

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 34 OF 2022

*(Originated from the decision of the District Land and Housing Tribunal for Rukwa at
Sumbawanga in Land Application No. 26 of 2021)*

LEONADA BENEDICTO KAPELE.....APPELLANT

VERSUS

LEONARD ALFRED MWANANZUMI (As the Administrator of the Estate of the late
Patrick Alfred Mwananzumi).....**1ST RESPONDENT**

HELENA EMMANUEL MANGAZINI.....2ND RESPONDENT

JUDGMENT

21st December, 2023 & 26th March, 2024

MRISHA, J.

This judgment presents a rather unique situation which calls for the need to widen the scope of providing legal education to the public as far as the legal effects of transferring interest in land are concerned, and to further encourage the public to opt for alternative dispute resolution as the best means of solving the disputes amicably so that the court's dispute settlement process becomes a last resort.

It is about a mother and son namely Leonada Benedicto Kapele and Patrick Alfred Mwananzumi respectively who before being confronted into a family dispute, as will be described shortly, happened to love each other so much that the former decided to let the latter go to the land office with her title deed, transfer the same into his name in order to acquire a loan from the bank and use the same to build a commercial building in front of her plot, believing that she would benefit from the house rent money to be obtained from that building.

However, things did not go the way the mother had expected as the son dishonoured the agreement by stopping to give her some money obtained from that house and that is when the dispute between the two arose with the mother beginning to press her son to retransfer the title deed so that she could regain her previous status as the occupier of a piece of land which is the subject of the present appeal, henceforth the disputed land.

The records of the District Land and Housing Tribunal for Sumbawanga at Sumbawanga (the trial tribunal) from which such land dispute can be traced, reveal that after completion of transfer of the title deed with the land Authorities at Sumbawanga, the status of that piece of land changed as the new land document began to bear the name of Patrick

Alfred Mwananzumi (now the deceased person), instead of that of his mother one Leonada Benedicto Kapele who is the appellant herein.

The trial tribunal records also depict that the disputed house was built by the late Patrick Alfred Mwananzumi on Plot No. 42, Block G (HH) at Jangwani area in the street called Community Centre within Sumbawanga District in Rukwa Region and the name which appears in the document pertaining to that piece of land, is that of Patrick Alfred Mwananzumi. This is shown at page 9 of the trial tribunal impugned judgment and on Exhibit B.

It is also on record that in order to ensure that she regain her previous legal status in relation to the disputed land, the appellant convened a family meeting which was attended by various relatives including her son Patrick Alfred Mwananzumi. The main agenda in that meeting was for the said Patrick to retransfer the title deed so that it bears the name of the appellant as it used to be before her agreement with him.

It appears that the two agreed that the son would transfer the title deed as demanded by his mother (the appellant) and the appellant would allow the said son to collect some rent as his compensation for development of the appellant's land (the disputed land) and subsequently thereafter, the son collected a total of Tshs. 3,060,000/=

as per the said agreement which was reduced into writing, tendered before the trial tribunal and admitted as Exhibit A.

However, it is unfortunately that one Patrick Alfred Mwananzumi passed away before completion of that rent collection. As a result, a family convened another meeting and the first respondent, Leonard Alfred Mwananzumi was appointed as the administrator of estate of Patrick Alfred Mwananzumi.

It is also revealed as per the trial tribunal records that upon learning that the first respondent was appointed by the probate court to be an administrator of her late son, the appellant approached and required him to ensure that the title deed which by that time was held by the bank as a collateral, is transferred and handled back to her and the first respondent partly complied by collecting that document from the bank and handing it back to the appellant.

That is exhibited by a written agreement between the appellant and the first respondent which was witnessed by family members, including the first respondent, and successfully tendered by the appellant during trial as Exhibit B.

However, it appears that the problem arose when the second respondent one Helena Emmanuel Mangazini, protested the transfer of the title deed

from the late Patrick Alfred Mwananzumi whom she claimed to be her late husband, to the appellant arguing that the appellant had, with love and affection, given the disputed land to her late husband who developed it by building a front house for business purpose; hence the disputed land belongs to her late husband.

Believing that her right in respect of the disputed land was in danger of being denied by the first and second respondents, the appellant filed with the trial tribunal a Land Application No. 26 of 2021 in order to urge that trial tribunal to declare her as the lawful owner of the disputed land, make a declaration that the respondents had entered into a void contract as they forged the same.

It was also her prayer that the trial tribunal be pleased to issue a permanent injunction restraining the respondents and their servants from entering into the disputed land and make any development therein, order the respondents to pay her Tshs. 10,000,000/= and costs.

In a bid to prove her claim against the first and second respondents, the appellant who testified as SM1 @PW1, paraded a number of five (5) witnesses namely Flora Alfred Mwananzumi, Isack Mwanawima, Jeremiah Nguyumali and Ademalus Charles who testified as SM2 @PW2,

SM3 @PW3, SM4 @PW4 and SM5 @PW5 respectively. She also tendered the documentary evidence successfully, as described above.

In brief, what was testified by her was to the effect that she entered a special agreement with her late son one Patrick Alfred Mwananzumi on condition that her late son would transfer her title deed into his name for him to be able to use it as a collateral and obtain a loan to be used in building a front building with shops on her plot.

She also told the trial tribunal that after such agreement, she went to the land offices with her late son who left her outside, then on return he gave her some papers to sign and she agreed by appending her right thumb signature on those papers because she did not know how to read and write. She also told the trial tribunal that she did not know what her late son had discussed in the land office and the contents of that document were not read over to her.

The trial tribunal's records also reveal that in her testimony, the appellant narrated that it was agreed between her and her late son that the later would be giving her part of the rent money from the shops of that building, but her son did not do so, then she began to accuse him to his relatives and wanted him to return back her title deed.

That later through a family meeting, the late Patrick Alfred Mwananzumi agreed to retransfer the title deed to her and the said agreement was reduced into writing. She prayed to tender the same before the trial tribunal as an exhibit and the same was admitted and marked as Exhibit A without any objection from neither the first, nor the second respondent. Her evidence was corroborated by all her four witnesses.

On the other side, the first respondent admitted before the trial tribunal that indeed there was such agreements as claimed by the appellant and that upon the death of Patrick Alfred Mwananzumi who was the appellant's son, he was appointed by the probate court to be an administrator of the said deceased person.

He also told the trial tribunal that it is true that the appellant and other family members including the late Patrick Alfred Mwananzumi, convened a family meeting in order to settle the dispute between the appellant and the late Patrick Alfred Mwananzumi and that it was agreed and resolved that the late Patrick Alfred Mwananzumi would start collecting rent from the front house he had built until the expenses he had incurred in building that house, could be completed.

According to the evidence of the first respondent, the problem arose when the second respondent refused to allow the transfer of title deed

from the name of her husband to that of the appellant, as it was agreed between the appellant and the first respondent.

On her side, the second respondent despite conceding that indeed there was such transfer between the appellant and her late husband, testified before the trial tribunal that the front house which is on the appellant's plot, was built by her late husband and his two sisters.

After a full trial, the said trial tribunal found that the appellant failed to discharge her legal due of proving her claim against the respondents on the balance of probabilities compared to the respondents whose evidence showed that the appellant had consented with love and affection that her title deed be transferred from her name to that of the late Patrick Alfred Mwananzumi.

Hence, it dismissed her application and declared that the disputed land is part of the estate of the late Patrick Alfred Mwananzumi. This decision did not please the appellant. Thus, she filed with the court a Petition of Appeal which is predicated into ten (10) grounds of appeal to the effect that:

1. The trial chairperson made the impugned decision by not considering that no invitee can exclude his host whatever the length of time the invitation takes place.

2. That, the trial chairperson made a serious mis consideration of law that an invitee cannot pass good title to third (sic) part.
3. The second respondent had no good title to the disputed house as the same was borrowed to the deceased for obtaining loans only.
4. That, the chairperson failed to scrutinize evidence on the table as per tendered exhibits which the first respondent wrote in his own hand writings agreeing to hand over the disputed plot.
5. That, the disputed house was not subject to Probate Cause No. 66 of 2020.
6. That, the learned chairperson of the trial tribunal erred in law and fact by failing completely to evaluate the evidence of the appellant which was watertight and corroborative; if that could be done it could come with different decision.
7. That, the evidence of the respondents was very weak compared to strong evidence of appellant which was strong yet it was ignored.
8. That, the trial chairperson mis regarded the strong evidence of the appellant.
9. That, the trial chairperson did not consider that the respondents did not call any witness to corroborate their evidence.
10. That, the appellant was not treated as according to the principles of natural justice.

When the matter was called on for hearing, Mr. James Lubusi, learned Advocate appeared for the appellant whereas the first and second respondents namely Leonard Alfred Mwananzumi who stood as the Administrator of the late Patrick Alfred Mwananzumi, and Helena Emmanuel Mwangazini, appeared in person and represented themselves.

Before beginning to make his submission in chief, Mr. Lubusi dropped the tenth ground of appeal and in commencing his submission in chief in respect of the rest particularly grounds number 6, 7 and 8 which he proposed to merge and argue together, he submitted that those grounds attract the need for the court to reevaluate the evidence adduced before the trial tribunal, subject it to a critical scrutiny and come up with its own decision. He cemented that proposition by citing the case of **Hon. Attorney General vs Mwahezi Mohamed (As the Administrator of the Estate of the late Dolly Maria Eustace) & 3 Others**, Civil Appeal No. 391 of 2019 (CAT, unreported).

He further submitted that it is a trite law that any person claiming anything must prove his claim on the balance of probabilities, as provided under the provisions of section 110 (1) (2) of the Evidence Act, Cap 6 R.E 2019. He also referred the court to the case of **Martin**

Fredrick Rajab vs Ilemela Municipal Council & Another, Civil Appeal No. 197 of 2019 (CAT at Mwanza, unreported).

In applying the above principle of law to the present case, the appellant's counsel submitted that the trial tribunal's records show that the appellant prove her claim against the first and second respondents on the required standard, but the trial tribunal denied her right.

He clarified that at page 4 of the trial tribunal typed records, it is revealed that the appellant who testified as SM1 while the first respondent as SU1, agreed with the latter to have her interest over the disputed land be returned to her which agreement was reduced into writing, tendered before the trial tribunal and admitted as Exhibit A.

It was also the submission of the appellant's counsel that the evidence of the appellant was corroborated by that of her second witness who testified as SM2, as it is shown at page 7 of the trial tribunal typed proceedings to the effect that before his death, the late Patrick Alfred Mwananzumi used to collect some rents obtained from the front house as his compensation for the expenses he had incurred in building that house as agreed between him and the appellant.

Mr. Lubusi also submitted that during cross examination, the first respondent replied that, "*Marehemu Patrick ndio aliyeomba arudishiwe*

fidia” which when informally translated, mean that the late Patrick is the one who asked for compensation.

According to the appellant’s counsel, also at page 8 of the trial tribunal typed proceedings it is revealed that there was another evidence from SM3, the appellant’s third witness, which shows that the said witness testified to have recognized SM1 (the appellant) as the owner of the disputed land.

It was also his submission that even the evidence of the remaining witnesses who testified as SM4 and SM5, corroborated the appellant’s claim over the disputed land which indicates that she managed to prove her claim against the respondents on the balance of probabilities.

Apart from the above, the appellant’s counsel submitted that during cross examination, the second respondent conceded that the disputed land does not belong to her late husband one Patrick Alfred Mwananzumi. Hence, he urged the court to allow the appeal, rely on the case of **Barelia Karangirangi vs Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (CAT at Mwanza, unreported) and find out that the appellant proved her case on the balance of probabilities.

Furthermore, the appellant’s counsel submitted that the trial tribunal chairperson misdirected herself when she found that the disputed land

was surrendered by the appellant to the late Patrick Alfred Mwananzumi with love and affection because no gift deed was tendered and admitted by the trial tribunal as a proof that the said land was given to the appellant's son with love and affection. A case of **Maria Syangyombo vs Catherine O. Ambakisye**, Land Appeal No. 56 of 2019 (HCT at Mbeya, unreported) was cited to back up the counsel's stance.

On grounds number 1 and 2 which were also proposed to be combined and argued together, the appellant's counsel submitted that it is the position of the law that no invitee can exclude his host whatever the length of time the invitation has taken place, as it was stated in the case of **Angelo G. Kapufi vs Edward Matondwa & 2 Others**, Land Appeal No. 30 of 2019 (HCT at Sumbawanga, unreported).

The appellant's counsel then argued that the late Patrick Alfred Mwananzumi was not given the disputed land as a gift, but he was given the title deed in order to use it as a collateral in obtaining bank loan for him to build the front house; he was therefore, an invitee of the appellant, as exhibited by Exhibits A and B.

To bolster the above position, the appellant's counsel cited the case of **Musa Hassani vs Barnabas Yohanna Shedafa** (Legal

Representative of the late Yohanna Shedafa), Civil Appeal No. 101 of 2018 (CAT at Tanga, unreported).

Guided by the principle derived from the above case, the appellant's counsel submitted that the late Patrick Alfred Mwananzumi was just an invitee and not the owner of the disputed land. Hence, he prayed that the court be pleased to follow the wisdom of the Court in **Musa Hassani vs Barnabas Yohanna Shedafa** (supra) and find merit in grounds number one and two.

Regarding the third ground of appeal, Mr. Lubusi submitted that the same has already been covered by his submission in respect of the first and second grounds of appeal to the effect that the late Patrick Alfred Mwananzumi was an invitee to the appellant as he was required to use the title deed and return it to the appellant.

In regards to ground of appeal number four, Mr. Lubusi submitted briefly that the first respondent had written on his own hand writing that he handled over the new title deed to the appellant for her to change the name of her late son into hers.

As for the fifth ground of appeal, it was his submission that the house erected on the disputed land, is not subject to Probate Cause No. 66 of 2020 because at page 14 of the trial tribunal's typed proceedings, it is

shown that SU2 who is currently the second respondent, testified that she did not know why the said house was not mentioned as one of the assets of the late Patrick Alfred Mwananzumi.

The learned counsel for the appellant further submitted that the house mentioned in Probate Cause No. 66 is located at Sumbawanga Wenyeji where the second respondent resides. It was his further submission that had the trial tribunal considered that evidence, it would have decided otherwise.

His submission in respect of the ninth ground of appeal was that the respondents neither summoned any witness to support their claims over the disputed land, nor did they tender any document including a deed of gift in order to prove their claims. Due to that omission, the counsel argued, it is obvious that the respondents failed to prove their case on the required standard. Finally, the appellant's counsel submitted that based on the above submissions and authorities, he humbly prays that the court be pleased to allow the present appeal and nullify the proceedings and the impugned judgment of the trial tribunal with costs.

On his part, the first respondent submitted that the late Patrick Alfred Mwananzumi whom he has stepped into his shoes, died on 23.07.2020, but before his demise, the said deceased person had an outstanding

loan with a certain commercial bank and he was paying the same on each month; the loan was supposed to be paid in full on or before 16.08.2020.

That, however; the said deceased person passed away before completion of such debt payment. Thereafter, a family meeting was convened and the first respondent was appointed to be an Administrator of the abovenamed deceased estate.

That, thereafter, he began to list down the assets left behind by the said deceased person, but he refrained from including the house located at Jangwani area, because according to him, the same has two houses; the rear house and the front house.

That the rear house was built by the deceased and his sisters and the front one was built by the late Patrick Alfred Mwananzumi after being given the plot by his mother one Leonada Benedicto Kapele. According to the first respondent, that is the reason why he did not list the house located at Jangwani as one of the late Patrick Alfred Mwananzumi's estate who is his late young brother.

It was also submitted by the first respondent that he went back to the financial institution where his late young brother had picked a loan in order to collect the security left behind by the said deceased person and

succeeded to be availed with a title deed of the house used by the late Patrick Alfred Mwananzumi as a security.

In relation to the documentary evidence tendered by the appellant and admitted by the trial tribunal as Exhibits A and B, the first respondent submitted that the late Patrick Mwananzumi had opposed Exhibit A by saying that it is impossible for him to build a house and begin to collect the rent money in order to secure the expenses he had incurred in erecting such house. In that regard, the first respondent urged the court to disregard Exhibit A stressing that the abovenamed deceased person never agreed with the terms and conditions contained in that exhibit.

Turning to Exhibit B which is about an agreement of changing name on the Title Deed which currently bears the name of Patrick Alfred Mwananzumi, to that of Leonada Benedicto Kapele, it was the submission of the first respondent that such exhibit backs the appellant as the owner of the disputed land.

He also submitted that he was summoned by the officials of the Land Department under the Municipal Counsel who required him to bring the widow and children of the late Patrick Alfred Mwananzumi so that they could consent to transfer the title from the name of Patrick to that of the appellant, but they denied to give their consent to that respect. In the

end, the first respondent prayed to adopt his reply to the petition of appeal for it to form part of his submission in chief. He also prayed that the appellant's appeal be dismissed with costs.

To the second respondent, her response was that the appellant on her own volition, had prepared a letter authorizing the late Patrick Alfred Mwananzumi to build the front house. She also submitted that the appellant gave her plot to the abovenamed deceased person with her love and affection.

It was her further submission that the late Patrick Alfred Mwananzumi who is her late husband, has left behind five (5) children, but she has not received any rent from that disputed house since her husband passed away. She thus, prayed to adopt her reply to the petition of appeal for it to form part of her submission in chief.

In rejoinder, Mr. Lubusi had it that since the first respondent has conceded to his submission in chief, it is his prayer that this court be pleased to consider the first respondent's submission because it supports his claims.

He further reiterated his previous prayer that this court be pleased to allow the appellant's appeal and quashed the decision of the trial tribunal which according to him was tainted with discrepancies, and

proceed to declare one Pascalia Alfred Mwananzumi, the Administratrix of the late Leonada Benedicto Kapele to be the owner of the disputed land.

I have dispassionately examined the rival submissions of the parties to this appeal in light with the grounds of appeal the appellant has implored me to consider. I have also paid much attention to the records and the impugned judgment of the trial tribunal as well as the authorities cited by the counsel for the parties.

Having done so, I think that the only issue which is enough to dispose of the present appeal despite a number of complaints raised by the appellant through her petition of appeal, is whether the findings of the trial tribunal were correct.

As correctly submitted by the appellant's counsel the first appellate court has a duty to reevaluate the evidence adduced before the lower court where it appears that the lower court omitted to evaluate properly the evidence adduced by the parties before it as a result it arrived to a wrong conclusion; See **Paulina Samson Ndawanya vs Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (CAT at Mwanza, unreported).

I subscribe to and I will be guided by the above principle because it is apparent that one of the appellant's complaints is that the learned

chairperson of the trial tribunal failed to completely evaluate the evidence of her evidence which according to her, was watertight and corroborative to the extent that had it been properly evaluated, the said learned chairperson could have decided otherwise. That complaint is contained in the sixth ground of appeal as presented by the appellant.

My examination of the evidence adduced by the appellant before the trial tribunal, shows that she categorically told the trial tribunal that her agreement with the late Patrick Alfred Mwananzumi was to allow the said deceased person to transfer her title deed into his name, use it as a collateral in order to obtain some loan money for building a front house on her plot so that they could share the profits to be obtained from that house, but her late son did not honour such agreement.

That piece of evidence is shown at pages 3 to 4 of the trial tribunal typed records. It is also corroborated by the evidence of SM2, SM3 and SM5. Also, both the first and second respondents did not object the appellant's prayer to tender the written agreement which is to the effect that the late Patrick Alfred Mwananzumi would collect the rent money from the front house up until he gets back his expenses. The same was admitted as exhibit A. This is shown at page 4 of the trial tribunal's

records whereby upon been shown that document and required to comment about it, they responded as follows: -

"Mjibu Maombi wa 1 (first respondent): "Sina pingamizi" (I have no objection)

Mjibu Maombi wa 2 (second respondent): "Sina pingamizi" (I have no objection)"

It appears that what followed after those responses from the respondents, was that the trial tribunal proceeded to grant the appellant's prayer by admitting the said document and mark it as Exhibit A, which was correct. Again, I have observed that in resolving the issue as to who is the owner of the disputed land, the honourable chairperson of the trial tribunal did not talk anything about exhibit A and B. In my view, and with all due respect to her, that was a serious misdirection and misapprehension of the law.

It is a well-known procedure that once a document is tendered and admitted before the trial court, it becomes part of the evidence in favour of the party who has tendered it and the trial court is duty bound to consider it when making its decision on a particular matter. By not considering the documentary evidence produced by the appellant, the

learned trial chairperson cannot be said to have arrived to a correct conclusion of her findings.

As it has been pointed above, the appellant tendered exhibit A and B all of which show that the disputed land belonged to her, but the same were neither considered, nor accorded any weight by the trial tribunal which in my view was not proper.

Again, in her judgment, the learned chairperson of the trial tribunal had a view that since in her testimony the appellant narrated that she agreed to have her title deed be transferred into the name of her son, then she cannot deny that she intended to transfer that title deed to the latter.

In my view, that proposition by the learned chairperson would have hold water had there been no any reason which prompted the appellant to allow the transfer of her title deed to her son. It is on record that the appellant agreed to have her title deed be transferred to her son for the purpose of collecting a bank loan which would have been used for erecting a front house so that the profits to be obtained from that house would be shared between the appellant and her late son.

Hence, it is apparent that the said transfer was subject to some conditions and that is why upon realising that the other party to the

agreement did not perform its duty properly, the appellant decided to claim back her title deed from the late Patrick Alfred Mwananzumi who showed cooperation to the appellant, as shown by Exhibit A.

If the above is not enough, I have also examined the records of the trial tribunal and noticed that there is nowhere it is stated therein that the appellant transferred her title deed to the late Patrick Alfred Mwananzumi, her late son with love and affection; the only evidence adduced by her is as described above.

It is surprising to find that the assertion that the appellant transferred her title deed to the abovenamed deceased person emerged in the course of composing the impugned judgment of the trial tribunal while there was no any evidence to back it. I think what was supposed to be done by the honourable learned trial tribunal was to confine herself on the evidence adduced by the parties before her.

Also, the argument that despite being blessed with eleven legal issues, the appellant decided to transfer her title deed to her last son one Patrick Alfred Mwananzumi indicated that she decided to do so with love and affection, has no legs to stand on the plain reason that had that been the case, then the adverse party would have tendered a deed of

transfer to prove before the trial tribunal that indeed the said transfer was done by the appellant with love and affection.

I am also of the settled view that had it been true that the appellant decided to transfer her right of occupancy over the disputed land to her late son with love and affection on her own volition, she would not have entered into another agreement with her late son to the effect of allowing him to start collecting the rent from the front house built on the disputed land as his compensation for the expenses incurred by him in building that house, as it is proved by Exhibit A.

It is also worth noting that had there been some truth that the disputed land began to be belonged to the appellant's late son after being transferred to him with love and affection, the first respondent would not have agreed to hand back the title deed to the appellant and participate in the process of retransferring the same to the appellant, as it is shown by Exhibit B.

Not only that, but also it is my considered view that the first respondent's contention that the late Patrick Alfred Mwananzumi opposed to retransfer that title deed to the appellant is baseless because he did not lead any evidence to prove that claim.

To the second respondent, her argument that the disputed land belongs to her late husband because the appellant decided to give the disputed land to the late Patrick Alfred Mwananzumi, is in my view without merit. As I have already alluded hereinabove, the disputed land was not given to the said deceased person with love and affection, but subject to the terms and conditions agreed by the appellant and her late son (deceased).

Moreover, I am of the settled view that the appellant's claim to have interest over the disputed land, also entails that she did not intend to transfer her title deed to her late son with love and affection, but with condition that upon completion of a front building by her late son on her plot, they would share some profits to be obtained from that house.

Thus, up to this moment, it is apparent that all that I have discussed above has covered grounds of appeal number four, six, seven, eight and nine which, based on the assigned reasons, I find to be merited.

The remaining grounds for my consideration, are number one, two, three and five and I will be very brief in addressing them. First the first and second grounds of appeal are about the issue of invitation on the part of the late Patrick Alfred Mwananzumi, the appellant's child.

It is alleged by the appellant through her learned counsel that the learned trial tribunal's chairperson erred in law by not considering that no invitee can exclude his host whatever the length of time the invitation has taken place. It is also his argument that the chairperson of the trial tribunal made a serious misdirection of law by holding that an invitee cannot pass good title to the third party.

This last complaint is automatically unmerited because in her judgment the learned trial chairperson did not hold the way the appellant's counsel would like the court to believe.

On the complaint that the trial tribunal omitted to consider that no invitee can exclude his host, I agree with the counsel for the appellant that indeed there is such misapprehension of the long-established principle of law in land matters that no invitee can exclude his host whatever the length of time the invitation takes places; See **Angelo G. Kapufi** (supra) and **Samson Mwambene v. Edson James Mwanyingili** [2001] TLR 1.

I say so because it is on record that initially the late Patrick Alfred Mwananzumi was invited by the appellant in order to supervise the process of erecting a building in front of the appellant's plot so that the profits to be obtained from that building would be shared by both of

them. That evidence was not disputed by the respondents and the trial learned chairperson ought to have considered that and enter judgement in favour of the appellant. Hence, I also find that the first ground of appeal has merit.

As for the third ground of appeal, in my view the same cannot consume my time because there is nowhere in the impugned judgment it was held that the second respondent has good title over the disputed land. Looking at page 10 of the said impugned judgment, it is shown that in resolving the issue of ownership of the disputed land the learned trial chairperson held that the disputed land is part of the estate of the late Patrick Alfred Mwananzumi, the decision which I have faulted in favour of the appellant.

Also, the records of the trial tribunal are silent whether the second respondent claimed to have any interest over the disputed land. Thus, owing to the foregoing reasons, I find that the third ground of appeal has no merit since it does not reflect the decision of the trial tribunal and it appears to be improperly raised.

In considering ground number five, I wish to say that I have revisited the records of the trial tribunal together with the impugned judgment and observed that it true that the disputed house was not part of

Probate Cause No. 66 of 2020 which led to the appointment of the first respondent as the Administrator of the estate of the late Patrick Leonard Mwananzumi.

That observation by the court is fortified by the response of the first respondent upon being cross examined by the appellant's counsel whereby he stated at page 13 of the trial tribunal typed proceedings that, and I quote:

"Nyumba gombewa sikuiorodhesha kwenye mali za marehemu kwasababu ina mgogoro"; (I did not list the disputed house as part of the deceased's estate because it is involved in a land dispute)

From the above excerpt which refers to the evidence of the first respondent before the trial tribunal, it is clear that the disputed land was not part of the Probate Cause relating to the late Patrick Alfred Mwananzumi. This again draws an inference that even the first respondent was not sure if the disputed land belongs to his late young brother.

Again, I do not see any logic as to why he did not list it as part of late young brother's estate despite observing that there was a land dispute in relation to that land. In my view, the presence of a land dispute does

not bar the administrator of the deceased estate to list any property believed to be part of the deceased's estate.

I am of that settled view because from what I know, it is the probate court which has jurisdiction to determine ownership of the asset (s) left behind by the deceased person and which is involved in a land dispute;

See **Mgeni Seif v Mohamed Yahaya Khalfani**, Civil Application No. 1 of 2009.

In that case, it was stated, *intel alia*, that,

"As I have said earlier, where there is a dispute over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership"

Back to our case, it is apparent that had there being a belief that the disputed land actually belonged to the late Patrick Alfred Mwananzumi, one would not have expected the first respondent to omit listing that land as among the assets left behind by his relative so that the alleged dispute could be determined by the probate court which appointed him.

In my view the omission to list the disputed land in the list of assets believed to be the estate of the late Patrick Alfred Mwananzumi, entails that the disputed land belonged to the appellant. Hence, based on the

reasons I have already provided herein above, I conclude by finding that the fifth ground of appeal lacks merit.

Before I pen off, I wish make some few remarks regarding the dispute leading to the instant appeal. First, as it has been pointed above, the land dispute between the parties herein could be solved amicably by way of alternative dispute resolution. This is because Exhibit A clearly shows that that the appellant and the late Patrick Alfred Mwananzumi agreed that the latter would be collecting rent from the front house he had built until he could secure all the expenses he had incurred in erecting such house. It appears that the agreement was partly complied with because the records show that before his demise the late Patrick Alfred Mwananzumi collected as sum of Tshs. 3,060,000/= as part of Tshs. 21,000,000/= which he was supposed to secure as his compensation.

In the circumstance, it is my opinion that the said dispute could well be settled by allowing the administrator of the estate of the late Patrick Alfred Mwananzumi to continue collecting rent to be obtained from that house up to the fullest so that the appellant can remain with the disputed house.

Secondly, I have observed that before hearing of the present appeal could start, the appellant counsel informed the court that the appellant had passed away and one Pascalia d/o Mwananzumi was appointed by the Urban Primary Court of Sumbawanga vide Probate Cause No. 17 of 2023, to be the Administratrix of the appellant whose name is Leonada Benedicto Kapele meaning that the appellant also passed away before hearing of the present appeal, though the records show that before her passing, she had engaged Mr. Lubusi to represent her in this appeal and also the Administratrix approved him.

Also, I have observed that in concluding his reminder submission the appellant counsel submitted a prayer that the Administratrix of the appellant be declared as the owner of the disputed land should the court allow the present appeal.

With all due respect to the learned counsel, that prayer cannot pass into my hands. Being an administratrix does not automatically make one Pascalia d/o Mwananzumi entitled to be the owner of the deceased estate. It is when it is proved that that she is among the deceased heirs, or has been mentioned in the deceased's will to be one of the deceased heirs or beneficiaries.

Her current duty is to administer and distribute the estate of late Leonada Benedicto Kapele to all heirs and beneficiaries, if any, and file an **inventory** together with an **account** with the Probate Court which appointed her, as it is provided under regulations 5 and 11 of the First Schedule to The Magistrates Court Act, Cap 11 R.E. 2019. The later provision of the law goes thus:

*"11. After completing the administration of the estate and, if the primary court orders, at any other stage of the administration, **the administrator shall account to the primary court for his administration.**" [Emphasis supplied]*

In the premise, it is my settled view that the findings of the trial tribunal were not correct. Hence, I find the present appeal to be meritorious. Consequently, I quash the proceedings as well as the impugned judgment of the trial tribunal. I also declare that the disputed land is currently part of the estate of the late Leonada Benedicto Kapele and that the purported transfer of the appellant's title deed into the name of the late Patrick Alfred Mwananzumi, is declared to be void.

As for prayer of costs, I have considered the nature of the present case and found that the justice of the case at hand requires that each party should bear its own costs. Hence, I make no order as to costs.

Order accordingly.



A.A. MRISHA
JUDGE
26.03.2024

DATED at SUMBAWANGA this 26th day of March, 2024.



A.A. MRISHA
JUDGE
26.03.2024