

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO 86 OF 2019

MASAUNI YUSUFU MASAUNI.....PLAINTIFF

(the administrator of the Estate of the Late Salama Yusufu)

VERSUS

LALITCHANDULA CHHOTABHAI

PATEL.....1ST DEFENDANT

JAYAATICAL CHHOTABHAI PATEL.....2ND DEFENDANT

AZIM SALEHE KASSAM.....3RD DEFENDANT

KARIMA AZIM KASSAM.....4TH DEFENDANT

DATE OF JUDGEMENT- 06/10/2021

EXPARTE JUDGEMENT

The plaintiff, Masauni Yusufu Masauni, was appointed the Administrator of the Estate of the Late Salama Yusufu who died intestate on 13th October 2017. The Late Salama Yusufu (Salama Yusuph Masauni) did not have any child but left behind the house



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located at Plot No. 627, Isevy Street, Upanga Area in Ilala Municipality, comprised in a Certificate of Title No. 186172/108, herein shall be referred to as the "disputed premises." The only heir and beneficiary of the estate of the late Salama Yusuph Masauni was the plaintiff herein, who is the only surviving brother of the deceased.

The Late Salama Yusuph was occupying the house, and even after her death, the children of Masauni Yusuph Masauni continued to occupy the house. Salama Yusuph died in 2017, and after the appointment of the administrator, the administrator enquired at the Registrar of Titles to confirm the ownership of the disputed premises. The Administrator received a search Report dated 27th November 2018, and he was surprised to see that the property was no longer in the name of Salama Yusuph, but the owners were Lalitchandul Chhotabhai Patel and Jayaatical Chhotabhai Patel of P.O Box 2493, Dar es salaam owning 5% shares, and Azim Saleh Kassam and Karima Azim Kassam of P.O. Box 508, Dar es Salaam as joint occupiers having 1/6 shares.

Having found the fraud, and since the administrator was not aware of the change of ownership, and since the house was still in occupation of the children of the administrator, he tried to locate the people who were mentioned as the owners through their registered address but could not find them. He then decided to file a suit claiming for rectification of the register, and a declaration that the plaintiff as the administrator of the estate of the Late Salama Yusuph is the legal and lawful owner of the disputed premises.

The suit was filed in Court on 5th July 2019. The suit was first mentioned before Hon. Opiyo, Judge, on 15th July 2019. On 1st October 2019, the Court Process Server tried to locate the defendants but could not know their whereabouts. The Court ordered Reservice, again the Court Process Server tried to find their whereabouts but again, he could not find them. There was an order to serve them by substituted service. The defendants were traced through the Local Government offices, they could not be found. The Court ordered that they be served through their postal address. Copy of the registered mail was received by the Court on

19/09/2020. On 15th March 2021, there was an order issued by the Court to serve the defendants through publication in a widely circulated newspaper. They were served through Mwananchi Newspaper of 14th April 2021. On 17th May 2021, Hon Madam Judge Opiyo ordered for the case to be proved exparte as the defendants did not enter appearance or filed any defense despite adequate services.

The hearing of the case exparte was held on 22nd September 2021, and the plaintiff gave his own evidence. Mzee Masauni Yusufu Masauni, an old man of 91 years old gave his evidence under oath. He said he is the only surviving brother and heir to the estate of the late Salama Yusufu who died intestate in 2017. The plaintiff was appointed the Administrator of her estate, and the Letters of Administration dated 28th January 2019 and issued by Kariakoo Primary Court were admitted and marked as Exhibit P1.

Mzee Masauni Yusufu Masauni continued to tell the Court that the Late Salama Yusuf had only one property located at Isevy Street in Upanga Dar es Salaam. The Certificate of Occupancy, Title No.

186172/108 for Plot No. 627, Upanga, Dar es Salaam was received as evidence and marked as Exhibit P2. The Late Salama Yusufu continued to pay land rent, and the receipts for payments of Land Rents and assessments were admitted as Exhibit P3, collective.

The plaintiff also confirmed that Salama Yusufu and Salama Yusufu are the same person, only spelling discrepancies when writing the names. He tendered in Court the affidavit to confirm that both these names are the names of the deceased. The affidavit was received as Exhibit P4. The plaintiff had written a letter to Kariakoo Primary Court, (Exhibit p5), asking the Court to note and rectify the names of the deceased, the Primary Court refused to rectify, and had responded to the plaintiff via a letter dated 17 August 2018, which letter was admitted as Exhibit p6.

This witness said, her sister, the Late Salama Yusufu never sold or disposed of the house to anyone, and the plaintiff's children are still residing in the house from the time the late Salama Yusufu was alive, and even after she died. He said, he was shocked to receive the Search Report dated 27th November 2018 (Exhibit p7) which

shows that the disputed premises are registered in the names of the defendants herein.

PW1 said, the 1st and 2nd defendants were once the tenants in a small part of the disputed premises, but when they got sick, they moved back to India, and he is informed that these tenants were already dead. Since they were still the tenants, when they went to India, they left the house under the care of another Indian man but did not know his name. He said, as soon as the case was filed in Court the Indian man got scared and moved out of the house to an unknown place, and he had locked the doors of the premises. He locked the doors of the small part of the house which was once occupied by the 1st and 2nd defendants. That part of the house is still locked to date.

That was all for the plaintiff and asked the Court to declare him the lawful owner of the disputed premises, and to order the Registrar of Titles to rectify the Register.

The defendants' whereabouts are unknown, and so the Court could not get their side of the story. The Court does not know as to why

the Registrar of Titles agreed to change the ownership of the disputed premises from the name of the deceased to the names of the defendants and mark them as joint occupiers owning shares in the property. The Original Title Deed received by the Court as Evidence shows that the Late Salama Yusufu was given the land known as Plot No. 627, Upanga in the City of Dar es Salaam. There was no joint ownership of land. The entire land was given to one person. The land she was given was 8,547 square feet, and she was given the land in January 1970 for 99 years. She has built the house and has been living there till her death in 2017, and after she died, her relatives, nieces and nephews, the children of the plaintiff were living there and still living there.

From the evidence received from the plaintiff, it is proved on the required standard that the land was granted to the Late Salama Yusufu through a Right of Occupancy, and she has occupied the house for her entire life till her death. There was no proof whatsoever that shows that the Late Salama Yusufu had disposed of the house to the defendants. There is also no proof that the title granted to Salama Yusufu was cancelled or revoked. The title is still

valid, and so it is not known as to why the name of the defendants appears in the records of the Registrar as the owners of the disputed premises. It be noted that the original Title Deed is with the Plaintiff and had produced it in Court as the Exhibit. Had the land or property been disposed of by the Late Salama Yusufu to the defendants, the purchasers, the defendants herein, would have been in possession of the original Title Deed. There must be some sort of forgery on the part of the defendants, and they had misrepresented themselves to the Registrar of Titles as the purchasers of the disputed premises using forged documents. The Registrar must have acted on a forged documents presented to him by the defendants or on false misrepresentations of the defendants. The defendants needed to prove their case in Court, but they completely avoided service.

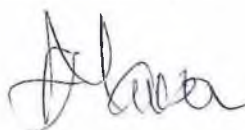
Order IX, r. 6 applies to a case where a plaintiff appears, and the defendant does not appear when the suit is called on for hearing. Order ix, rule 6 (iv) provides, that where the plaintiff appears and the defendant does not appear when the suit

is called on for hearing then if it is proved that the summons was duly served, the court may proceed ex parte. This is the provision under which the Judge acted upon to order the case against the defendants to proceed ex parte.

It has been proved that the Court ordered the case to proceed ex parte because the defendants were absent even after due service, they failed to file their defence. Therefore, the evidence of the plaintiff has been taken by the Court and the Court has set the date for pronouncing judgement. Service of the summons is proved, and the Court had all the right to proceed for ex-parte hearing against the defendants and the court is permitted to pass a decree in favor of the plaintiff. In some cases, the plaintiffs have the right to obtain a default judgment in circumstances where the defendant is unavailable or is otherwise attempting to avoid the dispute altogether. In this case the service was properly made, and so the court could have entered a default judgment in favor of the plaintiff. Default judgments are quite beneficial for the plaintiffs. In fact, default judgments are "automatic wins," so to speak. As the defendant has not responded to the complaint or summons, they

cannot dispute the arguments. In the instant case, the plaintiff was asked to prove his case, and from the evidence adduced by the plaintiff as PW1, and from the exhibits received, the plaintiff proved the case against the defendants in the required standard, and the Court grants judgment in favor of the plaintiff and grants the following orders:

1. The Late Salama Yusufu (Salama Yusuph) is declared the lawful owner of the suit premises located at Isevya Street in Plot No. 627, Upanga, Dar es Salaam Comprised in the Certificate of Title No. C.T.186172/108, thus the Legal Representative Mr. Masauni Yufusu Masauni is declared the lawful legal Representative of the Estate of the Late Salama Yusufu.
2. The Registrar of Titles is ordered to rectify the Register and enter the names of Salama Yusuph or Salama Yusufu as the owner of the property located at Isevya Street in Plot No. 627, Upanga Dar es Salaam Comprised in the Certificate of Title No. C.T.186172/108, and since she is dead, her administrator,

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Mr. Masauni Yusuf Masauni be recorded as the Legal Representative of the Late Salama Yusufu (Salama Yusuph).

3. Each party shall bear his own costs.

**DATED AND DELIVERED AT DAR ES SALAAM THIS 6TH DAY OF
OCTOBER 2021**




(L MANSOOR)

JUDGE

06TH OCTOBER 2021