Magoga**. The Appeal is baseless, he prayed for its dismissal with costs. Going through the rival submissions by the Parties, it is evident that the matter before the District Court was purely a Probate Revision, with limited powers in that premise but, not for determining the ownership. From records, it is clear that, before institution of **Mirathi No. 27 of 2018** the issue of ownership of suit land, on **Plots no. 518 and 519** respectively had already been determined before **Ward Tribunal for Kinondoni** on the **23/1/2018**, with the **1st Appellant**, as a party before the said Tribunal. She ought to have appealed on the decision, rather than, contesting ownership before this Court. The remedy was available the time the matter was within the ambits of the Ward Tribunal. It is the case of **Athuman Ally Nyabange vs. Magori Ally Nyabange & Another Land Case No. 48 of 2014**, the High Court opined;

"I take it to be the law that, where a party to a subsequent proceeding was privy to a previous judgment, he cannot, in the subsequent proceeding, avoid its effect for the reason that it was a nullity. He has to use the appropriate available forums to ask for a formal nullification of a nullity decision."

Further and, looking at the Judgment of the District Court, **pages 4 to 5**, the Magistrate explained the reasons for upholding the findings of Primary Court, which I have no reason to fault, as I find no contradiction whatsoever as alleged. It was rooted from proper evaluation of the facts and evidence adduced before the Trial Court which the District Court found basis for its decision.

From the foregoing, I find and, hold that, the entire Appeal has no merit, as I dismiss the same with no order to costs, this being a Probate background matter.



 Recoverable Signature

X *J. A. De-Mello*

Signed by: J.A. DE-MELLO

Judge

22nd September, 2020