

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LAND DIVISION
DAR ES SALAAM**

LAND APPEAL NO. 46 OF 2021

RICHARD EMMANUEL SONDA (As the Administrator
of the estate of the late **EMMANUEL SONDA**)**APPELLANT**
Versus

EDWARD J. K. NKEMBO.....**RESPONDENT**

*Last Order: 24/09/2021
Ruling date: 8/11/2021*

R U L I N G

MANGO, J.

The Respondent instituted Application No. 417 of 2016 before District Land and Housing Tribunal for Kinondoni claiming ownership of a piece of land located at Mbezi Luis Kinondoni Dar es salaam. He alleged to have purchased the suit land from two persons namely Cornelius Anthony and Emmanuel Sonda. The land he purchased from Cornelius Anthony measures 60x80 meters while the land he purchased from Emmanuel Sonda measures a half an acre. Emmanuel Sonda who was the first Respondent before the Tribunal alleged that the disputed land has never been sold to the Respondent in this appeal. The trial tribunal ruled in favour of the Respondent. Dissatisfied by the decision of the trial tribunal the Appellant in his capacity as the administrator of the estate of the late Emmanuel Sonda preferred this Appeal on the following grounds:-

- 1. That the trial tribunal erred in law allowing the application to sue the Appellant herein in individual capacity of which he had no locus standi;**
- 2. The Trial tribunal erred in law and in fact by relying on sale agreement which was not stamped and contain forged signatures;**
- 3. That both tribunals erred in law and fact by entering judgement in favour of the Respondent without considering evidence adduced by the Appellant;**

The Appellant had legal services of Mr. Mwang'enza Mapembe, learned advocate while the Respondent had legal aid services from Legal and Human Rights Centre. On 7th May 2021, the Respondent filed a notice of preliminary objection on points of law containing the following two points: -

- 1. That the Appeal is time barred;**
- 2. That the Appellant was not a party to the suit from which the Appeal emanates.**

On 9th August 2021 when this matter was called on for necessary orders, Mr. Mwang'enza Mapembe prayed to withdraw the first limb of objection. The Court granted the prayer and ordered the remaining limb of preliminary objection be argued by way of written submission as prayed by the Appellant.

Submitting in support of the remaining limb of objection, Mr Mwang'enza Mapembe, learned counsel for the Respondent argued that, the Appellant is a stranger to this suit because he was not a party to the Application before

the tribunal. He submitted that, the Respondent instituted Land Application No. 417 of 2016 against **RICHARD EMMANUEL SONDA** and not **RICHARD EMMANUEL SONDA** (As the administrator of the estate of the late Emmanuel Sonda). This Appeal was filed by Richard Emmanuel Sonda (As the Administrator of the estate of the late Emmanuel Sonda) who was not a party to Application No. 417 of 2016. The learned counsel argued that, change of party's name makes the petition of Appeal incompetent. He referred this Court to the decision of the Court of Appeal in **CRDB BANK PLC (FORMELY CRDB 1996) LTD. VERSUS GEORGE MATHEW KILINDU**, Civil Appeal No. 110 of 2017 Court of Appeal of Tanzania at Dar es salaam. In the cited case the Court of Appeal held that citing of new names for the Appellant without leave or order of the Court is a fatal irregularity which affects the competence of the Appeal

In his reply submission the Respondent conceded that the Appeal was filed in a different name. He however argued that it was proper to do so because the Respondent sued the Appellant in a wrong capacity. He is of the view that when filing Application No.417 of 2016 the Respondent ought to have sued the Appellant in his capacity as the administrator of the estate of the late Emmanuel Sonda and not in his personal capacity as he did. Therefore, he filed this appeal in what he considers to be his proper capacity in this suit.

In his brief rejoinder, the Respondent's counsel reiterated his submission in chief that the Appeal was preferred by a strange person. Citing the case **AHMED ALLY SALUM VERSUS RITHA BASHALI** and another, Civil Application No. 21 of 1999 and the case of **ATTORNEY GENERAL VERSUS OYSTERBAY VILLAS LIMITED AND ANOTHER** Civil Application No.

168/16 of 2017, he insisted that, a person who was not a party to the case ought to have preferred Revision application and not an Appeal.

From the submission by both parties it is not disputed that the Appellant preferred this Appeal as the administrator of the estate of the late Immanuel Sonda and not in his personal capacity. In this capacity, it means the appeal was filed on behalf of the late Immanuel Sonda. Court record indicates that the Appellant was sued in his personal capacity as Richard Immanuel Sonda. Thus, the Appeal at hand was instituted by a person who was not a party to the case. The allegations by the Appellant that he was sued in a wrong capacity is unfound because the nature of cause of action and time when it arose indicates that, the Respondent was correct to sue the Appellant in his personal capacity. In holding so, I am alert that Emmanuel Sonda passed away on 20th February 2009 and Richard Emmanuel Sonda was appointed as the administrator of the estate of the late Emmanuel Sonda on 3rd September 2015.


According to the contents of the Application before the tribunal, the Respondent does not have any dispute with the late Emmanuel Sonda. His cause of action is against Richard Emmanuel Sonda and Emmanuel Johnson as he alleges that they are illegally occupying his land located at Mbezi Luis area Kinondoni Dar es salaam. The Application was instituted on 22nd July 2016, seven years from the death of the late Emmanuel Sonda. Time when the application was filed and the nature of the cause of action establishes that the Applicant who is the Respondent herein does not have any cause of action against the late Emmanuel Sonda. In brief, the late Emmanuel Sonda

cannot be illegally occupying the suit land as he is already dead. This disapproves the allegations that the Appellant was sued in a wrong capacity.

For that reason, I sustain the objection and find the appeal to be incompetent for being filed by the person who was not party to the application before the tribunal. The Appeal is here by struck out for reasons expressed in this ruling.

As the Appeal was institute in forma pauperis this Court does not award costs.




Z. D. MANGO
JUDGE
08/11/2021