

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO. 495 OF 2021

OMARY SALIM HOHSIN.....APPLICANT

Versus

HAMISA ABDALLAH MUHSIN.....1st RESPONDENT
NYANYA MOHAMED MUHSIN.....2ndRESPONDENT
NAZARENO MAKILIKA3rd RESPONDENT
AVELINA MAKILIKA.....4th RESPONDENT
MOJHAMED SEIF.....5th RESPONDENT

RULING

22/12/2021 & 31/5/2022

Masoud J.

The applicant applied to be joined as a defendant in Land Case No. 200 of 2020. He claimed that he was a beneficiary and administrator of the estate of Salim Mohamed Mohsin who passed away on 20/03/1975. The deceased and one Hassan Mohamed Mohsin who also passed away on 06/02/1964, jointly owned a parcel of Land held under Certificate of Title No. 186100/40 situated at Kurasini area in Dar es Salaam.

It was alleged that following the death of the said Hassan Mohamed Mohsin in 1964, his two sons, namely, Salehe Hassan Mohamed Mohsin

and Salum Mohamed Mohsin were under his will appointed as executors of the deceased's 50% shares of the property. It was equally alleged that when the said Salim Mohamed Mohsin died in 1975 the first respondent herein (i.e Hamisa Salum Mohsin) was appointed to administer the second half of 50% of the said property.

The gist of the complaint leading to the filing of the present application was to the effect that one, Salum Mohamed Hasan Mohamed Muhsin, who is not a part herein, with other administrators (not named in the affidavit) sold part of the property described as Plot No. 671/3K, Kurasini area to the third and fourth respondents. And that the sale did not involve the second respondent who was not an administrator of the estate. With the said sale, the first respondent as the administratrix of the said estate distributed distribute the 50% share of the property to the beneficiaries and herself.

The application was opposed by the first, second and fifth respondent who filed counter affidavit and respective notice of preliminary points of objection. The third and fourth respondents did not oppose the application and did not therefore file any counter affidavit or preliminary point of

objection. The gist of the objection sought to show that the applicant has the applicant did not have interest on the matter. On the other hand, the objection points raised were to the effect that the applicant has no locus standi, the applicant has wrongly sued the first and second respondents; and that the applicant's application is untenable.

With the leave of the court hearing of the preliminary objection and the substantive application was simultaneously conducted by filing written submissions. As is the rule of practice, this court had to dispose of the preliminary objection first before embarking on the merit of the substantive application if the outcome of the determination of the preliminary objection would so require.

My consideration of the rival submissions on the preliminary point of objection left me in no doubt that thorny issue was whether the applicant disclosed interests that he has in relation to the Land Case No. 200 of 2021. I was shown that while the applicant was seeking to be joined as a defendant in relation to the estate of the deceased mentioned in his affidavits and disclosed herein above, he did not show the court in his affidavit that he was indeed an administrator of the property in dispute

and to make it worse he did not sue the first respondent as the administratrix. The case of **Ally Ahmed Ally vs Wastara Kipati**, Land case No. 126 of 2017 was relied by the first and second respondent among others. The same underlined the capacity of administrators to sue in relation to a property of a deceased person.

As earlier shown, the applicant brought the present application as both an administrator and as a beneficiary of the property which according to him was party of the estate of the two deceased persons. In so doing, he claimed that the sale was effected by one, Salum Mohamed Hassan Mohamed Mohsin, and other administrators who were not named at all.

It is apparent that there is nothing in the affidavit supporting the applicant as to his administrator position, neither did he bring the present application as an administrator. If the applicant brought the application as a beneficiary the issue is whether he can properly be joined in a matter concerning ownership of a property which is a subject matter of the estate in a land matter. In respect of this question, I think his complaints could properly be handled in a probate and not in land matter as such.


While also claiming to be joined as he is the administrator and beneficiary of the property in dispute, there was nothing shown in the affidavit concerning his interests in the Land Case No. 200 of 2021 which was only mentioned in the chamber summons. It is not clear as to the interests that he has in respects of the said Land Case.

Reading the affidavit one just finds averments in relation to a parcel of land allegedly belonged to the two deceased persons, and which was allegedly sold by the said Salum Mohamed Hassan Mohamed Mohsin, and other unnamed administrators, there is no link shown between the assertions and the suit in which the applicant wanted to be joined as a defendant in his capacity as an administrator and beneficiary of the said estate. Interests allegedly breached which are allegedly connected to the said suit were thus missing.

In the upshot, I sustain the objection as I am satisfied that it is not competent before the court. I accordingly proceed to struck iout the application with costs.

It is so ordered.

Dated and Delivered at Dar es Salaam this 31st day of May 2022.


B.S. Masoud
Judge

