

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

PC CIVIL APPEAL NO. 130 OF 2021

(Originating from Revision NO.6 and 98 of 2021, Of Ilala District Court)

CHRISTOPHER EMMANUEL SWAI.....APPELLANT

VS

LUGANO ALFRED MWAKASUNGURA.....RESPONDENT

Date of Last Order: 23/09/2023

Date of Ruling: 17/03/2023

JUGDMENT

MGONYA, J.

CHRISTOPHER EMMANUEL SWAI, being aggrieved by the decision of the Ilala District Court has appealed before this Court with **five grounds** of appeal. The said grounds of appeal are:

- 1. That, the Learned Senior Resident Magistrate misdirected himself in entertaining Revision No. 98 of 2021 which was filed out of time and without leave by consolidating it with Revision No. 6 of 2021 which emanated from his supervisory powers;***
- 2. That, the learned Senior Resident Magistrate erred in law and fact in faulting the findings of the trial Court which nullified the sale of property subject of the appeal for want of legal sale;***

3. That, the learned Senior Resident Magistrate erred in law and fact in ruling that the Trial Magistrate ought to have protected the Respondent for being a bona fide purchaser amid concern of illegality of sale; and

4. That the learned Senior Resident Magistrate misdirected himself in ruling against his own findings on the powers and practice of the Primary Court as a probate Court to use the same unclosed case file to hear and determine subsequent matters.

On hearing of this appeal, the Appellant enjoyed the services of **Mr. Benito Mandele** the learned advocate while the Respondent was represented by **Mr. Godwin Mwapongo** the learned Advocate. This Court after having had the lower Court's record in place, ordered for the matter to be disposed of by way of written submissions. The submission being in place this Court hence determines the appeal at hand.

Supporting his appeal, the appellant informed this Court that the fourth ground of appeal has been withdrawn and submissions upon the same will not be made.

Submitting on the first ground of appeal the Appellant states that the Court erred in consolidating the two revisions of the Court since **Revision No. 98 of 2021** which was filed out time, unlike **Revision No. 6 of 2021** that originated from the Judge

in charge of the Land Division through a complaint letter. The revision ordered by the Judge in charge has no limitation as to when the same should be filed. However, **Revision No. 98 of 2021** which was a formal application statutorily was to be filed within 12 months of which was not the case here. Hence the Magistrate having decided to consolidate the two applications was a misconception and prays that the Court find the first ground of appeal meritorious.

On the second ground of appeal, the Appellant asserts that the Court erred in faulting the findings of the trial Court. The trial Court nullified the sale since it was sold by one Severine Emmanuel Swai and he did not do so in the capacity of an Administrator. Instead, he did sale in his own personal capacity.

Further the Appellant stated that the trial Court was correct in observing that if the seller did sell in his capacity as an Administrator, he would have applied to have his capacity registered in terms of the Land Registration Act and then proceed to sale as an Administrator. Having not followed these procedures the latter had no title to pass the property by way of sale. Another default is where the same failed to attaining consent of the beneficiaries. The Appellant states the same was not attained while it was required. And hence making the nullification of the sale correctly nullified by the Court.

On the third ground of appeal that, the Court ought to have protected the Respondent for being the bonafide purchaser the same does not have legal grounds since the sale referred to in the matter was erroneously conducted. It suffices to say there was fraud and misrepresentation of facts in the said transaction. The case ***GODEBERTHA RUKANGA VS CRDB BANK AND OTHERS CIVIL APPEAL NO. 25 OF 2017*** was cited to prove the contention.

In reply to the Appellant's submission, the Respondents on Counsel the first ground states to be disappointed with the submission by the Appellant's Counsel considering the same to have represented the Respondent in an application for extension of time, ***Misc. Civil Application No. 263 of 2020*** and the same raised ***Revision No. 98 of 2021.***

Moreover, the contention that the directives for the Magistrate to invoke its Revisionary Powers was from the Judge of the Land Division was misleading but the same came from the Judge in charge of this Court. The Appellant is misleading the Court and the same needs to be argued for clarity. The Respondent finalizes by stating that it is their humble submission the first ground be dismissed with costs.

On the second ground of appeal, the Respondent's Counsel avers that, the sale of the property claimed to be an estate containing a share of the deceased, of which the beneficiaries

are claim to have a share of their mother from the same is a misconception, since the property was registered in the sole name of **Severine Emmanuel Swai**. Hence making him have power over the said property. If the Appellant believed there was a share of the late Lydia Severine Swai then the option was not to nullify the sale of the property but to claim from the seller after establishing the amount of contribution to the property the deceased. The case of ***JUMA RAHISI NYANYANJE VS SHEKHE FARISI (PC) CIVIL APPEAL NO. 24 OF 1985 TLR*** was cited to support the submission. The reason raised on consent to have been required is devoid of merits and cannot form a ground for nullifying the sale and jeopardising the interest of a *bonafide* purchaser.

Lastly on the third ground of appeal, the Respondent's Counsel, stated the same need not to detain the Court as it is devoid of merits. He said, it is a legal principle that a bonafide purchaser will always be protected. This principle is said to have based on equity. The Counsel thus prayed the third ground and the entire Appeal be dismissed for being meritless.

Having gone through the submissions of the parties in arguing for and against the appeal, this Court is now at a position of determining the same in accordance to the submissions, evidence and the law.

Beginning with the first ground of Appeal, which is ***on consolidation of the two revisions, Revision No. 6 and 98 of 2021. The Appellant states that Revision No. 98 of 2021 was already time barred.*** Therefore, the same cannot be competent before the law. The Respondent finds it that the Appellant's is misleading the Court for the revision regarded to be incompetent before the law was granted an extension of time of which the Appellant Counsel was representing his client in the said Revision and hence aware of the said extension that was granted.

It is a statutory requirement that where one intends to file an Application to file Revision, the same should be done within 12 months from when the decision intended to be revised was pronounced. ***Revision No. 98 of 2021*** is revealed in records to have been granted, an extension. Therefore, the Appellant claiming that the same was out of time and consolidating it with ***Revision No. 06 of 2021*** was an error, is an argument being defeated. The record before this Court contains proof that the latter was granted an extension of time. It should be remembered that the Revision before the District Court originated from the High Court's Supervisory Powers.

It was from the directive of the High Court that **Revision Number 6 of 2021** was filed. However, the coming of **Revision No. 98 of 2021** being filed after an extension of time

being granted, makes it a competent Application to be entertained. And the consolidation of the two Applications did not prejudice any party for they all bared the same prayers and orders. **From the above, this Court finds that the consolidation of the two Revisions to be competent and hence the first ground of appeal is meritless.**

With regards to the second ground of appeal, where ***the appellant is aggrieved by the sale of the property argued herein that the same was sold in the personal capacity of the then administrator and without the consent of the beneficiaries.*** The Respondent has argued that the said property was the sole property of the Mr. Severine Swai and that in exercising due diligence a search was conducted and the result was that the property was Mr. Severine's property and also free from any encumbrances. Hence the sale was legal.

It is the circumstance in this matter that the Children of Mr Severine Swai are in conflict over a house sold by their father after the death of their Mother. The Appellant being one of the issues is claiming for a share of their mother's contribution in the said property.

However, it should be remembered that when a spouse dies the remaining spouse has the rights of survivorship with them. In this matter, letting alone the right of survivorship, it is claimed that the said property was a property of Mr. Severine Swai and

was not a joint property. I have keenly gone through the records and I find that evidence was adduced in the lower Court proving the ownership of the said house and the same reveal the house to be the Property of Mr. Severine Swai.

From the analysis above, I join hands with Senior Resident Magistrate in **Revision No. 6 and 98 of 2021** that the Primary Court faulted in nullifying the sale of the property in issue in this matter. **It is from here I am of the firm decision that the second ground of appeal holds no water and is declared meritless.**

It was the *third ground* of appeal ***that the appellant was aggrieved by and stated that rights of a bonafide purchaser for value as a general rule are to be protected, however such rights do not extend to sale transactions that include fraud and misrepresentation.*** The Respondent on the other hand claims that a bonafide purchaser being someone that purchases something in good faith has to be protected. Conflicting claims upon such kind of circumstance should be taken up on the seller and not the bonafide purchaser.

At this circumstance I find it pertinent to question who is a bonafide purchaser? In general, the term *Bonafide* is a Latin term meaning "In Good faith". Thus, a *Bonafide* Person means the person having a good or sincere or an honest intention or belief. A *Bonafide* Purchaser is a term used in the law of property to

refer to an innocent party who purchases property without notice of any other party's claim to the title of that property. He is a person who purchases the property for value that he must have paid for value or must give consideration to the sale rather than simply be the beneficiary of a gift. In this case, the Respondent qualifies this test hence a *bonafide* purchaser.

From the root of this matter, it has been observed that Mr. Severine Swai was the owner of the Property argued of in this matter. The latter made a decision to sell what is his property. There is no evidence in record that show the deceased had a share to the said property. The law is clear that he alleges must prove. The Appellant herein ought to have proved what he alleges. The Appellant in all ways failed to prove what he claims.

Subsequently, it is from the records we find that the Respondent bought the said property in good faith and due diligence was applied where he was firm that the said property was competent to purchase for it had no any encumbrances. And that he even paid his consideration. From such events of the transaction, the Respondent stands to be the *bonafide* purchaser whose rights are required to be protected as seen. It is from the case of ***JOHN BOSCO MAHOGOLI VS IMELDA ZAKARIA NKWIRA AND 2 OTHERS, LAND APPEAL NO. 101 OF 2016***, In this case it is confided that the principle established requires a *bonafide* purchaser's right to be protected. **Having**

said the above, I find the third ground of appeal devoid of merits.

In the event therefore, I find the appeal before me meritless. In the event therefore, the decision of Ilala District Court is hereby upheld.

Consequently, this Appeal is hereby dismissed with costs.

It is so ordered.

Right of Appeal explained.



L. E. MGONYA

JUDGE

17/03/2023