

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB-REGISTRY

AT MUSOMA

LAND APPEAL NO. 90 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Mara at Musoma in Land Application No. 164 of 2022)

BETWEEN

NMB BANK PLC..... APPELLANT

VERSUS

ANNASTAZIA JOSEPH HINGIRA..... 1ST RESPONDENT

JOSEPH JUMANNE KANYONYI.....2ND RESPONDENT

RULING

20nd & 28 May, 2023

M. L. KOMBA, J.:

The first respondent filed Land Application No 164 of 2022 at the District Land and Housing Tribunal for Mara at Musoma (DLHT) against the appellant and the 2nd responded on the need to discharge guarantor upon the death of the principle. After hearing both parties the DLHT decided that upon the death of guarantor, he cannot continue with his duty as he will not be able to verify whether a party adhere to terms of contract within which he guaranteed. He closed the matter in favour of the first respondent that mortgaged property has to be returned to the guarantor.

The above appellant was dissatisfied by the decision of the DLHT and registered this appeal with three grounds. For reasons to be known later, I find it not necessary to produce the same grounds.

When the matter was in the preparation of hearing, on 8/4/2024 Mr. Paul Mng'arwe counsel for the 1st respondent informed this court that he communicated with her client as part of preparation, he was further informed that while the 1st respondent was in the capacity of administratrix of the property of the late Martha Nyamwikondo Magambana Maneno, she had a Land Case No. 164 at DLHT. Mr. Mng'arwe proceeded that he was informed by his client that she was discharged from the administration of the estate and the probate was closed. Following that information, bearing in mind that her client is not residing in Musoma, he prayed for time to make follow-up of the information from the Probate Court. To him verification was important due to the fact that if the information is true might affect the appeal at hand. Appellant and 2nd respondent agreed and this court granted time.

On 20/5/2024 Mr. Paul Mng'arwe confirmed to this court that upon perusal he finds on 08/02/2023 the probate case was closed and the 1st respondent was discharged from duties. He further submitted that the case at DLHT was heard while the 1st respondent was no longer

administratrix and the record show the property which is subject of this appeal was distributed to heirs. So far as the 1st respondent was no longer administratrix while the matter was in the DLHT he prayed this court to nullify the proceedings of the DLHT due to capacity of then Applicant.

Mr. Iche Mwakila who represented the appellant confirmed that this court was waiting for proof as submitted by counsel for the 1st respondent. It was his submission that if this court will find the submission by counsel to be true and that the house subject to this appeal was mortgaged by the deceased and was among the properties which was distributed, he prayed this court to exercise its supervisory power under section 43(1) (b) of Land Disputes Courts Act, Cap 216 to quash decision of the DLHT in Application No. 164 of 2022. He further prayed for the costs from the 1st respondent.

The 2nd respondent was represented by Mr. Godfrey Muroba who noted that by 06/9/2023 when judgment was delivered at DLHT the 1st respondent was not the administratrix and he prayed the proceedings to be nullified and this court to provide way forward.

Mr. Mngarwe requested to rejoin his submission only on issue of costs that if this court will nullify the proceedings, he prayed it to be without costs as the issue was raised by the 1st respondent herself.

I made the follow up of submission by parties together with order of the probate court issued on 08/02/2023. It is not disputed that 1st respondent was administratrix of the estate of the late Martha Nyamwikondo Magambana Maneno and also it is not disputed that she filed Land Application No. 164 of 2022 while she was administratrix. I have read the order of the probate Court which shows that on 08/02/2023 the probate was closed and that means the administrator was discharged from her duties. That being the position, from 08/02/2023, after she was discharged from administration of estate duties, she had no locus to proceed with the matter at the DLHT. Applicant had no capacity and therefore all proceedings that follows after 08/02/2023 are nullity.

Under section 43 of Land Disputes Courts Act, Cap 216 just as submitted by counsel, I hereby invoke the powers best owned by this court and proceed to nullify proceedings from date 08/02/2023 and quash decision which originate from nullity proceedings. I further struck out this appeal as it originates from nullity proceedings. I do this without costs. Any

party who is believe has to claim further for the rights, if any, has to pursue it by following proper channel as per law.

DATED at **MUSOMA** this 28th of May, 2024



NLK
M. L. KOMBA
Judge