


THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(IN THE DISTRICT REGISTRY OF MUSOMA)
AT MUSOMA
(ORIGINAL JURISDICTION)
CIVIL CASE No. 6 OF 2021

RAMADHAN SEMBEJO MONGU PLAINTIFF

Versus

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| <p>1. MUSOMA MUNICIPAL COUNCIL</p> <p>2. MARTINE KOROGO</p> <p>3. ANTONY EDWARD ETUTU &</p> <p>4. ATTORNEY GENERAL</p> |  | <p>..... DEFENDANTS</p> |
|--|--|--------------------------------|

JUDGMENT

06.12.2022 & 07.12.2022

Mtulya, J.:

In the present case, **Mr. Ramadhan Sembejo Mongu** (the plaintiff) claims that he was born and raised by his mother as the only son hence he is automatically becomes the administrator of estates of his deceased mother. During *suo moto* call of this court to explain how can that be possible, the Plaintiff had replied, in Swahili words, that: *nimekulia mikononi mwake [Mama yangu]. Mimi ndio mtoto wa pekee. Nisiporithi, nani atarithi?* According to the plaintiff

he was born at Kigeretuma Village in Musoma Rural District in 1942 and raised to maturity at Makoko Gengeni area of Musoma Municipality with his mother since 1955 and that his mother had cleared, cultivated and owned a ten (10) acres of land in the area in 1955. According to the Plaintiff, sometimes in 1984, he left for Dar Es Salaam and on return he found the ten (10) acres of the land had been reduced to one (1) acre and the same acre was trespassed by **Musoma Municipal Council** (the first defendant) and allocated the same to Mr. Martine Korogo (the second defendant) and Anthony Edward Etutu (the third defendant).

The plaintiff alleged that he cannot recall as to when he returned to Makoko Gengeni area from Dar Es Salaam City, but very aware that the third defendant was occupying and using part of the one (1) acre in Plots No. 3 & 5 Block U at Mwisenge area in Musoma Municipality since 1986 and second defendant in Plot No. 2 Block U at Mwisenge area in Musoma Municipality since 2019. According to the plaintiff, the survey and planning by the first defendant took its course in 1985, but no compensation was paid to his mother, **Mama Nyamamba Masunja** (the deceased) hence filed the present

suit in 2021 praying for compensation of his mother's land. To the plaintiff, he has no problem with the ten (10) acres of land surveyed and planned in 1985, but the remaining part of one (1) acre in the same ten (10) acres, which is partly occupied by the second defendant, third defendant and unclaimed Plots No. 4 & 6 Block U at Mwisenge area in Musoma Municipality. According to the facts presented in the case by the third defendant, the land in Plots No. 4 & 6 were allocated to the plaintiff's family, but unclaimed or paid necessary land fees to date. The facts produced by the third defendant regarding the cited two plots were not protested by all parties present in the case, including the plaintiff and the first defendant.

According to the plaintiff, his mother had already expired sometimes in September 2021 and he had in possession of his mother's Power of Attorney for representation in suits before the expiry in 2021. In his opinion, if requested to bring the same in the instant case, he would do so without any delay so that the court can have proper record. This thinking was protested by **Mr. Goodluck Lukandiza**, learned State Attorney, who appeared for the first defendant and

Attorney General (the fourth defendant) and **Mr. Thomas Manyama Makongo**, learned counsel for the second defendant.

According to Mr. Lukandiza, the plaintiff has initiated the case without instrument constituting the powers of representation either in Power of Attorney or letters of administration of the deceased's estates to give him mandate to sue or being sued. To Mr. Lukandiza this case cannot stand or be decided for want of proper parties. According to Mr. Makongo on the other hand, the materials presented in the instant case show that the land in dispute belonged to the deceased and there are no any evidence on record to show that the plaintiff was granted the land or letters of administration by appropriate authority. According to Mr. Makongo, it is unfortunate that the plaintiff is silent on who is administering deceased's estates.

Mr. Makongo contended further that the plaintiff cannot claim compensation in civil case in absence of ownership of the land or letter of administration of the deceased's estates. Finally, Mr. Makongo submitted that the first defendant had left Plot No. 4 & 6 to the plaintiff's family for good will and

that the plaintiff has to follow prerequisite procedures, including paying necessary land fees, to be allocated the same.

In the present case, the plaintiff prays for compensation for the lands belonged to his deceased's mother without necessary standing. According to the plaintiff, he is the only son of the deceased and has automatic right to inherit deceased's properties and claim compensation from the deceased's properties. However, according to the Court of Appeal (the Court), failure to plead or attach necessary documents displaying instruments constituting the appointment of plaintiffs in cases is fatal irregularity which renders the proceedings incompetent for want of necessary standing (see: **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021 and **Ally Ahmed Bauda v. Raza Hussein Ladha Damji & Others**, Civil Application No. 525/17 of 2016). The Court in the precedent **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another** (supra), stated, at page 4 of the decision, that:

It is now settled that, where a part commences proceedings in representative capacity, the

instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is fatal irregularity which render the proceedings incompetent for want of the necessary standing.

In the end, the Court advised that: the applicant is at liberty to refile the application provided that he is in possession of valid letters of administration of estates. The decision being delivered by the superior court in our judicial hierarchy, lower courts have to abide with the directives without any reservations. This court being inferior to the Court, has to follow the directives without any reservations as indicated in a large bundle of precedents of this court (see: **Manyonyi Weswa v. Malibha Njoya**, Misc. Land Appeal Case No. 34 of 2022; **Waziri Hussein Isore v. Sokoine Mseti & Two Others**, Misc. Land Appeal Case No. 38 of 2022; and **Burendire Isakwe v. Itaso Ally**, Misc. Land Appeal Case No. 116 of 2021).

Having directives of the Court in precedents and established practice in this court, I hold that the plaintiff cannot be paid compensation out of his deceased's mother

properties in absence of necessary instrument constituting his appointment as an administrator of the deceased's estates, despite the fact that he is the only son of the deceased.

In the end, this court is mandated to advice individual persons and institutions on proper course to follow for interest of justice (see: **The Hon. Attorney General v. Reverend Christopher Mtikila**, Civil Appeal No. 49 of 2009 and **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another** (supra). This country has been in good record in cherishing individual rights, but individuals must abide by the laws of the land.

The plaintiff must abide with the laws regulating administration of estates of deceased persons and land rights. In that case, the plaintiff is at liberty to refile fresh and proper civil suit of compensation after possessing valid letters of administration of the estates of the late **Mama Nyamamba Masunja** and appear before the first defendant for details of Plot No. 4 & 6 Block U at Mwisenge area in Musoma Municipality, which are alleged to have been allocated to his family. Owing to the nature and circumstances of the present

case, and noting the plaintiff is a lay person unrepresented, I order no costs. Each party shall bear its own costs.

It is so ordered •

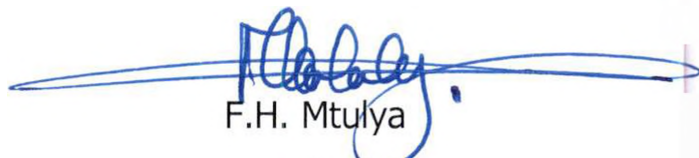



F.H. Mtulya

Judge

07.12.2022

This judgment was pronounced in chambers under the seal of this court in the presence of the plaintiff, **Mr. Ramadhan Sembejo Mongu**, the second defendant, **Mr. Martine Korogo** and third defendant, **Mr. Athony Edward Etutu**, and in the presence of **Mr. Goodluck Lukandiza**, learned State Attorney for the first & fourth defendants.


F.H. Mtulya

Judge

07.12.2022