

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 246 OF 2022**

**KAUNDIME YUSSUF AMANI1ST PLAINTIFF
REHEMA RAMADHANI.....2ND PLAINTIFF
AMANI YUSSUF.....3RD PLAINTIFF
SALMA RAMADHANI.....4TH PLAINTIFF
BARUT YUSSUF.....5TH PLAINTIFF
MRISHO YUSSUF.....6TH PLAINTIFF
T WALIBU YUSSUF.....7TH PLAINTIFF
ALLY YUSSUF.....8TH PLAINTIFF
MUSSA YUSSUF.....9TH PLAINTIFF**

VERSUS

**RAMADHANI MKUU SHEBE(As administrator of
the estates of the late Hanuni Jamal)1ST DEFENDANT**

**SAIDA JUMA KUWINGWA (As administratix of the
estate of the late Zaina Jamal).....2ND DEFENDANT**

SHARIF MUSTAPHA JUMBE.....3RD DEFENDANT

JUDGMENT

Date of last Order: 13/10/2023

Date of Judgment: 23/10/2023

A. MSAFIRI, J.

The nine (9) plaintiffs hereinabove have instituted this suit against the defendants as shown above. Their claims against the defendants is for the ownership of the equal share of the landed property described as

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House No. 58 located on Plot No. 32 Block "J" Bukoba Street within Ilala District of Dar es Salaam Region (herein referred as suit property).

According to the averments in their plaint, the plaintiffs claims that they are among the rightful and legal owners of the equal shares on the suit property and that their claims are due to the unjustified encroachment on the suit property done by the defendants. It is claimed further that on 16th February 2022, the defendants knowing of the distributions of the estates share belonging to the late Nusura Jamal who was the biological mother of the plaintiffs, illegally entered into a secret purported sale agreement unknown to the plaintiffs. That this act was done so as to dispose of the suit property at the detriment of the plaintiffs. They allege that the 3rd defendant has been threatening eviction of the plaintiffs on the suit property.

Hence the plaintiffs prays for judgment and decree against the defendants jointly and severally as follows;

1. A declaration that the plaintiffs are among the rightful and legal owners of an equal share entitled in the suit property forming part of the estate of the late Nusura Jamal (their biological mother).
2. A declaration that the transfer of ownership of the suit property by the 1st and 2nd defendants was not valid void ab initio and ineffectual in the eyes of law.

3. A declaration that the ownership of the suit property reverts to the plaintiffs in accordance to their entitled share in the estates.
4. The Honourable Court be pleased to issue permanent injunction to the defendants, their agents, assignees and any other person acting under their instructions and directions from interfering or conduct any activity on the disputed property.
5. That the defendants be ordered to pay general damages to be assessed by the Court.
6. That the defendants be condemned to pay the costs of the suit, including the advocate instruction fee.
7. Any other reliefs which this Court may deem fit and just to grant.

The defendants lodged their defense by filing their joint written statement of defence in which they vehemently denied the claims of the plaintiffs. They averred that the 1st plaintiff, 1st and 2nd defendants lawfully and acting in their capacities as administrators entered into sale agreement with the 3rd defendant and the sale of the suit property was never at the detriment of the plaintiffs at all and that the 1st plaintiff openly participated in the said transaction.

In their reply to the written statement of defence, the plaintiffs claimed that the genuineness of the contents of the sale agreement

Alls.

annexed in the WSD are disputed. The plaintiffs claimed that the contents are false and are tainted with fraud and forgery. That, even by mere comparison of the eyes, the signatures allegedly belonging to the 1st plaintiff therein are forged.

Before the commencement of the trial, four issues were framed and adopted by the Court as the issues in dispute. These are;


- i. Whether the 3^d defendant lawfully purchased the suit premises from the 1st, 2nd defendants and the 1st plaintiff.*
- ii. Whether there was a valid transfer of suit premises to the 3^d defendant.*
- iii. Whether the plaintiffs are entitled to claim any share in the suit premises.*
- iv. To what reliefs are parties entitled to.*

During the trial, the plaintiffs were represented by Mr. Kennedy Sangawe, learned advocate who was joined later by Mr. Martin Sangira, learned advocate. The defendants were represented by Mr. Haji Mlosi, learned advocate who was also joined later by Mr. Said Aziz, learned advocate. After the close of the hearing on both parties, the counsels for both parties, with leave of Court, filed their final submissions which this Court have taken in consideration while determining this suit. I will like to commend the counsels for their useful submissions which have helped this Court in determination of this dispute. *Alle.*

I will determine each of the four framed issues by analyzing the evidence which was presented before this Court by both parties to the case. In determination of the suit, for the purpose of clarity, I see it fit to start with **the third issue which is whether the plaintiffs are entitled to claim any share in the suit premises/property.** This is important issue to determine first as the Court has to see whether the plaintiffs have established whether they have any right to their claims on the suit property.

To establish their claims, the plaintiffs had a total of seven (7) witnesses who are Amani Yusufu Amani (PW1) who is also the 3rd plaintiff, Baruti Yusufu Amani (PW2) who is also the 5th plaintiff, Jamal Juma Kuwingwa (PW3), Salma Ramadhani Hassan (PW4) who is the 4th plaintiff, Mrisho Yusufu Amani (PW5) who is also the 6th plaintiff, Rehema Ramadhani Mazula (PW6) who is also the 2nd plaintiff, Ally Yusufu Amani (PW7) who is also the 8th plaintiff and Kaundime Yusufu Amani (PW8) who is also the 1st plaintiff. The 9th plaintiff Mussa Yusufu did not adduce his evidence in Court.

The defence witnesses were Saida Juma Kuwingwa (DW1), Ramadhani Mkuu Shebe, (DW2), Sharifu Mustafa Jumbe (DW3) and Daudi Mzeri (DW4).



The PW1, PW2, PW3, PW4, PW5, PW6 and PW7 had all similar evidence that they have instituted this case complaining on the illegal sale of the suit property. That the 1st and 2nd defendants have unlawfully sold the suit property to the 3rd defendant, the property which the plaintiffs have inherited from their late biological mother one Nusura Jamal Athumani. They all described the suit property to be Plot No. 31 Block J, House No. 58, located at Bukoba Street, at Ilala, Dar es Salaam.

The said witnesses told the Court that their late mother Nusura Jamal Athumani, was the owner of the suit property which she owned jointly with her two siblings named Hanuni Jamal Athumani and Zaina Jamal Athumani who are now all deceased. That these three sisters jointly inherited the ownership of the suit property from their late father who was the original owner.

They testified that after the death of their mother the late Nusura Jamal, the plaintiffs instituted a Probate Cause No. 92 of 2021 at Temeke Primary Court where the 1st plaintiff Kaundime Yusufu was appointed the administratrix of the estate of their late mother. That Kaundime fulfilled her obligations as the administratrix whereby she distributed the estate of their late mother which included the suit property, equally to the heirs and beneficiaries. *Alls.*

That, since the suit property was equally owned by the three siblings, the heirs of the late Nusura Jamal agreed to distribute equally their part of share by inheritance of the share of their mother in the suit property and the other shares were left to the heirs of the other two siblings.

The witnesses PW1-PW7 stated that after distribution of the said estate, the administratrix, Kaundime, filed the inventory and accounts and closed the probate on 11th February 2022. That PW8, PW7 and PW5 are currently living in the suit property also there are tenants who have leased the property and the money from rent are collected by them and divided into two shares.

PW8, Kaundime Yusufu testified that she and other plaintiffs have instituted the suit at hand claiming part of ownership of the suit property which they inherited from their biological mother the late Nusura Jamal. That the other heirs are Salma Ramadhani, Rehema Ramadhani, Amani Yusufu, Baruti Yusufu, Mrisho Yusufu, Twalib Yusufu, Ali Yusufu and Musa Yusufu.

She stated further that their mother the late Nusura Jamal owned the suit property jointly with her siblings Hanuni Jamal and Zaina Jamal. She tendered a photocopy of the Certificate of Title of ownership of suit property as she claimed that the original Title was in the possession of the defendants. The photocopy of the said Title was admitted in Court as

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Exhibit P1. It shows that one Hanuni Jamal and two others who have signed as Zainabu Jamal and Nusura Jamal have been granted the said Title on the suit property which was issued on 15th December 1966.

The fact that the plaintiffs are the children and heirs of their late mother Nusura Jamal who was the co-owner of the suit property was not denied by the witnesses of the defendants. Saida Juma Kuwingwa (DW1) who is also the 2nd defendant, admitted that the suit property was jointly owned by the three siblings whereby Nusura Jamal was the biological mother of the plaintiffs, and Zainabu Jamal was her biological mother and Hanuni Jamal was her aunt. In cross examination, DW1 stated that all the heirs of the three siblings have right of ownership of the suit property. She said further that the heirs of Nusura Jamal are the one who are living in the suit property. Even Ramadhani Mkuu Shebe, (DW2) who is also the 1st defendant admitted that the suit property was jointly owned by the named three siblings who are all deceased and they were inherited by their children who have equal shares on the suit property.

Hence by this evidence, there is no any doubt that the plaintiffs have right to claim any share they have on the suit property through the inheritance from their late mother. The third issue which I have started with is answered in affirmative. *Alle.*

I will now go back to determine the first issue which is **whether the 3rd defendant lawfully purchased the suit premises from the 1st defendant, 2nd defendant and the 1st plaintiff.**

In this there is a controversy between the parties whereby the plaintiffs claims that the sale of the suit property was void ab initio for the reason that, first, the 1st plaintiff who the 1st and 2nd defendants claimed that she also participated in the sale of the suit property, did not participate as she refused to be part of the sale and they claim further that, the signature of the 1st plaintiff on the sale agreement was forged as she denied to have signed the said sale agreement. The second reason is that, the 1st plaintiff did not have mandate to sell the suit property together with the 1st and 2nd defendants as the 1st plaintiff was not an administratrix of the estate of the late Nusura Jamal by that time as she has already filed the inventory and closed the probate. Third reason was that the suit property could not be sold without knowledge and approval of the heirs of Nusura Jamal (the plaintiffs) and Fourth, there was a registered caveat on the suit property entered by the 1st plaintiff hence the sale was illegal.

The witnesses PW1, PW2, PW3, PW4, PW5, PW6, PW7 and PW8 all testified that on unrevealed date they were invaded by unknown people at the suit property, and that those people claimed that the suit property

Alls.

has been sold to their father whom they did not reveal. That later they came to know that the suit property was sold by the 1st and 2nd defendants to the 3rd defendant.

The said witnesses stated that the sale was illegal since they did not consent it as heirs and the claim that Kaundime Yusufu (PW8) who was the administratrix consented and participated to the sale are not true as the said PW8 had no mandate to sell the house as she was no longer an administratrix as she has already done her job and closed the probate.

In her evidence, PW8 stated that one day came some people at the suit property and claimed that the house in dispute is the property of their father Sharifu Mustafa Jumbe (who is the 3rd defendant) and that he has bought the said house. She said that they were told by those people that the said 3rd defendant bought the suit property from Ramadhani Mkuu Shebe (1st defendant) and Saida Juma Kuwingwa(2nd defendant). She denied to have participated in the said sale as she was not ready to sell the suit property. She claimed that she saw the sale agreement for the first time here in Court, that it was the 1st and 2nd defendants who sold the house illegally to the 3rd defendant.

She tendered a photocopy of the said sale agreement for the reason that the original one was in possession of the defendants. The Court admitted it as exhibit P2. Led by her advocate, PW1 said that she has

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already closed the probate after she had distributed the assets of the late Nusura Jamal hence she was no longer an administratrix. That she had no mandate to sell the suit property. She was shown exhibit P2 and identified her name and photo on it. She said that the signature seen on exhibit P2 which is purported to be her signature, it is not hers. That she has not signed the document and have never signed any sale agreement to sell the suit property. She said further that she don't know the purchaser Sharifu Jumbe Mustafa and she don't know Daudi Mzeri, the advocate who appeared in the sale agreement as the one who witnessed and attested the agreement.

PW8 testified further that, she was initially appointed as an administratrix of the estate of Nusura Jamal and her letter of appointment was admitted in Court as exhibit P4. Also the ruling of the Probate Court which granted the application and appointed PW8 was admitted as exhibit P3. Both documents shows that in the Probate Cause No. 92 of 2021, Temeke Primary Court appointed Kaundime Yussuf Amani as the administratrix of the estate of the late Nusura Jamal who died in 11th March 2020. The appointment was made on 11th October 2021 and the administratrix was to do her obligations and close the matter by 11th February, 2022.

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PW8 testified that she collected and distributed the assets which was mainly on the part of the suit property (the share) which was owned by the late Nusura Jamal, and that was the share which was collected and equally distributed to the heirs of Nusura Jamal who are the plaintiffs. That after that, PW8 filed the inventory and closed the probate on 11th February, 2022.

PW8 told the Court that when the plaintiffs discovered that there are people who claim to have purchased the suit property without their knowledge, they decided to register a caveat to restrain any transaction on the suit property. A caveat was admitted in Court as exhibit P5. It shows that on 03rd March 2022, Kaundime Yussuf Aman registered a caveat claiming an interest on the suit property. That she is an administrator with a duty of collecting and administering all of the deceased properties and that the caveat was being registered to stop any transfer or any disposition of the said suit property.

PW8 also tendered a letter purported to be written by the 1st and 2nd defendants to the Resident Magistrate Incharge Temeke District Court. The letter was admitted as exhibit P7. I have read the said letter. It is written by the 1st and 2nd defendants addressed to the Resident Magistrate Incharge of Temeke District Court.

A handwritten signature in black ink, appearing to be 'A. M. S.', written over the end of the text.

In the letter the 1st and 2nd defendants stated that they are the administrator and administratrix of the estates of the late Hanuni Jamal and Zainabu Jamal respectively. They state further that in their capacities and in collaboration with the heirs, they have agreed to sell the suit property and distribute the purchase money equally to the heirs of three families. That the purchase amount was TZS 400 Million which was divided between the three families whereby each family received TZS. 112,333,333/=. That surprisingly, one of the heirs Kaundime Yusufu has refused to receive her share, and hence the two defendants have written the said letter asking the probate court to take custody of the money the share of Kaundime Yusuf by depositing the sum in the account of the court. The witness PW8 said that the heirs of the late Nusura Jamal did not recognize/acknowledge the sale of the suit property, that the sale was not legal.

On the defence, the defendants stated that the sale of the suit property was lawful and it was consented by all heirs of the suit property through their administrators who are the 1st plaintiff, 1st and the 2nd defendants. That the vendors were the said three administrators on one side and the 3rd defendant was the purchaser on the other side.

DW1 Saida Kuwingwa told the Court that the suit property was legally sold. That the decision to sell the property was unanimously agreed by *Alls.*

the three administrators who are Saida Juma Kuwingwa, the administratix of the estate of Zaina Jamal, Ramadhani Mkuu Shebe as the administrator of the estate of the late Hanuni Jamal and Kaundime Yusufu Amani, the administrator of the estate of the late Nusura Jamal. That the purchase price was TZS 400 Million and after the sale, the money was deposited in joint account and later it was divided into three equal shares as per the administrators. She insisted that all administrators and heirs were involved in the sale.

DW2 Ramadhani Mkuu Shebe testified that Hanuni Jamal was his grandmother, the biological mother of his father. That, he is an administrator of the estate of the late Hanuni Jamal who was among the owners of the suit property and he is the heir. He said that in that capacity, he participated in the sale of the suit property and the price was TZS 400 Million and all three administrators were involved in the sale and after that the money was deposited in the joint account.

In cross examination, DW2 admitted that the sale agreement was entered on 02nd September, 2022 while there was a caveat which was registered on 03rd March, 2022.

DW3 was Sharifu Mustafa Jumbe, the purchaser of the suit property. He stated that he knows Saida Juma Kuwingwa, Ramadhani Mkuu Shebe and Kaundime Yusufu Amani as the vendors who entered an agreement

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to sell the suit property to him. That before entering an agreement, he met with the heirs and they agreed to enter a sale agreement. That, the agreed price was TZS 400 Million. That the vendors said they could not sign the agreement until they have seen the money hence he deposited the purchase amount in the account at Mkombozi Bank. On the stage of signing, the 1st plaintiff Kaundime Yusufu refused to sign claiming that her share amount was little.

That after that he heard that Kaundime has filed a complaint at the District Tribunal, but later on the case was dismissed. He said he then met with Kaundime in presence of Government Street Leaders and after discussion, Kaundime agreed to sign the agreement and she did that on September 2022. He identified the sale agreement exhibit P2 in Court. He stated that he purchased the suit property lawfully and the house in dispute lawfully belonged to him.

In cross examination, DW3 stated that there were two agreements, the first one was the agreement of March 2022, and the second agreement was of September 2022 and that the purchase amount was issued in the agreement of March. He admitted that the agreement of March 2022 was not written.

DW4 was Daudi Mzeri, who testified that he is an advocate and on 02nd September, 2022 he witnessed and attested the sale agreement

Atts.

between his client one Sharifu (the 3rd defendant) who was buying a property and the three administrators who were selling the same. That before the purchase, his client Sharifu informed him about his intention to buy the suit property and hence, as an advocate he made a search or due diligence on the property and was satisfied that the vendors are the legal owners of the suit property being the administrators of the estates of the original owners of the suit property. That in making his inquiry DW4 went to the Office of the Street Government of the place where the suit property is located. Having been satisfied, he advised his client to proceed with the purchase of the property.

He said that in September 2022 he drafted the sale agreement and the parties signed and he attested the said agreement. He identified in Court the 1st plaintiff, 1st and 2nd defendants who he claimed came to his office and signed before him the sale agreement. He was shown the sale agreement exhibit P2 and identified it. He told the Court that the sale agreement was valid and lawful.

In cross examination, DW4 admitted that the suit property is a registered land and has a Title. That the law requires the due diligence to be conducted when one wants to buy a registered land. He said that it is not necessary to conduct due diligence of the suit plot to the Ministry for Land or at the Municipal Council. At the same time he agreed that the

Atts.

ownership of a registered property cannot be verified at the Street Local Government.

He said that his client did not tell him that they have already agreed to buy the suit property before the sale agreement he attested on 02nd September, 2022. He said that the payment of the purchase money was done at the Bank after both sides have signed sale agreement and that it was done in September 2022.

After going through the evidence, now the third issue is determined basing on whether the plaintiffs have succeeded to establish their claims that the sale agreement was unlawfully entered. In this I am guided by the cardinal principle of law which states that he who alleges must prove.

This principle law is set under Sections 110 and 112 of the Evidence Act, Cap.6 R.E 2022. This cardinal principle has been emphasized in a plethora of cases among them the case of **Ernest Sebastian Mbele & 2 others**, Civil Appeal No. 66 of 2019, CAT at Iringa, (unreported) where the Court of Appeal held that;

"The law places a burden of proof upon a person who desires Court to give judgment and such a person who asserts the existence of facts to prove that those facts exists (Section 110 (1) and (2) of the Evidence Act.) Such facts is said to be proved

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when in civil matters its existence is established by a preponderance of probability."

Guided by the above principle, on the case at hand, the plaintiffs bears the evidential burden to prove their case.

The plaintiffs have claimed that the sale agreement was illegal. **The first reason being that the signature of the 1st plaintiff Kaundime Yusufu was forged.** That the 1st plaintiff did not participate in the sale agreement and did not sign the same and the signature appearing on the said agreement purported to be signed by her, is not her signature as she did not sign it. In her evidence, the 1st plaintiff as PW8 was led by her advocate to compare the two signatures; one appearing on exhibit P2 (sale agreement) which she denied to be hers and the signature appearing on exhibit P5 (caveat) which she admitted to have signed and stated that they are different.

I have looked at the two signatures. It is difficult to differentiate them with the naked eyes (normal eyes) as they look the same to me. It was important to get an opinion of handwriting expert to ascertain whether the two signatures are different as per the claim of the plaintiffs.

It is in the proceedings that before hearing, the advocate for the plaintiffs Mr. Sangawe made a prayer and requested the Court to have a

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forensic investigation conducted on the documents which were attached to the WSD of the defendants. Among the documents was the original sale agreement in light of verification of the alleged forged signature of the 1st plaintiff. The prayer was granted and the Court made an order for the requested documents to be handed over to the counsel for the plaintiffs for the purpose of forensic investigation. The documents were all handed over and were taken to the Forensic Bureau for the examination and verification of the disputed signature. However, from the date the hearing of the plaintiffs' case commenced up to the time the plaintiffs closed their case, there was no report from forensic bureau which was produced in Court. According to the explanation given by Mr. Sangawe, they unsuccessfully made a follow up on the said report and finally decided to commence the hearing of the case without the said Report.

I should point out that it was not the duty of the Court to make an order regarding the forensic report or making a follow up on the same. This was pure plaintiffs' case and as per the cardinal principle, it was their duty to prepare their case and prove their claims. The plaintiffs had the option to withdraw their case with leave to refile while following up on the Forensic Report but they chose to go on with the prosecution and tried to

Alls.

prove the claimed forgery of the 1st plaintiffs' signature with mere denial words of the 1st plaintiff.

It is trite law that when there is a claim of fraud that is raised in a civil case, the standard of proof is higher than it is in normal civil cases, given its criminality. The 1st plaintiff did not produce any other evidence except her sole oral evidence that the signature on Exhibit P2 is not hers hence it was forged.

It was held in the case of **Omari Yusufu vs. Rahma Ahmed Abdulkadr** (1987) TLR 169 (CA), that;

"When the question whether someone has committed a crime is raised in civil proceedings that allegation need be established on a higher degree of probability than that which is required in ordinary civil cases."

On the above principle, the claim that the sale agreement contained forged signature cannot be proved by mere words of the 1st plaintiff. Hence, I find that the same has failed to prove that the signature which is purported to be signed by her on exhibit P2 was forged.

The second claim of the plaintiffs was that the 1st plaintiff was not an administratrix of the estate of Nusura Jamal at the time the sale agreement was entered since she has already collected

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and distributed the assets of the estate and closed the administration of the estate since 11/02/2022. The sale agreement was entered on 02/09/2022. The plaintiffs argued that the 1st plaintiff had no mandate to enter a sale agreement on behalf of the heirs as she had no capacity to do so. She was no longer an administratrix.

In this, again I will base on the duty of the plaintiffs to prove their claims. Indeed, Exhibit P3 which is the ruling of the Ilala Primary Court which has appointed the 1st plaintiff to be the administratrix, made an order that the 1st plaintiff should file the inventory and submit the same to the Court so that the estate will be closed. I should point the observation of the Court that the letter of the appointment was issued by Temeke Primary Court (as per Exhibit P4) while the Ruling which order that the estate should be closed by 11th February 2022 is of the Ilala Primary Court (as per Exhibit P3).

Despite that, the 1st plaintiff stated that on 11th February 2022, the estate of Nusura Jamal was closed as ordered and hence her position as an administratrix of the estate of Nusura Jamal was ended. However, this Court was not told whether the 1st plaintiff filed her inventory and closed the matter as per the order of the probate court of 11th February 2022. The 1st plaintiff did not produce any document(s) to support her claims that she filed the inventory and that the said estate was indeed closed on

Alls.

11th February 2022. In my view, the 1st plaintiff could have produced the court proceedings or order of 11th February 2022 or inventory form which could have ascertain that the estate of Nusura Jamal and the probate cause on the same was indeed closed on that date.

I say so for the reason that the probate court's last order was on 11th October, 2021 in which the 1st plaintiff was given four months to collect and distribute the estate and file inventory in court. It is not shown whether the order was complied with by the 1st plaintiff within the given time. It is again the mere words of the 1st plaintiff that she had finished her duty as administratrix and the estate was closed on 11th February 2022. In the circumstances, in absence of any documentary proof, the Court is not certain whether the estate of Nusura Jamal was closed on 11th February 2022 and whether by 02nd September, 2022 when the disputed sale agreement was entered, the 1st plaintiff was not an administratrix of the estate of Nusura Jamal as she claims.

As earlier said, the third reason was that the suit property could not be sold without knowledge and approval of the heirs of Nusura Jamal (the plaintiffs) and also there was a registered caveat on the suit property entered by the 1st plaintiff hence the sale was illegal.

A handwritten signature in black ink, appearing to be 'Alle', is written over the end of the text.

In their reply to the written statement of defence, the plaintiffs stated that the allegations of the defendants that the 1st plaintiff has agreed to the sale of the suit property forced her to file caveat. The 1st plaintiff also admitted this in her evidence in Court. The said caveat was admitted as exhibit P5. It is the claim of the plaintiffs in their evidence that the caveat was registered on 03rd March 2022 months before the sale agreement was entered and signed on 02nd September, 2022 hence the sale agreement cannot be valid. It shows that the caveat was received and endorsed by the Assistant Registrar of Titles on 08th March 2022.

In their final submission, the counsels for the plaintiffs stated that the caveat was registered under Section 78 (1) of the Land Registration Act, Cap 334 and that even if the plaintiff did sign the sale agreement, the presence of caveat still negate the validity of the same as the caveat was registered before the sale agreement.

In their evidence, DW4 who is the advocate who attested the sale agreement, stated that he did due diligence on the suit property before the purchase of the same. Surprisingly he admitted to have made search at the Street Local Government and that he did not search at the Ministry for Lands or even at the Municipal Council despite the fact that the property is the registered one.

Adls.

As shown in exhibit P5, the caveat was registered on 03rd March 2022. It shows that the 1st plaintiff Kaundime Yusufu has claimed an interest on the suit property as an administratrix of the estate of Nusura Jamal. This registered caveat contradict the evidence of the 1st plaintiff that by 11th February 2022, she has officially finished her duties as an administratrix by filing inventory and that the estate of Nusura Jamal was closed. If she really finished her duties and she was no longer an administratrix on February 2022, then how did she register a caveat on the suit property in March, 2022? In what capacity did she register the said caveat?

I have read the contents of the caveat (exhibit P5) at paragraph 7, the 1st plaintiff state as follows;

“THAT, on the view of the foregoing, I hold an interest in the above referred registered land by virtue of being the Administrator of the estate of the late Nusura Hanuni (one of the owners)”. (emphasis mine).

By this paragraph, it is with no doubt that on 03rd March 2022 Kaundime Jamal (1st plaintiff) was still an administratrix of the estate of the late Nusura Jamal and in that capacity, she registered a caveat.

I find that the 1st plaintiff have failed to establish that on 11th February 2022, she has finished her duties as an administratrix and the estate of

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Nusura Jamal was closed. I find also that by March 2022 she was still an administratrix and she registered a caveat in that capacity.

On the issue of validity of the sale agreement, and whether there was a lawful purchase, it is my finding that there was no dispute that the 1st and the 2nd defendants were the administrators of the estates of the late Hanuni Jamal and the late Zaina Jamal respectively. The plaintiffs did not dispute that as they also sued the said defendants in their capacities as administrators hence this shows that they acknowledge and admit that the 1st and 2nd defendants are administrators.

It was also not disputed that the heirs of Hanuni Jamal and Zaina Jamal have also the right to the share of ownership of the suit property through their deceased parents who owned jointly the suit property as per exhibit P1, the title of ownership.

It was also agreed that the heirs of the three deceased have equal shares on the suit property although the evidence did not reveal how the shares were being owned. Since there was three owners then the house was owned equally owned. Therefore the 1st plaintiff, 1st and 2nd defendants have a right to sell their part of shares of the suit property each in his/her capacity as the administrator/administratrix of their respectful estates.

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It is my finding that the 3rd defendant lawfully purchased the suit property from the 1st and the 2nd defendants and the 1st plaintiff in their capacities as administrators. The existence of a registered a caveat on the suit property does not make the sale agreement a nullity but it makes the process of transfer of ownership of suit property from the vendors to the purchaser ineffective until either the caveat is cancelled or has expired.

I whole agree that before the sale was agreed and concluded, it was necessary for the purchaser to make a search or conduct due diligence to the Ministry for Land or the Office of Commissioner for Land in order to ascertain whether the house/ property have no encumbrances. However, failure to do that, in my opinion does not invalidate the sale agreement but as said earlier it invalidate the transfer of a right of occupancy as the same cannot be done until the caveat is cancelled.

Basing on those reasons, I find that the sale agreement which was purportedly entered between the 1st, 2nd defendants, 1st plaintiff as vendors and the 3rd defendant as purchaser was valid and the fact that there was a registered caveat on the suit property filed by the 1st plaintiff did not nullify the same. The first issue is answered in the affirmative.

The second issue is whether there was a valid transfer of suit premises to the 3rd defendant.

Alls.

This issue is answered in negative because since there was a registered caveat on the suit property which the defendants admits to have no knowledge about, there could not possibly be a valid transfer of the suit property to the 3rd defendant. This is until the registered caveat has been cancelled or has expired.

In his evidence in Court as DW3, the 3rd defendant admitted that the plaintiffs were still in occupation of the suit property and prayed for vacant possession. Also, the 3rd defendant did not state whether he has already started any process for transfer of occupancy. Hence as the evidence stands, there is no any transfer of the right of occupancy of the suit property from the current owners to the 3rd defendant.

I have already determined the third issue hence I will go to the **fourth issue which is on the reliefs which are entitled to the parties.**

The plaintiffs challenges the legality of the sale of the suit property on the reason that it was done without their knowledge and consent as the heirs of the late Nusura Jamal hence having the right to the part of the ownership of the suit property by equal shares with other heirs of Hanuni Jamal and Nusura Jamal. I have found that their reason of the forgery of the signature of the 1st plaintiff was not proved hence was rejected by the Court. I have also found their reason that the 1st plaintiff have already discharged her duties as administratix was not supported by any

Alle.

documentary evidence to prove the mere words of the 1st plaintiff hence the Court has also rejected that reason. The Court has also found the sale agreement not to be void because of the existence of a registered a caveat on the suit property which was entered by the 1st plaintiff. What cannot be effected by the purchaser is a transfer of right of occupancy of the suit property as long as the purported caveat is in existence and still valid.

Furthermore, on the reason that the heirs of the late Hanuni Jamal did not consent to the sale of the suit property, I find this not mandatory as the plaintiffs did not state whether it is a mandatory requirement of law that the administrator/ administratrix of the estate should seek the consent of the heirs or beneficiaries before disposing of the asset/ property in the estate.

In the case of **Elizabeth Mboyo and 2 others vs. Grace Mboyo and 2 others**, Land Case No. 14 of 202, HC Arusha Registry, my Learned Sister Hon. Kamuzora, J while observing on the issue of consent of the beneficiaries, she held that;

*"I agree that the administrator can opt to sell the property in the estate where it is necessary to do so in the administration of the deceased estate. **It is not the requirement of the law that the administrator has to seek for consent from***

Alle.

***the beneficiaries before selling the property
in the estates" (Emphasis mine).***

I wholly subscribe to the above position which is very persuasive to me and hold on to my finding in the case at hand that consent of beneficiaries/ heirs was not mandatory and the absence of it cannot nullify the sale agreement.

By those analysis and reasons, this Court finds that the plaintiffs have failed to prove their claims on the standard of probability and hence not entitled to the reliefs sought.

I hereby dismiss the suit in its entirety with costs.

It is so ordered.

Right of appeal duly explained.


A. MSAFIRI
JUDGE
23/10/2023

