

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

TANGA DISTRICT REGISTRY

LAND APPEAL 35 OF 2018

**(Arising from the decision of the District Land and Housing Tribunal in Tanga
District at Tanga in Land Case No. 12 of 2018)**

ABISAI URONU..... APPELLANT

VERSUS

**ELIBARIKI NATHAN (Administrator of Estate of the late Judica E.
Mbowe).....RESPONDENT**

JUDGMENT:

MRUMA,J.

The facts that the Appellant Abisai Uronu and the late Judica E. Mbowe are relatives and friends are not relevant to this appeal. Although each side says it in a different way, what is relevant here is that, the two did work together in a business. The Appellant claims that during their partnership in business he and the late Judica E. Mbowe did collectively and jointly acquired a property situated on Plot No. 31/15 Duga Industrial area in

Following the demise of Judica Eliuzima Mbowe, the present Respondent Elibariki Nathan was appointed an administrator of his estate in Probate and Administration Cause No, 8 of 2004 of Machame Primary Court in Hai District, Kilimanjaro Region. Sequel to this appointment, the present Appellant preferred Civil Case No. 6 of 2005 of Machame Primary Court against the administrator claiming that he had a share in the estate of Judica Eliuzima Mbowe particularly in respect of properties on Plot No. 31/15 which is registered in the sole name of the late Judica Eliuzima Mbowe with title deed number 8421 registered on 12/11/1991.

In its judgment dated 14/09/2005, the Primary Court of Machame ordered that:

'Hivyo Mahakama kwa pamoja inasema Mdai ana haki ya kudai na mali alizotaja Kiwanja No. 31/15 na kiwanja chenye hati Namba 8421 ya tarehe 12/11/1991 na Karakana. Msimamizi aangalie ni sehemu gani atampa mdai maana hata vielelezo vinaonyesha kuwa mdai alikuwa na sheya na marehemu'

This order was executed and the properties mentioned thereon were sold to one Marry Elias Kimatare in an auction conducted on 20/02/2012. Consequently however, the proceedings, decision and orders of Machame Primary Court in Civil Case No. 6 of 2005 and the proceedings, decisions

and orders of the District Court of Hai in Misc. Civil Rev. No. 1 of 2012 which ensued from that case were all nullified by the High Court at Moshi in Civil Revision no. 7 of 2015 (Fikirini, J.) on 17/05/2016.

In its ruling, the High Court held that the issue in Civil Case no. 6 of 2005 (which gave rise to DC. Civil Revision No. 1 of 2012 involved both Land and Registered landed property which the Primary Court had no jurisdiction. The court therefore nullified all proceedings of the lower courts.

The Appellant Abisai Uronu came back to Tanga and instituted in the District Land and Housing Tribunal for Tanga District, Land Application No. 12 Of 2018 praying for among other orders that the District tribunal make an order that the proceeds realized from the sale of properties on Plot No. 31/15 located at Duga Industrial area in Tanga Municipality be distributed to him. In its judgment, the District Land and Housing tribunal held that the Appellant/Applicant had failed to prove that he had a share in that property. It therefore proceeded to dismiss the Appellant's claim. The Appellant is aggrieved and has appealed to this court on three grounds, the most relevant being the first ground in which he complained that the District Tribunal failed to comprehend his evidence which was to the effect

that the parties' partnership and their business relations were solely informal and undocumented family partnership.

I have carefully reviewed the evidence of the Appellant which he gave before the trial tribunal. His evidence which was ex-parte was basically on the order given by the Primary Court of Machame in Civil Case no. 6 of 2005. In the handwritten records of the trial tribunal the Appellant is quoted to have stated thus:

'Your Hon. I am claiming properties on Plot No. 31/15 Duga Industrial area within Tanga Municipality. My partner in business one Judica Mbowe died in 2003. I filed Civil Case in court claiming part of the property left by the deceased. Court decided that I should be given part of that property. It was ordered the property to be sold so that I could get my share out of it. After the said money was handed over to court, the court decided that the procedure had not been well followed before sale, the said sale was supposed to get blessing from this tribunal, thus this application. I pray this tribunal to issue an order so that I can get part of my share. That is all'.

In the first place, as correctly pointed out by the District Tribunal, the order under which the Appellant has based his evidence was declared by the High Court in Civil Revision no. 7 of 2015 to be a nullity. In law when an act, proceeding, decision or order of lower court is declared by a superior

court to be a nullity it means that it is legally void or is of no importance therefore it does not worth to rely on it. Thus, a nullity order cannot worth to be evidence in support of any claim.

Secondly it is with no doubt from the records of the matter that the Appellant's claim is founded on the alleged partnership between him and the late, Judica Eliuzima Mbowe. Partnership is a legal term which entails a voluntary association of two or more persons who jointly own and carry on a business for profit [See **Blacks Law Dictionary 9th Edition by Bryan A Garner page 1230**]. In the appeal at hand the Appellant alleged that their partnership was an informal family partnership. In other words he was saying that their partnership was of related persons. Section 110 (1) of the Evidence Act provides that:

'Whoever desire, any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

In the instant case the Appellant asserted that there was a partnership between him and the late Judica Eliuzima Mbowe, but he didn't lead any evidence in terms of a business license or permit to prove that he jointly owned or carried on any business with the deceased. To the contrary, it is

not disputed that the landed property on Plot No. 31/15 Duga Industrial Area over which he claims a share is registered under certificate of title No. 8421 in the name of the late Judicial Eliuzima Mbowe as its sole owner. This presumably means that the said property is solely owned by him. Even the assertion that the Appellant and the late Judica Eliuzima Mbowe are related was not proved. In his evidence before the tribunal, the Appellant did not mention anything about his blood relationship with the deceased and no relative or any other witness was called to explain about that.

In the circumstance, the trial tribunal was right to hold that evidence of partnership was wanting. The first ground therefore has no merit and it is dismissed. Equally the 2nd and 3rd grounds have no merits. In the 2nd ground the Appellant is complaining on contradiction and discrimination by the District Tribunal in that it used orders of the High Court and lower courts discriminatorily. I see no any discrimination in the decisions and orders of the tribunal in connection with order of the High Court and those of subordinate Court of Moshi. As stated hereinbefore, the High Court in its ruling in Civil Revision No. 7 of 2015 did nullify all proceedings of Civil Case no. 6 of 2005 of Machame Primary Court and DC. Civil Revision No.1

of 2012. The consequence of nullification of those proceedings is that all resultant acts from those proceedings are of no effect. I note that the District Tribunal gave an order to the effect that the purchaser of the suit property one Marry Kimatare could proceed to transfer the property and register it in her name. There is no appeal against that order and the Appellant did not even cite the said Marry Kimatare in the present appeal despite the fact that she was a party in the original proceedings. Thus, as there is no appeal against that order, and the party which is concerned is not cited, this court cannot delve into the legality or illegality of the said order. The most I can say is that because the administrator of the deceased estate (who was also a party) didn't counter appeal or appeal against that order, he is presumably contented with the order.

Regarding ground three which is about what constituted properties of the deceased, having found that the Appellant did miserably failed to prove that he had any partnership with the late Judicial Eliuzima Mbowe (deceased) interpretation of what constituted properties of the said Judicial Eliuzima Mbowe would not help him in this matter. His burden was twofold: one to establish that there was partnership between him and the

deceased and two that the properties he is claiming were partnership properties. These have not been discharged. Consequently, the entire appeal has no merits and it is dismissed. As the Respondent didn't contest this appeal, I make no orders as to the costs.

A.R. Mruma, J

05/03/2021

Court: Right of Appeal Explained.



A.R. MRUMA

JUDGE

05/03/2021