

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

MISC. LAND APPEAL NO. 78 OF 2021

(Arising from the decision of Registrar of Titles)

ENOS JEREMIA KASAMBALA (Administrator of the
Estate of the late JEREMIAH KASAMBALA)..... **APPELLANT**

VERSUS

THE REGISTRAR OF TITLES.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT

Date of Last Order: 26.05.2022
Date of Judgment: 27.06.2022

JUDGMENT

V.L. MAKANI, J.

The appellant is ENOS JEREMIAH KASAMBALA. He is appealing against the decision of the Registrar of Titles (the **Registrar**) for refusing to register him as the owner of a house with Certificate of Title number 186034/43, Plot No.361, Oyster bay, Dar Es Salaam (the **suit property**). Dissatisfied with the decision of the Registrar, he has preferred this appeal basing on a single ground of appeal herein reproduced:

That the Assistant Registrar erred in law and fact for refusing to register the name of the appellant as the owner of the suit property whereas there is a court order directing him to register the appellant as the owner.

The appellant has prayed for the appeal to be allowed, and the impugned order of the Registrar be quashed and set aside. He has also prayed for this court to order the Registrar to register his name on the Register of Titles as per the order of the Kinondoni Primary Court in Shauri la Mirathi No.189/1999.

The appeal was argued by way of written submissions. Mr. Allan Emily Kabitina drew and filed submissions on behalf of the appellant, while Mr. Daniel Nyakiha, State Attorney, drew and filed submissions in reply on behalf of the respondents.

Mr. Kabitina gave a brief background of the matter and added that, upon notification by Kinondoni Primary Court by the letter dated 04/04/2021, that the appellant was appointed as the administrator of the estate of the late Jeremiah Kasambala, the Registrar of Titles declined to register him and informed the appellant vide the letter dated 08/07/2021. The Registrar said the ownership of the suit property was already transferred to Hanna Kasambala, Stella Shoo, Roy Kas Tambwe, Pepe Kisa Mwakasege and Mary Lauden Pondo who jointly own the property in equal shares. He said that it is trite law

that after the demise of anyone nothing should be done in respect of his estate until an administrator in respect of the said estate is appointed by the court to collect, pay debts, and distribute the estate to the beneficiaries thereto. He relied on section 108 of the Probate and Administration of Estates Act, CAP 352 RE 2019 and the case of **Shabani Issa vs. Ramadhani Khasim, Misc. Land Appeal No.33 of 2020**. Mr. Kabitina also relied on section 67 of the Land Registration Act, CAP 334 RE 2019 which place mandatory requirement for an administrator of the estate of deceased to be registered as the owner in place of the deceased. That the names registered as the owners came without any justification as to why they became owners. He insisted that suit property was the property of the late Jeremiah Kasambala hence subject to Letters of Administration. That the change of names to new owners was therefore illegal. He prayed for the grant of the prayers in the petition of appeal

In reply, Mr. Nyakiha gave a brief history of the matter at hand. He said the house that appellant wanted to be registered in his name does not belong to the deceased whose estate the appellant is the administrator. He said the appellant and the previous administrator

had initially complained that the transfer of the property in the name of Hanna Kasambala and others was not proper in that their documents were forged. But in all the cases narrated by Mr. Nyakiha which were from the District Court Mbeya to the Court of Appeal, decided in favour of Hanna Kasambala who together with Stella Kasambala were cleared of forgery by the Court of Appeal in **DPP vs. Hanna Kasambala, Criminal Appeal No. 464 of 2017 (CAT-Mbeya)** (unreported). He said the appellant did not submit any document of title in the name of the deceased so that respondent could act on the said Title. He observed that the Certificate of Title of the property is in the name of Hanna Kasambala and others. That unless the contrary is proved, the respondents holds that Hanna Kasambala is the lawful owner and the appellant cannot be registered as the lawful owner of the suit property by using the Letters of Administration. He relied on the case of **Amina Maulid Ambali & 2 Others vs. Ramadhani Juma, Civil Appeal No.35 of 2019 (CAT-Mwanza)**(unreported). He said that it was proved by the High Court and the Court of Appeal at Mbeya in **Criminal Appeal No.88 of 2017 (HC-Mbeya)** and **Criminal Appeal No.464 of 2017 (CAT-Mbeya)** that the Certificate of Title that the appellant is demanding was lawfully issued to Hanna Kasambala and the 1st

respondent cannot now act contrary unless the appellant submits evidence to disprove the decision of the two courts. He said that even the letter from Kinondoni Primary Court was only informing the respondent of the appointment of the appellant in place of the former Administrator Samwel Kasambala. That the letter from Kinondoni Primary Court (**Annexure 9**) did not direct 1st respondent to register the appellant as the owner of the suit property.

Mr. Nyakiha further said that under section 99 and 99 (2) of the Land Registration Act CAP 334 RE 2019, the appellant's appeal is incompetent. He observed that even section 67 of Land Registration Act quoted by the appellant does not grant automatic registration to the legal representatives as it requires an application in a prescribed form of which the appellant did not adhere to. That section 108 of Probate & Administration Act cited by the appellant is irrelevant as it provides guidelines to the administrator as to what to do with the property of the deceased. The section does not cover the properties that are not in the ownership of the deceased and under section 67 of Land Registration Act it is not mandatory for the administrator to be registered as the owner of the deceased property. He said the primary duty of the administrator is to distribute the property of the

deceased among the heirs. He insisted that the appellant is abusing the court process by bringing this matter to court while knowing that it was conclusively decided by the courts of law. He prayed for the appeal to be dismissed with costs.

In rejoinder submissions Mr. Kabitina reiterated his main submission and the reliefs prayed.

I have gone through the submissions by Counsel for the parties, and the main issue for consideration is whether this appeal has merit.

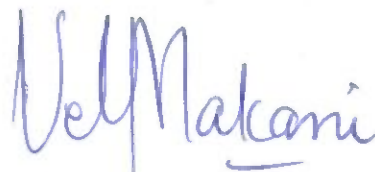
Both Mr. Kabitina for the appellant and Mr. Nyakiha for the respondents are not disputing the fact that appellant was appointed by Kinondoni Primary Court to administer the estate of the late Jeremiah Kasambala and further that he succeeded the former administrator one Samwel Kasamabala who passed on. It is common knowledge that the primary duty of the administrator, as correctly stated by Mr. Nyakiha, is among others, to collect and distribute the properties of the deceased among the heirs. He also has the duty of collecting and paying debts in the name of the deceased. The rationale behind registering of the properties of the deceased in

administrator's name is to enable easy functioning of his duties in relation to the properties for the benefit of the legal heirs. The appellant herein applied to the 1st respondent for the suit property to be registered in his name. But he was unsuccessful and has come to his court to appeal for an order to direct the 1st respondent to register his name as owner of the suit property in his name. The guiding question is whether the suit property belongs to the deceased. Mr. Nyakiha for respondents argued that the Certificate of Title to the suit property is in the name of Hanna Kasambala and her children. Mr. Kabitina for the appellant did not dispute the allegation. He only insisted that the 1st respondent should register the suit property in the name of the appellant as he has received the Letter of Administration from Kinondoni Primary Court. We are all aware that appellant as an administrator is in charge of only those properties listed as belonging to the deceased. However, it should also be noted that the suit property is in the name of Hanna Kasambala and her children and not in the name of the late Jeremiah Kasambala whose estate the appellant is the administrator. In that respect, the appellant cannot be incharge of the said suit property and the 1st respondent therefore, could not have changed the title of the suit property from Hanna Kasambala and his children to the appellant's name without

any justification. Doing so would have been contrary to section 99 of the Land Registration Act.

In view thereof, the 1st respondent was not at fault in refusing to register the suit property in the name of the appellant. The appeal therefore is without merit and it is hereby dismissed with costs.

It is so ordered.



V.L. MAKANI
JUDGE
27/06/2022