IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

GEITA SUB-REGISTRY

AT GEITA

MISCELLANEOUS LAND APPEAL NO. 8491 OF 2024

(Originating from Land Application No. 24 of 2019 in District Land and Housing Tribunal for Geita at Geita)

GRACE LAURENT MAPEMBE *(Administratrix of the estate of the late Maria Laurent Mapembe)* **.....APPELLANT**

VERSUS

1. **BONIFACE REUBEN KATAMPA**
2. **ABDALLAH SHIRAZI ALLY..... RESPONDENTS**

JUDGMENT

Date of last Order 21/05/2024
Date of Judgment 31/05/2024

MWAKAPEJE, J.:

The Appellant herein, Grace Laurent Mapembe (Administratrix of the estate of the late Maria Laurent Mapembe), is discontented with the decision of the District Land and Housing Tribunal for Geita in Land Application No. 24 of 2019, which was delivered on 08 March 2024; hence, the present appeal.

The crux of this appeal arises from the subsequent events: The 1st Respondent initiated legal action in the District Land and Housing Tribunal against the Appellant herein and the 2nd Respondent, seeking, among

other remedies, a declaration of ownership over the property, i.e. house, he acquired from the 2nd Respondent located on Shilabela Street in Buhalahala Ward, within the District and Region of Geita. As per the available evidence, the 1st Respondent (PW1) alleged to have purchased the disputed property through Shedrack Jumanne (PW2), acting as the agent of the 2nd Respondent, since the 2nd Respondent was residing in Zambia, for a total sum of Tshs. 6,000,000/=, which he paid. Subsequently, the 1st Respondent was taken aback to discover that the Appellant had taken possession of the property, leased it out, and collected rent from tenants without the 1st Respondent's consent or prior notification. The 1st Respondent further contended that the 2nd Respondent's mother-in-law refused to give him documents pertaining to the ownership of the property after he purchased it.

Additionally, PW2 stated that PW1 and the 2nd Respondent agreed that the disputed house would be purchased for a total amount of Tshs. 6,000,000/=. He further stated that following this agreement and after the 1st Respondent made the payment, some of which Tshs. 500,000/= was to the mother-in-law of the 2nd Respondent and the agent, i.e. Shedrack Jumanne (PW-2), was to receive Tshs. 1,500,000/=. The remaining amount was sent to the 2nd Respondent in the respective bank account in Zambia.

Conversely, the Appellant, who served as the 2nd Respondent (DW-1), asserted that the disputed residence belonged to Mariam Laurent Mapembe. To substantiate her claim, DW-1 presented the original sale agreement of the disputed property dated 08/12/2001, which was admitted as DE1 in evidence. She also indicated that following the demise of Mariam Laurent Mapembe, the family designated her as the administratrix of her late sister's estate. During her testimony, she argued that the 2nd Respondent and her sister were not legally married despite having four children. Furthermore, she maintained that she was unaware of and had no knowledge regarding the sale of the disputed property.

Martha Lukanduji (DW-2) testified that Mariam Laurent Mapembe was her daughter, and following her demise, the family designated DW-1 as the administratrix of the estate. DW-2 stated that the deceased, Mariam, bequeathed numerous assets, including the contested residence. She also asserted that DW-1 has been overseeing the management of the residence since assuming the role of estate administratrix and that the property is currently tenanted, with the rent proceeds being utilised to provide for the offspring of the late Mariam Laurent Mapembe.

After consideration of the evidence, the tribunal concluded that the 1st Respondent failed to substantiate his claims of purchasing the aforementioned house due to a lack of evidence proving ownership by the

2nd Respondent. Consequently, it was determined that the property rightfully belonged to Maria Laurent Mapembe. However, given that the 1st Respondent was a *bonafide* purchaser, the Appellant and the 2nd Respondent were ordered to reimburse the 1st Respondent the amount he had paid for the alleged purchase of the property. Dissatisfied with this ruling, the Appellant has filed an appeal on four grounds as follows:-

1. *That the learned trial Chairperson grossly erred in law to hold the Appellant was responsible for refunding the 1st Respondent without any proof of receiving any portion of the defrauded sum;*
2. *That the learned trial Chairperson, having held that exhibits P-1, P-2 and P-3 did not disclose the purpose of payment, grossly erred in law and fact to hold the Appellant responsible for refunding the 1st Respondent.*
3. *That the learned trial Chairperson grossly misdirected himself not to hold the 2nd Respondent an administrator of his own wrong and thus solely bear the burden of his wrong.*
4. *That the learned trial Chairperson grossly erred in law by applying criminal standards of failure to cross-examine in land cases, ending up abusing justice.*

This appeal was argued orally, and both parties appeared *pro se* and were unrepresented. The 2nd Respondent failed to enter an appearance as all the necessary measures to reach him turned futile.

Thus, he was considered to have abdicated his duty of defending his case. Therefore, the Court was compelled to proceed *exparte* against him.

Being the first to address the Court, the Appellant adopted her grounds of appeal and submitted that she was discontented with the tribunal's ruling, which ordered that she reimburse the funds transferred by the 1st Respondent to the 2nd Respondent. She stated that she neither received nor utilised the sum advanced by the 1st Respondent to the 2nd Respondent and argued that the 1st Respondent should seek restitution from the party to whom the payment was made, not her.

The 1st Respondent, on the other hand, stated that his concern was to receive a reimbursement of the amount of Tshs. 6,000,000 he had paid for to acquire the aforementioned property, i.e., the house. He mentioned that the contested landed property was close to his residence and that he was acquainted with the 2nd Respondent and his late spouse, which led him to have no reservations regarding the acquisition of the house in question. He concluded by seeking the repayment of the sum he had disbursed in accordance with the decision of the District Land and Housing Tribunal.

In her rejoinder, the Appellant had nothing substantial apart from what she had already stated in her submission in chief.

Having considered the grounds of appeal and submissions by the parties, this court is of the opinion that the first, second and third grounds of appeal hinge solely on one ground, which I will deal with herein by enjoining them: that the trial chairperson erred in ordering that she be part of reimbursing the 1st Respondent an amount of money she neither utilised nor had knowledge of. The question that follows is whether the trial tribunal was justified in ordering that the Appellant be included to reimburse the 1st Respondent in such circumstances.

In determining this ground of appeal, it is essential at the onset to state that it is the administrator, or administratrix as the case may be, who is empowered by the court to manage the estate of the deceased. It is a well-established legal principle that the property of a deceased individual, which has not yet been distributed to the heirs, remains under the care and management of the duly appointed administrator or administratrix. The administrator is always appointed by the probate and administration court before carrying out any transactions involving the property. The same position was articulated in the case of **Mgeni Seif vs Mohamed Yahaya Khalfani,** Civil Application No. 1 of 2009 [2017] TZCA 258, as follows:

> "*…it is only a probate and administration court which can empower an administrator to* ***transfer the deceased*** *person's* property."
> [Emphasis supplied]

In the present appeal, the Appellant is challenging the third order issued in the trial tribunal's judgment against her and the 2nd Respondent in relation to the reimbursement of Tsh 6,000,000/= to the 1st Respondent. She asserts that since she was unaware of and did not partake in the sale of the disputed property or derive any benefit from the proceeds, she should not be held liable for any losses suffered by the 1st Respondent in the alleged purchase of the property. As a mere administratrix of the deceased's estate, she argues that she should not be personally responsible for the actions in question.

To me, the actions undertaken by both Respondents are indefensible, as they violate legal principles as far as the disposition of the deceased estate under administration is concerned. The house in question, which was part of the deceased's estate and had not yet been distributed to any heir, was overseen by the Appellant, who is the legally designated administratrix and not the 2nd Respondent. Regrettably, the Appellant was not involved at any point in the alleged sale despite being a party to the application before the District Land and Housing Tribunal of Geita. It is baffling why the Appellant, in her capacity as the administratrix of the deceased's estate, was disregarded throughout the sale process while being held responsible for the actions of another party.

The available evidence indicates that she was unaware of and not consulted during any stage of the sale.

From the foregoing, it goes without saying that claims by the 1st Respondent, termed a *bonafide*, as stated in the trial tribunal's decision, should not have been imputed to a person who had neither knowledge of the transaction nor benefitted from the proceeds of the sale, especially in circumstances such as those present in this appeal. Despite finding that the transaction of sale was flawed, the trial tribunal found that it was undisputed that the Respondents, i.e. the Appellant and the 2nd Respondent, received money from the 1st Respondent. It was stated on page 23 of the trial tribunal's decision that:

> *"…… ijapokuwa mauziano ya eneo bishaniwa hayakuwa sahihi lakini inaonekana ni jambo lisilopingika kwamba wajibu maombi walipokea pesa kutoka kwa mjibu maombi wa kwanza aliyeruhusu pesa ambayo imetokana na mauziano hayo igawanywe kwa mama mkwe (DW-2) ambaye ni mlezi wa watoto waliochwa na marehemu Maria Laurent Mapembe ambaye pia ni mzazi mwenzie na mjibu maombi wa Kwanza"*

This finding was wrong because there was no evidence that the Appellant received any sum from the 1st Respondent. Therefore, from the foregoing, I concur with the Appellant that there is no justification for her, as administratrix of her late sister's estate, to be implicated in reimbursing the funds received by another individual for their personal gain. Given that

the 1st Respondent was caught on a web of buyer beware and failed to conduct due diligence about the acquired property, which was under administration, the amount he paid as a termed *bonafide* purchaser should be recovered from the 2nd Respondent he entered into an agreement with, not the Appellant.

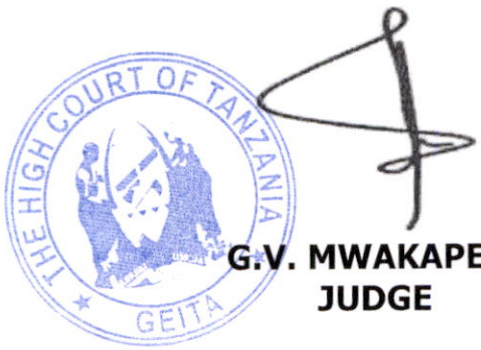
The fourth ground should not detain me, as legal principles are generally applicable in both criminal and civil cases, depending on the specific circumstances of each case. See the case of **Issa Athumani Tojo vs The Republic (Criminal Appeal 54 of 1996) [2001] TZCA 22 (28 June 2001).** The principle that the failure to cross-examine a witness constitutes an admission is not only relevant in criminal law but also in civil litigation, as it pertains to rules of evidence applicable in both legal realms. In this appeal, it is apparent that the alleged proceeds from the transaction were meant to be divided among PW2, the 2nd Respondent and DW2. Despite PW2's statement that DW2 did not receive the portion of Tshs 500,000, as documented on page 34 of the trial tribunal's records, the tribunal concluded on page 21 of its ruling that due to DW1-DW2 not challenging the assertion that DW2 received the mentioned sum, it was deemed as an admission. While I agree with the trial Chairperson's assertion that failure to cross-examine a witness implies admission, it was incorrect to apply this in the context of this case, as PW2, who was

distributing the funds according to the 2nd Respondent's directives, explicitly mentioned that DW-2 did not receive the stated amount.

That said and done, I hereby find the appeal meritorious to the extent explained and proceed to quash the reimbursement order against the Appellant only. The remaining orders by the trial tribunal remain unaltered. In the circumstances of the case, I make no order as to costs.

It is so ordered.

DELIVERED at **GEITA** on this 31st day of May 2024.



G.V. MWAKAPEJE
JUDGE

Right to appeal explained.

The judgment is delivered on the 31st day of May 2024, in the presence of both the Appellant and Respondent.

G.V. MWAKAPEJE
JUDGE