

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 140 OF 2019

AGNESS SIMBAMBILI GABBA.....1ST APPLICANT

VERONICA SAMSON GABBA.....2ND APPLICANT

FROLA SAMSON GABBA.....3RD APPLICANT

NOEL SAMSON GABBA.....4TH APPLICANT

SARA SAMSONI GABBA.....5TH APPLICANT

VERSUS

GRACE GABBA1ST DEFENDANT

MGENNI GABBA.....2ND DEFENDANT

NUHI GABBA.....3RD DEFENDANT

FRANK MGENI.....4TH DEFENDANT

Date of the ruling 11/12/2020

Date of the last order 05/11/2020

RULING

MAIGE, J:

The dispute at hand pertains to ownership of a landed property at Plot No.61

Ursino South, with Title No.186157/52 Kinondoni, Dar es Salaam (the suit

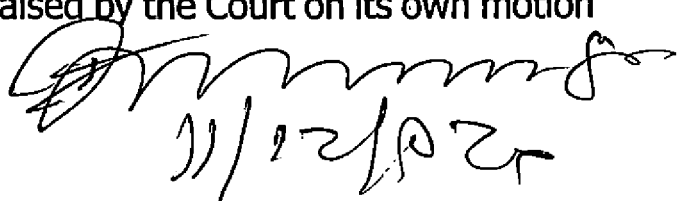
property). Until 2014, it is not in dispute, the **suit property** was registered in the name of the late SAMSON KISHOSHA GABBA. The Plaintiffs claim that the transfer was made by the first plaintiff in her capacity as the legal representative of the late Samson in 2014. She was irrefutably so constituted by the District Court of Kinondoni vide Probate and Administration Cause No. 10 of 2009 on 8th June 2009. The plaintiffs have also pleaded clan minutes suggesting that the defendants are also descendants of the late Samson.

While the first plaintiff was the legal wife of the late Samson, the rest of the plaintiffs as much as it is for the defendants are all descendants of the late Samson. Indeed, the defendants are in occupation of the **suit property**. They claim to have ownership interest on the **suit property**. Just as is for the plaintiffs, they trace title thereon from the late Samson by way of succession.

In this suit, the plaintiffs prays to be declared the lawful owners of the **suit property** on account of succession. They are also praying for vacant possession of the **suit property**. The factual allegations in the pleadings do not suggest that the deceased estate has been fully administered and the proceedings thereof closed.

In their written statement of defense, the defendants though admit of there being a transfer of the suit property at the instant of the first plaintiff as the administrator of the estate of the late Samson, it is their claim that vide **Civil Appeal No. 124 of 2011**, the appointment of the first plaintiff as administrator of the estate was nullified on 14th July 2015. They have attached, which was marked "Gabba 1," a copy of the said decision. Further pleaded and attached is a copy of the ruling of the High Court in **Probate and Administration Cause No. 40 of 2015** appointing David Samson Gabba, Thomas JK Fula, Lugendo Samson Gabba and Veronica Samson Gabba as successor administrators. It was on 17th February 2017.

On 5th November 2020 when the matter came for final PTC, I requested the parties to address me whether this matter did not fall under the Probate and Administration Cause No. 40 of 2015. The plaintiffs should have filed their written submissions on or before 12th November 2020 and the defendants 19th November 2020. For the reason better known to themselves, the plaintiffs and their counsel Fredrick Seba Marwa who was present on the said date, did not comply with such order. The defendants did not file any submissions too. Since this matter was raised by the Court on its own motion

Handwritten signature and date 11/12/2020

and it affects the jurisdiction of the Court, this Court is bound to decide notwithstanding the silence of the parties to address it. I will treat the parties' silence as waiver of their rights to be heard on the issue.

On my part, I have deliberated on the issue in line with the complaints and copies of the two judgments of the High Court, Dar Es Salaam District Registry, of which I have taken judicial notice. I am settled, in my mind that this issue ought to have been dealt with in the Probate and Administration Cause No. 40 of 2015 in which both parties are beneficiaries. The transfer of the **suit property** to the plaintiffs from the late Samson, it would appear to me, was made by the first plaintiff in pursuit of her capacity by then as the administrator of the estate. The transfer was made while the **Civil Appeal No. 124 of 2011** which nullified the grant and the proceedings thereof was pending. It is also apparent that, as of now, the first appellant is not an administrator of the estate. New administrators have been appointed since 2017.

In the judgment appointing new administrators, both the plaintiffs and defendants have been listed, ~~2 thereof~~ as the beneficiaries of the estate. At

page 8 thereof, the **suit property** is mentioned as part of the deceased estate.

In my view therefore, since both parties are claiming interest on the suit property by virtue of being administrators of the estate, the issue therein involved is a pure succession issue which is within the domain of the probate and administration court. It is on that account that, I will strike out the suit for want of jurisdiction. Parties may make use of the Probate and Administration Cause No. 40 of 2015 to have the dispute resolved. Since the issue was raised by the Court on its own motion, I will not make an order as to costs.

Dated at Dar es Salaam on 11 day of December 2020.

A handwritten signature in black ink, appearing to read 'I. Maige', with a large, stylized initial 'I'.

I. Maige

JUDGE

11/12/2020

Date: 11/12/2020

Coram: Hon. C. Tengwa - DR

For the 1st Plaintiff

For the 2nd Plaintiff

For the 3rd Plaintiff

For the 4th Plaintiff

For the 5th Plaintiff

Absent

For the 1st Defendant

For the 2nd Defendant

For the 3rd Defendant

For the 4th Defendant

RMA: Bukuku

COURT: Ruling delivered in the absence of both parties.



C. Tengwa

DEPUTY REGISTRAR

11/12/2020