

**IN THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(DISTRICT REGISTRY OF MOROGORO)**  
**AT MOROGORO**  
**LAND APPEAL NO. 06 OF 2022**

**JUDICA GODFREY UROKI ..... APPELLANT**

**VERSUS**

**ABDALLAH MJOMBO ABDALLAH**

**Administrator of Shani Selemani.....1<sup>ST</sup> DEFENDANT**

**SALIMA SELEMANI**

**(administratrix of Selemani Juma.....2<sup>ND</sup> DEFENDANT**

**MAJEMBE AUCTION MART LTS.....3<sup>RD</sup> DEFENDANT**

**JUDGEMENT**

*Last Court Order on: 13/05/2022*

*Judgement date on: 16/05/2022*

**NGWEMBE, J.**

The appellant is a tenant in a business center at Morogoro Municipality, while the 1<sup>st</sup> and 2<sup>nd</sup> respondents are claiming as landlords. The 2<sup>nd</sup> respondent after being appointed as an administratrix in year 2015, she attempted to forcefully, evict the appellant from his business by using the 3<sup>rd</sup> respondent, known as Majembe Auction Mart. In the cause of eviction, the appellant found his way to the District Land and



Housing Tribunal for Morogoro to protect his rights as a tenant. Unfortunate may be to the appellant, the District Land Tribunal in its considered opinion, upheld the decision to evict the appellant from the rented premise of his business. The Tribunal went further to declare the appellant as trespasser and was ordered to vacate the premises with immediate effect. The language used by the tribunal is quoted hereunder:-

*"Baraza linaona kwamba uhalali wa upangaji unaotokana na uhalali wa umiliki wa mpangishaji. Mjibu Maombi No. 1 si msimamizi wa mirathi, hivyo si mmiliki wa jengo hilo, na Baraza linaamua hakuwa na uhalali wa kupangisha hivyo, upangaji wa mleta maombi **si halali** kisheria, na Baraza linamtangaza kama **mvamizi**. Baraza linatoa **amri aondoke mara moja katika jengo hilo na alipe gharama za shauri alizotumia Mjibu Maombi No. 2"** (emphasise is mine)*

This quotation in simple meaning, disqualified the tenancy agreement between the alleged landlord (1<sup>st</sup> respondent) and the appellant because the 1<sup>st</sup> respondent was not the owner of the building thus, the appellant should be evicted with immediate effect and his application was dismissed with costs.

Being so aggrieved, the appellant decided to exhaust his natural and constitutional right to appeal to this court, clothed with three grounds namely:-

1. *The trial tribunal erred in law and fact when entered a decision in favour of the 2<sup>nd</sup> respondent without considering the evidence*

*adduced by the 2<sup>nd</sup> respondent which collaborated what was said by the 1<sup>st</sup> respondent;*

- 2. That the trial chairperson erred in law and fact when treated circumstances of this case into strict rules of tenant and landlord relation contrary to the evidence adduced; and*
- 3. The trial chairperson erred in law and fact when found the applicant to be a trespasser and ordered him cost without considering the evidence adduced by the 2<sup>nd</sup> respondent and her witnesses.*

On the hearing of this appeal, both parties appeared in court, armed with learned advocates. While the appellant procured legal services of learned advocate Prof. Binamungu, the 1<sup>st</sup> respondent is represented by advocate Hassan Nchimbi and the 2<sup>nd</sup> & 3<sup>rd</sup> respondents are represented by advocate Ndanu Emmanuel. The learned counsels, agreed and asked this court to dispose of the appeal by way of written submissions, the prayer was granted. Consequently, parties made thorough research and presented their arguments professionally. This court appreciates their input.

To recap just briefly, the learned counsel for the appellant argued by narrating the genesis of the dispute. That plot No. 150 Block B Uhuru street within Morogoro Municipality, was founded by Seleman Juma who demised in year 1974, leaving behind children, including Shani Seleman Msindi (1<sup>st</sup> respondent) and Salima Seleman (2<sup>nd</sup> respondent). Since the deceased Seleman Juma survived children and many properties, including the house built in Plot No. 150 Block B Uhuru Street, then in year 2004 the appellant executed a lease agreement of two rooms in the said premise. The lease agreement was between the appellant and





Shani Seleman Msindi. From 2004 to date, the appellant has been conducting his business therein as per the lease agreement.

Further argued, on the assertion that, the appellant is ruled as trespasser to the leased two rooms. Contradicted that assertion by submitting that, trespass is a tort, which its proof requires three ingredients, that is; entering physically or through an object or remaining on the land; the said land should be in possession of another person; and without permission or authority. In the contrary, he submitted, the appellant was legally, allowed to occupy the suit rooms by the family members of the deceased Seleman Juma. Shan Seleman signed a written lease agreement with the appellant and so is a tenant not a trespasser. To support his argument, he referred this court to the case of **Jela Kalinga Vs. Omari Karumwana (1991) TLR 67 (CAT), and Joshua Shija Kisendi Vs. Paul Katoto & Another [1986] T.L.R. 111**. Rested by a prayer to allow the appeal and quash the decision of the trial tribunal with costs.

The submission and arguments of the appellant was supported by the 1<sup>st</sup> respondent Abdallah Mjombo Abdallah through his advocate Hassan Nchimbi. That he is an administrator of the estate of Shani Seleman (mother). Advocate Nchimbi stood firm to support the appellant by repeating the genesis of the whole dispute, that the suit rooms were lawfully rented to the appellant by the deceased Shani Seleman. Shan became a landlord by virtue of inheritance from her father Seleman Juma the founding person of the suit rooms. That in the cause, in year 2004 Shani Seleman found an economic opportunity to lease the two rooms to the appellant. Prior to 2004, same rooms were leased to other



persons. In fact, Shan Seleman enjoyed rental fees from year 1990 to her demise.

Further argued that, the condition of the two rooms were dilapidated, hence required heavy investment in terms of rehabilitation and revamping them into habitable rooms for business. As a result, in year 2013, Shan Seleman entered into an agreement with the appellant to rehabilitate those two rooms and turn them into a habitable condition. Costs incurred therein were recoverable through rental charges up to year 2024.

Added that while they were agreeing on rehabilitation with the appellant, the 2<sup>nd</sup> respondent was yet to be appointed an administratrix. Suggested that, upon being appointed an administratrix, ought to employ paragraph 11 of the fifth schedule to Magistrate Court's Act, Cap 11 R.E. 2019 together with Primary Courts (Administration of Estates) Rules, GN. No. 49 of 1971, instead of unilaterally and radically, evicting the tenant.

Further argued that, prior to her appointment, there were family arrangements on how to occupy and use those business rooms and other properties which were left by their father Seleman Juma. Therefore, after her appointment, she ought to respect and legalize that family arrangements.

Rested by arguing that, the appellant is not a trespasser, rather is a lawful tenant blessed by the whole family of Seleman Juma prior to appointment of the 2<sup>nd</sup> respondent as an administratrix, hence the appeal be allowed.





In turn, the learned advocate Ndanu Emmanuel, strongly opposed the three grounds of appeal as vague and not easy to comprehend them. Also contradicted both arguments of the appellant and the 1<sup>st</sup> respondent as irrelevant, while supporting the judgement and decree of the trial tribunal. Insisted that there were no family arrangements, which permitted Shan Seleman to lease the said rooms to the appellant. Thus, any lease arrangement between whoever and the appellant was illegal. Even the alleged rehabilitation should be counted as inoperative and the appellant is illegally occupying the suit rooms because he entered into such contract with a wrong landlord.

Rightly, pointed out that being a son or daughter of a deceased estate does not warrant him or her to own such estate until a legal process is completed. Therefore, what was done by the 1<sup>st</sup> respondent was equally unacceptable in law and amount into illegal. Hence, the lease agreement between the appellant and 1<sup>st</sup> respondent remained illegal. Thus, the appeal be dismissed with costs.

In rejoinder, Prof. Binamungu, reiterated his submission in chief and added that, it is evident that the appellant and 1<sup>st</sup> respondent tendered the executed lease agreements during trial and were admitted and marked exhibits AE 1 and DE 3. Also referred to the testimonies of DW1 that the family of the original owner consented to rehabilitate the said two frames from the appellant's costs recoverable from rental payments.

Having summarized the rival arguments of legally trained brain, I find certain issues are not disputable, including the fact that, the original

owner of the suit premise is Seleman Juma who died on 21/10/1974. Upon his demise, he survived children and properties, including the suit premise. That after 41 years of his death, Salima Seleman applied for appointment as an administratrix before Morogoro urban primary court which prayer on 2/3/2015 was granted.

It is likewise, evident that prior to appointment of the administratrix, some landed properties were occupied, used and maintained by the deceased family, otherwise, same would be dilapidated and may be vandalized and or stolen or disappeared. If it is true that the deceased died on 21/10/1974, to the date of appointment of the administratrix on 2/3/2015 was equal to 41 years. Therefore, without due care and rehabilitation, those landed properties and others would have disappeared or vandalized and or stolen and nothing remained.

Equally important is to note that, the parties are not in loggerheads due to ownership of those two rooms, if I understood it properly, the gist of this suit is a tenant against two persons each one claiming ownership or landlord. The 1<sup>st</sup> respondent versus the 2<sup>nd</sup> respondent, of who among them is a true land lord? This assertion is correct because, the appellant does not claim ownership, rather is adamant to defend his rights as a tenant of the 1<sup>st</sup> respondent as per exhibit D1.

Moreover, the record indicates that, the 1<sup>st</sup> respondent is a son and administrator of Shani Seleman (deceased) who was a daughter of Seleman Juma also deceased, rightly so, Shani Seleman is a sister of Salima Seleman who also a daughter of Seleman Juma. Notably, Shani





Seleman and Salima Seleman are blood relatives from the bosoms of Seleman Juma. In other words, the appellant is neither relative nor claiming ownership of that two roomed premises, rather is a tenant who is responsible to pay lease rent.

Despite those undisputed facts, yet it is a legal position that an administrator or administratrix is not the sole owner or inheritor of the deceased estate, rather is placed to the shoes of the deceased as if, the deceased has resurrected from grave, like what the Holly Books say's Jesus Christ resurrected from grave after three days. The only difference between the true owner and an administrator, is that the administrator has a statutory duty to perform timely as per sections 99, 100, 101, and 107 of Probate and administration Act read together with Primary Court Rules, which partly says:-

*"Administrator shall with reasonable diligence, collect properties of the deceased and the debts, pay the debts and distribute the estate of the deceased to the heirs"*

Likewise, the administrator is a person appointed by the court to administer the estate of a deceased person. The powers to do so are derived from section 99 of the Act.

Understandably, an administrator is entrusted by his/her family of the deceased to collect all properties left by the deceased, debt if any, settle them and distribute the remaining properties to the true heirs (see section 108). The time provided for by the law is within six months up to one year (see section 107 of the Act).

Notably, an administrator may be removed if at all, mishandles or misuse the properties of the deceased and may be accountable for any





loss or misuse of the deceased properties. Again, if an administrator or administratrix is found to engage into mistreating the true heirs of the estate of the deceased may be removed and replaced by another person. These are among legal actions, which may be taken against an administrator or administratrix by the true heirs of the estate.

Having laid down those basic principles and undisputable facts, I have sought guidance from the old precedents in determining this appeal. The first precedent comes from the reasoning of Lord Godard C.J. in **R Vs. David Flynn 52 Criminal Appeal R, 17** where he said:-

*"The object of a civil trial is to do justice to the parties and determine the dispute between them judiciously in accordance with the law"*

In similar vein, in year 1987 the Court of Appeal in the case of **DPP Vs. Peter Roland Vogel [1987] T.L.R. 100** at page 104 held:-

*"It is deplorable that any bench – holder could treat court proceedings before him as a football match, with doubtless, the parties themselves being the ball and kicked around by their counsels, however inept they may be"*

Based on these precedents, I intend to be a referee of the football match by tracing the evidences adduced during trial. Of course, it is a settled legal practice, which is now accepted in our jurisdiction as a duty of the first appellate court to review the evidences and proceedings of the trial court or tribunal. Such duty is exercised with due care and caution, lest the appellate court may step in the shoes of the trial court. Such caution is derived from the old precedent of East African Court of

Appeal in year 1958, in the case of **Peter Vs. Sunday Post Ltd [1958] E.A. 424** the Court held:-

*"Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution, if there is no evidence to support a particular conclusion, or if it shown that the trial court has failed to appreciate the weight or bearing of circumstances admitted or proved or has plainly gone wrong, the appellate court will not hesitate so to decide"*

As such, I now proceed to revisit and review the evidences adduced during trial. As I have already alluded herein above, the duties of the administrator are statutory. Likewise, it is on record that the trial tribunal admitted exhibit D1 which is a lease agreement best titled as "Mkataba wa Upangaji" entered on 8/12/2018. Same is intended to come to an end on 1/9/2024. Such contract was executed between the 1<sup>st</sup> respondent as landlord or "Mpangishaji" and the appellant "Mpangaji" the contract was executed before an advocate called Alpha Boniphace.

It is also evident that in year 2014, the same appellant, had similar lease agreement on the same frames, which ended on 1/8/2017. Moreover, while the appellant was still enjoying protection of the tenancy agreement, on 20/10/2016 was issued eviction order from the 3<sup>rd</sup> respondent. Such order triggered application No. 179 of 2016.

Perusing inquisitively the reasoning of the trial tribunal at page 5 & 6 of the judgement, the issue of ownership of that two rooms and the



application of section 110 of the Evidence Act, to my understanding was misconceived, because it raises more questions than answers. For instance, when did that tenancy agreement become nullity? Whether such nullification goes back prior to the appointment of the 2<sup>nd</sup> respondent to become an administratrix or after her appointment? Who was the lawful owner of the suit rooms capable of entering into a lease agreement with the appellant from year 2004 to 2015 when the 2<sup>nd</sup> respondent was appointed an administratrix? When did trespass begin? Lastly whether the lease agreement is *void abinitio* or *voidable* under pleasure of the administratrix?

Repeatedly, the presumed landlord and the administratrix are blood relatives and both have right of inheritance over those rooms and other related properties of their father Seleman Juma. Shani Seleman and Salima Seleman are sisters and each is a daughter of Seleman Juma. Thus, each one has a right of ownership over the estate of their father Seleman Juma save only upon being lawfully divided by an administratrix. Above all, at no time the appellant claimed ownership over those two rooms, rather stood firm, even in this appeal, that he is a tenant covered under the lease agreement signed between himself and Shan Seleman way back on 26/7/2004. The appellant continued to rent up to 2013, but also, he executed another contract on 8/2/2014 ending on 2022. However, Shan Seleman died in year 2018, hence a new contract from 8/12/2018 to 1/9/2024 was executed with the administrator of Shan Seleman who is the 1<sup>st</sup> respondent. What does this piece of evidence mean in law and in administration of justice? Should this court uphold that the appellant is a trespasser and illegally entered and remained in those two rooms all along from 2004 to 2016



hence, liable to eviction forthwith? I think not, the act of the appellant over the two rooms are contractual not trespass.

**Black's Law Dictionary**, (8<sup>th</sup> edition) define trespass to mean an unlawful act committed against the person or property of another, wrongful entry on another's real property. Such meaning is *impari materia* with the reasoning in the case of **Moriss Vs. Marsden and Another [1952] 1 All E.R. 925** where the court held that a person is liable for trespass if, he acts voluntarily knowing the nature and the quality of his act even though he does not know the act to be wrongful. The reasoning of a case cited above was adopted by the Court of Appeal in **Jela Kalinga Vs. Karumwana** (supra) where judges of appeal held that anyone who was in possession or who is deemed to have been in possession at the time of the trespass could bring an action for trespass. The appellant had a tenancy agreement with a person believed to be a true owner (Shan Seleman) and now is Abdallah Mjombo Abdallah. The circumstances of this appeal do not indicate an element of trespass known by law, rather the 2<sup>nd</sup> & 3<sup>rd</sup> respondents interfered with the business of the appellant by issuing eviction order without realizing that he has a valid lease agreement.

The 2<sup>nd</sup> & 3<sup>rd</sup> respondents are equally right to note that the one who pretended to be the landlord, had no capacity and in fact, had no mandate to lease those two rooms because she was neither the true owner nor an administratrix of the original owner's estate. This argument is valid, but is defeated by tracing the reality, how could Shan Seleman be a trespasser since 1990 to the date of his demise in year 2018? It is clearly shown, Shan Seleman is among the heirs and daughter of Seleman Juma, how could she be termed a trespasser to

her father's property? These are some unanswered questions and I do not intend to answer them.

Considering this appeal in light of the law of contract, I have asked an unanswered question of whether the lease agreement entered by the appellant was/is void or voidable? Obvious, the appellant knew and believed throughout that he was executing a lease agreement with a competent person. More so, he was paying the required and agreed rent to a person believing that she was competent and true owner of the two rooms. In such circumstances, section 22 of the **Law of Contract Act Cap 345 R.E. 2019** may assist as quoted hereunder:-

*"A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact"*

Applying this principle, the contract was/is still valid and there is no trespass over the two rooms.

According to the circumstances of this case, immediate after appointment of the administratrix in year 2015, ought to notify the tenant or tenants on the change of landlord. In doing so, she would be executing her general statutory duty as provided for in rule 5 of Magistrate Court's Act.

Therefore, to decide otherwise, will only mean to fuel more conflict to the heirs over the properties of their late father. As such I have a settled view that the trial tribunal misdirected to declare the appellant as trespasser, thus should be evicted with immediate effect. Instead the tribunal ought to direct the administratrix to recognize those lease agreements and sign an addendum effecting changes of landlord.

In totality, and for the reasons so stated, this appeal has merits same is allowed. I proceed to nullify the judgement and decree of the trial tribunal and declare the lease agreement entered on 8/12/2018 valid. The appellant and 1<sup>st</sup> & 2<sup>nd</sup> respondents may agree on the change of landlord. Each party to bear his own costs.

**It is so ordered.**

Date at Morogoro this 16<sup>th</sup> May, 2022.



**P.J. NGWEMBE**

**JUDGE**

**16/05/2022**

**Court:** Judgement delivered in chambers at Morogoro on this 16<sup>th</sup> day of May, 2022, **Before Hon. S. J. Kainda, DR** in the presence of advocate **Prof. C. Binamungu** for the Appellant and 2<sup>nd</sup> respondent in person and in the absence of 1<sup>st</sup> and 3<sup>rd</sup> Respondents.



**S. J. KAINDA**

**DEPUTY REGISTRAR**

**16/5/2022**