

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

LAND APPEAL NO. 242 OF 2023

**ZIADA THABITI HUSSEIN AS ADMINISTRATRIX OF
THE ESTATE OF THABITI HUSSEIN CHANZA APPELLANT**

VERSUS

KESSY JAFARY NGUGE 1ST RESPONDENT

CHANZA THABITI HUSSEIN 2ND RESPONDENT

NOEL ESTATE COMPANY LTD 3RD RESPONDENT

JUDGMENT

17/8/2023 & 14/9/2023

A. MSAFIRI, J.

This is a judgment on the appeal lodged by the appellant Ziada Thabit Hussein as administratrix of the estate of Thabit Hussein Chanza. Initially the appellant was also the applicant in Application No. 116/2020 filed at the District Land and Housing Tribunal of Ilala (herein trial Tribunal). She has filed the said Application against the now respondents; Kessy Jafary Nguge (1st respondent), Chanza Thabiti Hussein (2nd respondent) and Noel Estate Company Ltd (3rd respondent) claiming that, the 1st respondent through the service of 3rd respondent has issued 14 days' notice to the applicant for her tenants to vacate from the house situated

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at Mchikichini Ward, Ilala Kota Street in Ilala Municipality, Dar es Salaam (suit property) and that the 1st respondent claims that he purchased the said house from the 2nd respondent. The appellant who was then the applicant averred that the suit property is among the properties of the late Thabiti Hussein Chanza who died intestate on 15/6/2006.

She prayed for the declaration order that the sale agreement between the 2nd respondent and 1st respondent is null and void ab initio. She also prayed for declaration order that the eviction notice issued by the 3rd respondent is unlawful. After hearing of the Application, the trial Tribunal decided in favour of the 1st respondent and dismissed the applicant's claims.

The now appellant was aggrieved and has come to this Court by way of appeal on ten (10) grounds of appeal which are reproduced herein below as follows;

- 1. That the Honourable trial Tribunal erred in law and fact by holding that the house in dispute with Residential License No. ILA 027677 at Mchikichini, Ilala Kota, Dar es Salaam is the property of the 2nd Respondent while even in his Written Statement of Defence at paragraph 4 and 7 the 1st respondent agreed that the house he purchased from the 2nd Respondent was the lawful property of the late THABIT HUSSEIN MABURUKI who is also known as THABIT*

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HUSSEIN CHANZA the father of the 2nd Respondent and 2nd Respondent was mere Administrator of the said estate.

- 2. That the trial Tribunal erred in law and facts by ignoring the heavy evidences testified by SM-1, SM-3 and SM-4 which testified on the ownership of said house to be of their father THABIT HUSSEIN CHANZA and not the 2nd Respondent.*
- 3. That the trial Tribunal erred in law and facts by ignoring the exhibit KM-4 which is the Affidavit of the 2nd respondent taking an oath that the house in dispute is not his property but is the lawful property of his father and the 2nd respondent was a mere administrator of the said estate as pleaded in his written statement of defence of the amended application filed on 21st September 2020.*
- 4. That the trial Tribunal erred in law and facts by ignoring exhibits KM-5 and KM-6 which are courts' decisions under which the 2nd respondent never claimed the house in dispute to be his property rather than being revoked as administrator of estate of his father under which among the properties administered was the property in dispute and the 2nd respondent never objected or claimed ownership of the said house.*
- 5. That the trial Tribunal erred in law and facts by holding that the house in dispute was the property of the 2nd respondent without any evidence documentary or orally any testified witnesses (sic) showing how the 2nd respondent got the house in dispute.*
- 6. That the trial Tribunal erred in law and facts by ignoring the differences in signatures purported to be signed by the 2nd*

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respondent in exhibits KU-1, KM-7, Sales Agreement, KM-3(Residential License), KU-2, Hati ya Makabidhiano ya Nyumba.

- 7. That the trial Tribunal erred in law and facts by holding that SM-1, SM-3, and SM-4 testified that their father inherited the property in dispute from his mother the testimonies which never testified (sic) by the said witnesses.*
- 8. The trial Tribunal erred in law and facts by ignoring all cross examinations questions/testimonies and records for all witnesses testified at the trial Tribunal at the cross examination by the advocates for both parties, assessors and Tribunal itself in its decision.*
- 9. That the trial Tribunal erred in law and facts by basing its decision in the facts that the applicant did not complain to Ilala Municipal on the 2nd respondent ownership of the land in dispute while ownership of the said house as to be (sic) among the properties of their late father THABIT HUSSEIN CHANZA it was never disputed anywhere by the 2nd respondent as provided by exhibits KM-4 affidavit of 2nd respondent, KM-5 and KM-6 where the said house was clearly stated to be the property of their late father.*
- 10. That the trial Tribunal erred in law and facts by holding that the house in dispute was the property of the 2nd respondent without any evidence (documentary) from Serikali ya Mtaa to prove that the 2nd respondent was the resident of that place.* *Alle.*

The appellant prayed that this Court be pleased to allow the appeal with costs and the judgment and Decree of the trial Tribunal dated 8th May 2023 be quashed and set aside.

The appeal was argued by way of written submissions whereby the appellant's submissions were drawn and filed by Mr. Joseph Mailu Msengezi, learned advocate and the reply submission by the 1st and 2nd respondents was drawn and filed by Mr. Ansibert Rugaibura, learned advocate. The appeal was heard in absence of the 3rd respondent as she was duly served and failed to appear in Court and defend the matter against her.

The counsel for the appellant started his submission in chief by combining the 1st and 8th grounds of appeal and argue them together. He submitted that at the trial, it was manifestly proved by the appellant that the house in dispute is the lawful property of the late Thabit Hussein Maburuki who was also known as Thabit Hussein Chanza, the father of 2nd respondent, and that the 2nd respondent was a mere administrator of the said estate of his father. Mr. Msengezi argued that this was evidenced by Exhibits KM 4, KM 5, and KM 6, the exhibits which were tendered by the appellant's side during the trial. *Alle*

That, in addition, in his written statement of defence at the trial Tribunal, the 1st respondent admitted at paragraphs 4 and 7 that the house in dispute was the property of the late Thabit Hussein Maburuki who is also known as Thabit Hussein Chanza. He argued that, the parties are bound by their pleadings and paragraphs 4 and 7 of the written statement of defence of the 1st respondent shows clearly that the 1st respondent knew that the house in dispute was not the property of the 2nd respondent.

Mr. Msengezi added that, when cross examined by the counsel for the appellant on trial on 29/9/2022, the 1st respondent admitted that the house in dispute was the property of the late Thabit Hussein Chanza and the 2nd respondent is a mere administrator. He added that it was revealed in questions of clarifications by assessors that the 2nd respondent's signature differs in all documents which were tendered as evidence by the 1st respondent.

Mr. Msengezi also argued the 2nd, 3rd, 4th, 5th and 10th grounds of appeal in consolidation. He argued on the consolidated grounds of appeal that through evidence testified by SM-1, Ziada Thabit Hussein, SM-3, Zabibu Thabit Hussein and SM-4, Mabrook Thabit Hussein, it was proved that the ownership of the disputed house belongs to their father the late

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Thabit Hussein Chanza and not the 2nd respondent herein. That, their evidence was supported by exhibits KM 4, KM 5 and KM 6; and hence the appellant proved her case as provided under Section 110 (1) of the Evidence Act, Cap. 6. R.E 2022. He added that, the 1st respondent did not provide any evidence, oral or documentary to show how the 2nd respondent obtained the said disputed house before he was issued with the residential license.

Mr. Msengezi also combined grounds no. 6, 7 and 9 and argued them together. He submitted that, SM-1, Ziada Thabit Hussein, SM-3 Zabibu and SM-4 Mabrook, never testified that the house in dispute was inherited by the late Thabit Hussein Chanza as it was provided by trial Tribunal at pages 3 and 4 of the typed judgment.

That, the 2nd respondent never claimed ownership of the house in dispute, but he was registered in the Residential License because he was the only administrator of the estate of the late Thabit Hussein Chanza. That the registration was for the purpose of protection of the house in dispute.

He prayed for the appeal to be allowed with costs.

In reply, the 1st and 2nd respondents through their advocate Mr. Rugaibura submitted in accordance with the appellant's order of

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submissions of grounds of appeal. On grounds of appeal No. 1 and 8, Mr. Rugaibura stated that, the trial Tribunal was justified to reach the conclusion that the house in dispute is the property of the 1st respondent. That this was due to the evidence tendered during the trial, which showed that the disputed house is held under the Residential License No. ILA 027677 at Mchikichini, Ilala Kota, Dar es Salaam which was granted in 2011.

Mr. Rugaibura argued that it is a well-known principle of law that Title is the conclusive evidence of ownership of land. Thus, having the interest of the 1st respondent registered under the above residential license is the conclusive proof as to ownership of the said landed property.

Mr. Rugaibura argued further that the appellant's contention that the trial Tribunal ignored cross examination questions and testimonies is pure fallacy as all exhibits were taken into consideration by the trial Tribunal while delivering judgment. He averred that the trial Tribunal considered the strong evidence of the respondent and reached fair and just decision.

On grounds of appeal Nos. 3, 4, 5, 6, 7, Mr. Rugaibura responded that all contentions of the appellant in the combined grounds lacks merit as none of the appellant's witnesses proved ownership of the appellant

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on the landed property but they just presented empty stories which were not backed up with anything to prove the said ownership. That, page 7 of the judgment of the trial Tribunal gave reasons as to why the appellant was not the owner of the disputed house.

On the 8th and 9th grounds of appeal, Mr. Rugaibura submitted that, taking into consideration of heavy evidence presented by the respondents, the appellant's evidence at the trial particularly exhibits KM 4, KM 5, and KM 6 had no evidential weight to establish the appellant claims against the respondent who produced a residential license which was issued in 2011 and sale agreement between the holder of license and the 1st respondent.

The counsel prayed for the appeal to be dismissed with costs for lack of merits.

On rejoinder, the appellant through his counsel mainly reiterated the submission in chief. He added that the respondent's claim on the ownership of the house was baseless as the cited Land Registration Act Cap 334 does not apply in unplanned areas with residential licenses but to the surveyed and registered land with letters of offers and Certificate of Right of Occupancy which is not the matter at hand. *Alle.*

Having gone through the submissions by parties to this dispute and considered them along with the cited authorities, the major issue is whether the appeal is meritorious.

As said earlier according to the trial Tribunal records, the appellant instituted an Application before the Tribunal claiming that the house in dispute is among the properties of the late Thabit Hussein Chanza. That, in 2011 while as an administrator of the estate of the late Thabit, without consent or any information to the other beneficiaries, the 2nd respondent transferred ownership of the house in dispute into his name. During the trial, the framed issues were;

1. Whether the applicant as an administratrix is the lawful owner of the suit property?
2. Whether the sale agreement between the 1st and 2nd respondents of the suit property was lawful?
3. To what reliefs are parties entitled to.

The appellant as PW1 during the trial stated that the house in dispute (or suit property) is the property of their late father. That the house has residential license which is in the name of Chanza Thabit, her brother. PW1 said that Chanza Thabit (2nd respondent) was living in the house in dispute and hence he was present when the Municipal people were *Adls.*

passing at the residents to register the houses. She tendered the photocopy of the residential license as Exhibit KM 3. She also tendered an affidavit (a photocopy) of Chanza Thabit (2nd respondent) who deponed that the suit property is the lawful property of their father Thabit Hassan Chanza. It was admitted as Exhibit KM 4. PW1 testified further that, Chanza Thabit (2nd respondent) sold the house in dispute to Kessy Jaffary Nguge on 29/4/2020. That, she complained at the Street Government Office of Mchikichini and she was advised to take the matter to the land Tribunal.

PW1 said further that, the 2nd respondent was once appointed by family to be an administrator of the estate of their late father, but he was not appointed by the Court. That she instituted a probate case at Ujiji Primary Court which revoked the administrator ship of the 2nd respondent and appointed her as administratrix. She tendered Exhibit KM6, which is the Ruling of the Court. She said that the sale of the suit property by the 2nd respondent to the 1st respondent was illegal as the 2nd respondent was not the lawful owner of the suit property. She tendered the sale agreement as KM 7, and the minutes of family meeting as KM 8.

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The evidence of other witnesses of the applicant i.e. PW2, PW3, PW4 were similar to the one by PW1. It was mainly on proof that the suit house was the lawful property of their late father and not the 2nd respondent.

On the defence, the 1st respondent testified as DW1 and claimed to be the lawful owner of the suit property having purchased it from Chanza Thabit Hussein (2nd respondent) for purchase price of TZS. 21 Millions. He produced the sale agreement which was admitted as Exhibit D1, and the Residential license which was admitted as Exhibit D2, and the certificate of handing over the suit premises as Exhibit D3.

The other witnesses on the defence who were DW2 Amin Iddi Mbwana, the Street Chairman of Ilala Kota, and DW3 Wenceslaus Mkwe, State Attorney who attested/ witnessed the sale agreement between the 1st and 2nd respondent, only cemented the evidence of DW1 (1st respondent) that he bought the suit property from the 2nd respondent.

From the ten (10) grounds of appeal, the reply to the memorandum of appeal and submissions from the parties, I have gathered that the major issue in controversy is the ownership of the suit property. Even the issues which were raised during the trial also revolves around the ownership of the suit property. The appellant is claiming that the suit property was lawfully owned by her father the late Thabit Hussein Chanza

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who died interstate on 15/6/2006. The respondents particularly the 1st respondent contending that he is the lawful owner of the suit property as he bought it from the 2nd respondent who was the lawful owner of the suit property as he is the registered owner by the residential license which was tendered in Court.

It is a settled law that the duty of the first appellate Court is to reconsider and re-evaluate the evidence on record and may come to its own conclusion. (See the cases of **Maramo s/o Slaa Hofu & 3 others vs. the Republic**, Criminal Appeal No. 246 of 2011 CAT at Arusha (unreported) and **Makubi Dogani vs. Mgodongo Maganga**, Civil Appeal No. 28 of 2019 (unreported). Basing on that, I will re evaluate the evidence on record in determining the major controversy which is the ownership of the suit property.

As I have already read the evidence in record and analysed it hereinabove, during the trial, the appellant relied on documentary evidence as well as the oral evidence to prove her claims that the suit property belonged to her father the late Thabit Hussein Chanza and that the 2nd respondent Chanza Thabiti Hussein was not the owner of the said property but he came into possession of the same merely as an administrator of the estate of his father the late Thabit Hussein Chanza. *Alls.*

The documentary evidence produced by the appellant and her witnesses during the trial are Exhibit KM1 which is the Death Certificate of the late Thabit Hussein Chanza, KM 2 is the letter of appointment of the appellant as the administratrix of the estate of the late Thabit Hussein. KM 3 is the residential license registered in the name of Chanza Thabit Hussein, the 2nd respondent.

The appellant stated that the said license was in the name of the 2nd respondent as he is the one who was residing in the suit property and when the Municipal Officers came to register the residence, the house was registered in his name.

The appellant also tendered KM 4. This is an affidavit which it was claimed that the 2nd respondent affirmed and deponed that the house in dispute was not his property but it was the property of his father one Thabiti Hussein Maburuki. The affidavit was affirmed on 26/3/2014.

In the determination of the evidence adduced during the trial, the trial Chairman found that the appellant failed to prove that the house in dispute belonged to her/their late father as claimed. The trial Chairman stated that the appellant did not produce any proof that the house in dispute was the property of the late Thabit, but there was mere words/statements from the witnesses on the appellant's side and that

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their evidence was mere hearsay evidence. The trial Chairman based his findings on the Residential license - KM 3 where the house in dispute is registered in the name of the 2nd respondent, and the Sale Agreement between the 1st and 2nd respondents.

Having re-analysed the evidence of both sides which were adduced during the trial, I have come to my own different conclusion which with respect, differs with the findings of the trial Chairman.

In my conclusion, I am of the view that there was evidence on the appellant's side which proved on balance of probability that the house in dispute did not belong to the 2nd respondent Chanza Thabiti Hussein but it came into his possession as the administrator of the estate of his late father Thabiti Hussein Chanza.

It was not in dispute that the 2nd respondent was appointed an administrator of the estate of his late father. It was also not disputed that later his administrator-ship was revoked by the Primary Court of Kigoma in Probate Cause No. 45 of 2006. The Ruling of the said Primary Court was admitted by the trial Tribunal as KM 5.

In the said Ruling according to the evidence, one Hassan Thabit applied to the Primary Court (Probate Court) to revoke the administrator-ship of his sibling Chanza Thabit (now 2nd respondent) for the reason of *Acle*.

misappropriation of the assets of the estate and abuse of his position as an administrator by selling the disputed house at Mchikichini Ilala without the consent of the family.

In his defence, the now 2nd respondent denied to have sold the house without involving the family. He said that the family met with the purchaser and agreed to sell the house in dispute. That, the purchaser paid the agreed money into 2nd respondent's account. That, later the family members changed after getting another buyer who was ready to pay TZS. 30,000,000/= instead of TZS. 21,000,000/= which was already paid by the 1st respondent.

The house which was sold without consent of the family was said to be the one registered under Resident License No. ILA 027677 "A", which is the house in dispute in this appeal. According to this evidence, in the Probate cause No. 45/2006, the house in dispute was not the personal property of the 2nd respondent, but he sold it to the buyer as an administrator.

On the finding that the administrator (2nd respondent) has sold the house in dispute without consent of the family members, the Probate Court in Probate Cause No. 45/2006, revoked the administratorship of the 2nd respondent.

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To me the decision of Probate Court being the Ruling of the competent Court, I find its decision to be proof that the house in dispute was not the personal property of the 2nd respondent and he had no right to sell it in individual capacity and without involving the rest of the family members.

There is also a judgment of the District Court of Kigoma at Kigoma in Probate Administration Appeal Cause No. 6 of 2019 whereby Chanza Thabit (2nd respondent) was appealing against the decision of Kigoma Primary Court in Probate Cause No. 45/2006. The Judgment was admitted by the trial Tribunal as KM 6. The District Court in appeal capacity dismissed all grounds of appeal and upheld the findings and decision of the Primary Court, that the then appellant has misappropriated the estate of the late Thabit s/o Hussein including selling the houses situated at Mchikichini area, Ilala District, Dar es Salaam Region and Majengo area within Municipality and Region of Kigoma. This is another proof that the house in dispute was not the property of the 2nd respondent but it was in his possession as an administrator of the estate of the late Thabit Hussein.

As pointed earlier, there was an affidavit which was deponed by Chanza Thabit Hussein (2nd respondent). It was deponed before the Magistrate of the Primary Court at Ujiji. It was affirmed on 26/3/2014. *Alle.*

In the affidavit, the 2nd respondent deponed that the house in dispute with residential license No. ILA/MC/ILK/23/9 is not his property but the house belongs to the late Thabit Hussein Maburuki and that he (2nd respondent) was just an administrator. This affidavit was admitted by the trial Tribunal as "KM 4."

In his determination, the trial Chairman of the trial Tribunal was of the view that the appellant and her witnesses had no proof that the house in dispute belonged to their late father. The trial Chairman acknowledged the two decisions of the Probate Courts i.e. the Primary Court and the District Court at the appeal level. He also noted that the appellant brought the Minutes of the family meeting of December 2019 which passed the decision of revoking the administratorship of the 2nd respondent.

However, the trial Chairman pointed that, the appellant did not produce the minutes of family meeting of 2006 when the 2nd respondent was appointed the administrator so as to know whether the 2nd respondent was appointed also to administer the house in dispute. That, there was no such evidence.

But it is my finding basing on the two judgments of probate Courts i.e. Primary Court in Probate Cause No. 45/2006 and District Court in Probate Administration Appeal Cause No. 6 of 2019 that the house in

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dispute was among the assets administered by the 2nd respondent and he sold the said house without consent of the other beneficiaries. The two judgments are in the Court records as "KM 5" and "KM 6" respectively.

There is also the affidavit of the 2nd respondent which was admitted as "KM 4". In his analysis of evidence, the trial Chairman questions the authenticity of the signature of the 2nd respondent in the affidavit. He was of the view that, the affidavit's authenticity was not proved and that even in the normal sight (naked eyes), it shows that the signature which was claimed to be of the 2nd respondent is different from his signature in the sale agreement (Exh. D1) and the signature in the residential license. The trial Chairman concluded that, the proof of authenticity and truth of the affidavit KM 4 was necessary and mandatory.

However, it is my finding that, the trial Chairman was misdirected in his analysis and findings regarding the authenticity of the purported affidavit of the 2nd respondent. I say so for a reason that the trial Chairman relied on the normal look/naked eyes to question the authenticity of the signature on the purported affidavit of the 2nd respondent. He said that the signature on the affidavit is different form the signatures of the 2nd respondent on the sale agreement Exhibit "D1" and the residential license Exhibit "D2." The trial Chairman did not state how he reached to the

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conclusion that the signatures of the 2nd respondent are different from the one on the affidavit and the other on the sale agreement and Residential license.

The trial Chairman did not show or explain how he reached to the conclusion that the signature on the affidavit was not authentic hence needed proof but the signatures on Exhibits D1 and D2 were authentic hence did not need proof. The trial Chairman did not show how he reached to his finding that the signatures on Exhibits D1 and D2 belonged to the 2nd respondent but the signature on the affidavit did not.

If one was to rely on normal eyes (naked eyes) to differentiate the signatures of the 2nd respondent, then one can have different opinion as every one has his/her own sight. I also have looked at the three signatures purported to be signed by the 2nd respondent and I find that they are all the same i.e. the signature at the last page of sale agreement, is similar to the one on the affidavit. The same is also on the Residential license. With my normal eyes, the signatures are similar.

In such circumstances, it was wrong for the trial Chairman to disregard and dismiss the affidavit (KM 4) basing on the authenticity of the signature, while giving weight to Exhibit D1 and D2 which were also purported to be signed by the same person, without getting evidence of

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an expert witness on the authenticity of all signatures of the 2nd respondent. If there was a question of authenticity of signature on the affidavit, then how did the trial Chairman found that the other signatures on the other two documents were authentic and were indeed signed by the 2nd respondent?

The trial Chairman also relied on the sale agreement (D1) and the Residential license (D2) to find that the house in dispute was the lawful personal property of the 2nd respondent. In his findings, the trial Chairman stated that, the Residential license shows that the 2nd respondent is the first/original owner and that his ownership is not a transferred ownership. The trial chairman added that the appellant did not show proof that she has ever complained to the authority which issued the Residential license to the 2nd respondent and that the 2nd respondent did not bring proof to the Court that the Residential license was not lawful. Basing on that reasons the trial Chairman ruled that the appellant was not a lawful owner of the disputed property.

The trial Chairman might be right about the proof of ownership of the appellant on the suit property that there was no documents on ownership of the same which was produced by the appellant and her witnesses. However, what the appellant was seeking was for the trial

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Tribunal to declare that the house in dispute is the lawful property of the estate of the late Thabit Hussein Chanza. And there was documents which were produced in trial Tribunal which shows that the suit house was not property of the 2nd respondent but he was just an administrator who unlawfully sold the suit property. These documents are the judgments of the Probate Courts as seen in KM 5 and KM 6. There is also an affidavit of the 2nd respondent KM 4.

It is my finding that the trial Chairman wrongly concluded that the 2nd respondent was the first original owner without questioning how did the 2nd respondent got the said house in dispute in the first place before he was issued with the Residential license.

The 2nd respondent did not show how he got the house in dispute before he was registered as the owner and be issued with a Residential license. Did he purchase the suit property from another person, or did he cleared the bush? Was he granted the suit property by planning authority? Being the first owner as the trial Chairman found, it was important to know the origin of ownership of the 2nd respondent before he was given the Residential license. The Residential license alone is not absolute proof of ownership. There have to be more evidence to prove how the possessor

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of a residential license acquired the property in dispute before he got the same.

Furthermore, the Residential license was issued for duration of five years i.e. from 26 August 2011 to 25 August 2016. It is not in evidence whether the 2nd respondent has ever renewed the said license after the expiry of five years. Hence the Residential license which the trial Chairman relied upon to prove the ownership of the 2nd respondent on the suit property was already expired. Looking at the Sale Agreement Exhibit D1, the house in dispute was sold to the 1st respondent on 20/12/2017. This shows that when the sale agreement was entered, the Residential license on the house in dispute had already expired.

In the circumstances where the ownership of the 2nd respondent is based merely on the Residential license and he has no other Title over the suit property and the fact that the residential license has already expired, then this Court finds that the sale of the house in dispute was void ab initio as the 2nd respondent had no title to pass to the 1st respondent.

Section 23(1) of the Land Act, Cap 113 provides that;

A derivative right, in this Act referred to as a residential license, confers upon the licensee the right to occupy land in non-hazardous land, land reserved for public utilities and surveyed land,

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urban or periurban area for the period of time for which the residential license has been granted (emphasis mine).

In the dispute at hand, as said earlier the residential license has already expired at the time of sale hence the 2nd respondent's ownership of the suit property basing on that residential license was not valid.

Basing on my re-analysis of evidence as the Court of the first appeal, I find that the 2nd respondent had no any title to pass over to the 1st respondent and I also find that there was proof on balance of probabilities that the house in dispute did not belong to the 2nd respondent in his own capacity but it was in his possession as an administrator.

For the foregoing reasons, I allow the appeal, quash and set aside the findings, judgment and decree of the trial Tribunal in Land Application No. 116 of 2020.

The 1st respondent is free to seek remedy in way of refund from the 2nd respondent. The costs of the appeal to be borne jointly by the 1st and 2nd respondents. Right of further appeal explained.

It is so ordered.


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A. MSAFIRI

JUDGE

14/9/2023

