

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**LAND CASE NO. 31 OF 2016**

**JAYNE ALEX MARO ..... PLAINTIFF**

**VERSUS**

**EMANUEL ALEX MARO ..... 1<sup>ST</sup> DEFENDANT**

**CRDB BANK PLC ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL MICROFINANCE BANK PLC..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

23/11/2022 & 24/1/2023

**L.M. Mlacha,J**

The plaintiff, Jane Alex Maro filed a suit against Emanuel Alex Maro, CRDB Bank PLC and NATIONAL MICROFINANCE BANK PLC (hereinafter referred to as the first, second and third defendants respectively). She filed a suit challenging the legality of title to plot No. 340 Block 'D' Msaranga, Moshi Municipality) held under Title No. 28779, L.O. No. 383090 and plot Nos. 338 – 339, Block D Msaranga Moshi Municipality, Title No. 28780, L.O. No. 383091 to the first defendant for according to her, they are based on a piece of land which does not belong to the first defendant. It is alleged that the first defendant had obtained the titles fraudulently and deposited



them to the second and third defendants as security for the loan illegally. The plaintiff alleged to be the owner of the farm, 4 acres, long before it was surveyed by the first defendant to create the plots and obtain the title deeds. She filed the suit to seek a declaration that the first defendant's title to the plots was obtained through fraud for she was not involved as an heir of the land having obtained it as her share in the estate of the late Anastazia Alex Maro in administration cause No. 156/2009 of the primary court of Arusha at urban court, an order for rectification of the Land registry to reflect her name as owner of the plots, an order compelling the first defendant to offer another security for the loans, an order restraining the second and third defendants from interfering with the suit premises, general damages and costs.

The first defendant filed a defence and denied the claim. He stated that he is owning the plots legally having obtained them after survey of his farm at Msaranga Moshi Municipal which he got as his share from the estate of late Alex Omary Maro in administration cause No.194/2006 administered by the late Anastazia Alex Maro. The second and third defendants were dropped in the course of hearing after a statement that the money the subject of the mortgage had been paid. So, the suit

remained with plaintiff and the first defendant who are sister and brother from the same father and mother.

Mr. Gwakisa Sambo appeared for the plaintiff. The first defendant had the services of Ester Kibanga and David Shilatu. With the assistance of the parties, the court framed the following issues;

1. Who between the plaintiff and the first defendant is the lawful owner of the disputed land (the three plots).
2. Whether the registration of the suit land to the first defendant was valid.
3. To what reliefs are the parties entitled to.

The court received the evidence of PW1 Rita Alex Maro (46) who told the court that the late Alex Maro and the late Anastazia Alex Maro had six (6) children. One is dead leaving five (5). She mentioned them in a seniority list as Rita Alex Maro, Eva Alex Maro, Jane Alex Maro, Bruce Alex Maro and Emanuel Alex Maro. The first defendant is the youngest in the family. The father died in 2006 while the mother died in 2008. They left behind a lot of properties which included 395 acres of land at Mererani, 2.6 acres at Themis Njiro, 4 acres at Msaranga, Mfahamiko garage, house at Buruburu

estate Nairobi, a house at Mbokomu, a house at Kirua Dudumani Moshi, and a house at Moshi Kwa Mtei. She went on to say that the land at Msaranga (sango) was bought by her father in 2001 who passed away in 2006. Their mother, Anastazia Alex Maro was appointed to administer the estate but died in 2008. She then petitioned to administer the estate of the late Anastazia Alex Maro and was appointed by Arusha Urban Primary Court on 4/9/2009 to administer the estate. She produced her letters of administration which were admitted as exhibit P1. She went on to say that she submitted her inventory to the court and the administration was closed. That the court issued a document showing that the matter was closed. She then distributed all the assets to the heirs who are Jane, Eva, Bruce and Emanuel. She tendered the inventory, form No. V which was received as exhibit P2. She told the court that the farm at Msaranga was given to Jane, the plaintiff, but it was learned later that the farm had been registered in the name of the first defendant. He had subdivided the farm into three plots namely, plots Nos. 340, 388 and 339 and processed titles in his name. They learned later that he had mortgaged them to the second and third defendants as security for the loans. Copies of the title deeds were received as exhibits P3 collectively.



PW1 went on to tell the court that she was appointed the administratrix of the estate of the late Anastazia Alex Maro but the dispute is still pending in the Court of Appeal. She went on to say that they discovered in early December that the first defendant had committed forgery and created the title deeds in his favour. By that time the administration had already been closed. They wrote a letter to the Land officer informing him of the forgery who wrote a letter to the first defendant calling him to his office for discussions. The letter was received marked exhibit P4. She also tendered a letter from the land officer requiring the first defendant to surrender the title deeds without success, exhibit P5. There was also a declaration in support of application for rectification of Land Register for CT NO. 287779 and CT No. 28780. She also wrote a letter to the registrar of titles, exhibit P7 seeking rectification. She then filed a caveat, exhibit P8 in respect of the title deeds.

PW2 Gimson Stephano Msemwa is a land officer of Moshi Municipal Council. His evidence is mainly on the way he received complaints from PW1 and tried to convince the first defendant to surrender the title deeds without success. PW3 Jane Alex Maro supported the evidence of PW1 and PW2. She stressed that the farm at Msaranga, 4 acres is her own property

having obtained it in Administration cause No. 156/2009. She challenged the legality of the title deeds which she said were illegally obtained.

DW1 Emanuel Alex Maro (39) was the only defence witness. He agreed that PW1 and PW3 are his sisters. He agreed that his father, Alex Maro died in 2006 followed by their mother, Anastazia Alex Maro who died in 2008. He agreed that they left a lot of assets which were later distributed to the children.

DW1 went on to tell the court that Anastazia Alex Maro was appointed an administratrix of the estate of the late Alex Maro by the primary court of Moshi district at urban court in Administration cause No.194/2006. She then distributed the assets to the children giving the farm to him. He tendered a copy of the judgment of the primary court, exhibit D1. He went on to say that he decided to survey the Land and process title deeds because it his. He was successful and is now the owner of the plots because the title deeds are in his name. He denied to have made any forgeries. DW1 proceeded to tell the court that he was charged of forgery in respect of the title deeds and acquitted. He tendered a copy of the judgment of the district court of Moshi made in Criminal Case No. 334/2018, exhibit D2.

I will now move to examine the issues. I plan to discuss issue number one and number two together. The first issue one seeks to find the owner of the farm at Msaranga which gave rise to plots numbers 338 – 339 and 340 while the second issue seeks to examine the legality of the title deeds. Looking at the pleadings and evidence, it has come to my mind that, it is not disputed that the suit land is part of the estate of the late Alex Maro, their father, whose estate was vested to his wife, the late Anastazia, in administration cause No. 194/2006 of the urban court of Moshi. The court appointed Anastazia on 3/11/2006 vide exhibit D1 to administer the estate. Anastazia died in 2008 before finishing the administration. She did not file any inventory in form No.5 or accounts of estate in form No.6 as required by the law. See **Beatrice Brighton Kamanga and another v. Ziada William Kamanga**, (HC) Civil Revision No. 13 of 2020. There is no evidence of filing these forms and the order of court closing the matter. That means that administration cause No. 194/2006 is still pending.

Further to that, the evidence shows that following the death of Anastazia Alex maro, Rita Alex Maro petitioned for administration of her estate in administration cause No. 156/2009 at the Primary Court of Arusha at urban court. She was appointed and given mandate to administer the estate of

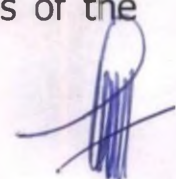
the late Anastazia Alex Maro. But the records show that despite the fact that her appointment was in respect of the estate of Anastazia Alex Maro she went on administering the estate of the late Alex Omary Maro which were the subject of administration cause No.194/2006. The reasons are obvious. Anastazia did not have any assets of her own other than those of her husband. Acting as aforesaid, Rita Alex Maro gave the suit land to the plaintiff, Jane Alex Maro. Evidence was given that Jane Alex Maro was given the land by Rita Alex Maro in administration cause No. 156/2009. There is also a counter evidence that the first defendant was given the same land by Anastazia in administration cause No. 194/2006. Now who has a better title to the farm? There is evidence that Rita filed an inventory but there is no evidence of filing the accounts of estate. Further, the appointment of Rita is no more. There is evidence that her appointment was revoked by the primary court of Arusha at a later stage which appointed Bruce Alex Maro in her place. An appeal to the district court made through civil case No.45 of 2017 could not be successful. There is no documentary evidence of further appeal to this court but PW1 claimed that there is an appeal in the Court of Appeal. No document was produced to support this statement.





Looking at the evidence, I could not find any evidence giving ownership of Msaranga farm to any of the parties. Ownership of the farm is what takes us to ownership of the plots. Further, I don't see if there was any need of filing a new administration cause at Arusha after the death of Anastazia. Moving to Arusha was not needed because of the existence of an earlier administration cause and fact that the deceased had no place of abode at Arusha but Mbokomu Moshi. It was a waste of time and resources. The parties could simply sit at home and propose a person to replace Anastazia. The person so proposed could then go to the primary court of Moshi at urban with the minutes and the death certificate of the administratrix and seek to replace the former administratrix. The court could then issue a citation in the usual form and if no objection is lodged, receive evidence from the petitioner and persons in his support, and if satisfied that she is a fit person to replace the administratrix, grant the petition. The proceedings could be conducted in the same file because the matter was still pending. The new administratrix could then take over the administration from the place where it had ended.

In probate or administration matters, the administrator appointed by a primary court is given power to collect the assets and liabilities of the



deceased and fill the information in an inventory which is form No. V. He will then pay the debts and distribute the balance to the heirs of the deceased. He will fill this information in the accounts of estate, form No. VI. Forms No. V and VI will then be presented to the primary court and if not objected (by the heirs, debtors or creditors), the court will make an order closing the matter This order will put the matter to finality. See **Hadija Saidi Matika v. Awesa Saidi Matika** (HC) Civil Appeal No. 2 of 2016 and **Mayunga Madalali v. Mrisho Mwanawande.** (HC) (One stop Judicial Centre) at Temeke Pc Civil Appeal No. 32 of 2022. Title can only pass to heirs after the order of the court adopting the contents of form No. V and form No. VI as its own decision in the matter. This order has the effect of closing the probate or administration and discharging the administrator from his office It has also the effect of vesting title of assets to heirs. It is evidence that ownership has shifted to heirs as reflected in form No. VI. It was thus important for the parties to present forms No.V and VI and the final court order as evidence. Unfortunately, none of the parties has done do this.

In the absence of evidence of form No. V and form No.VI, dully filled and presented to the court for approval, and the order of court adopting the

contents therein as its decision and putting the matter to an end, title cannot pass to heirs. It is important therefore to ensure that all probate/administration causes are marked closed. With this finding, I find it unsafe to find and hold any of the parties to be the owner of the Msaranga farm as none of them has presented the forms and court order. That disposes the first issue.

Next is an examination of the legality of the title deeds. I have said that the first defendant did not get the land in a due process of the law for failure to present forms number V and VI and the final order of the primary court. He has no evidence showing that the matter went to its finality. He has instead tendered exhibit D4 which is the *Assent to the Bequest of a Right of Occupancy* executed by Anastazia Alex Maro on 12/6/2012. This document carry the photo of Anastazia Alex Maro and that of the first defendant, Emanuel Alex Maro. It is written as under:

*"It Anastazia Alex Maro of P.O. Box 11610 Arusha, as legal personal representative of the estate of the late Alex Omari Maro deceased HEREBY ASSENT to bequest without will of the said deceased to EMMANUEL ALEX MARO of P.O. Box 11610 Arusha the Rights of occupancy registered under the above reference.*



***SIGNED and DELIVERED by the said ANASTAZIA ALEX MARO who is identified to me by JUMA NYUMBA the letter being known to me personally in my presence this 12<sup>th</sup> day of June 2012 .....” (Emphasis added).***

Exhibit D4 is a clear indication of fraud because Anastazia cannot be said to have SIGNED and DELIVERED a document on 12/6/2012 while she died in 2008. The parties agree that she died in 2008 making exhibit D4 baseless. The first defendant accepted this fact in evidence. There is also another problem with the title deeds. They show that they were issued on 20/5/2010 while the consent forms were signed and delivered in 2012. This is not practicable. It is a false presentation. The titles deeds were thus illegally procured making them inoperative in law. That disposes the second issue.

As for the reliefs, I will do the following i) I declare the title deeds in respect of plots No. 338 – 339 and 340. Block 'D' Msaranga Moshi Municipality to have been obtained contrary to the law and thus illegal, null and void. ii) I declare that what was done by the primary court of Arusha at urban court in administration cause No.156/2009 was a travel outside the jurisdiction of the court. The proceedings and decision were

illegal because of the existence of administration cause No. 194/2006 at the urban court of Moshi which was still pending. iii) I advise the parties, if they so wish, to return to the urban court of Moshi to administration cause No. 194/2006 and seek to get a new administrator to replace Anastazia Alex Maro and take over matter. iv) The suit is partly allowed, no order for costs. It is ordered so.



  
**L.M. Mlacha**

**Judge**

**24/1/2023**

**Court:** Judgment delivered online through the virtual Court. I am in the High Court at Kigoma. Right of Appeal Explained.



  
**L.M. Mlacha**

**Judge**

**24/1/2023**