

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 313 OF 2023

(Originating from the decision in Application No. 286 of 2008 by Hon. Cheney, delivered on 28/6/2023 at the District Land and Housing Tribunal for Kinondoni at Mwananyamala)

SECHELELA SAIMON CLEOPA

(Administatix of the state of the late

SIMON MAZENGO.....APPELANT

VERSUS

MASHAURI JEREMIA MABULA1ST RESPONDENT

SABINA CHARLES MASHAURI.....2ND RESPONDENT

JUDGMENT

Date of last Order: 09/11/2023

Date of Judgment: 22/11/2023

A. MSAFIRI, J.

The appellant hereinabove having been dissatisfied with the judgment and decree of the District Land and Housing Tribunal of Kinondoni at Mwananyamala (herein as the trial Tribunal) in Land Application No. 286 of 2008 which was delivered on 28/6/2023, has appealed to this Court and advanced two (2) grounds of appeal namely;

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- 1. That, the Honourable Tribunal erred in law and facts to entertain the matter which was a nullity for being instituted by the respondents against deceased person.*
- 2. That, the trial Tribunal erred in law and fact when barred(sic) the counsel for the appellant to submit on point of nullity when the parties was invited to address the Tribunal on whether the application is proper before the Tribunal.*

The hearing of the appeal was orally and it was set for hearing on 09/11/2023. The appellant was present in person while the respondent was represented by Mr. Amani Joachim, learned advocate.

As said the appellant was unrepresented. She submitted on the first ground of appeal that her father Simon Cleopa Mazengo passed away while the Application No.286 of 2008 was pending before the trial Tribunal. That after her father's death she was appointed the administrator and she was substituted in the trial Tribunal as administratrix of the estate of her father.

On the second ground, she submitted that, it is true that the advocates were invited by the trial Tribunal to address on whether the Application was proper before the Tribunal. She said that she does not know whether her advocate was not given a chance to address the Tribunal or not because she was not present in the Tribunal at the time of hearing. That it was her advocate who was always attending the

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proceedings. She said she has lodged this appeal to stop the respondents from disturbing her about her suit property.

On his part, Mr. Joachim prayed to address the Court on the propriety of the appeal before the Court. He submitted that, this appeal originates from Land Application No. 286 of 2008. That in the said Application which was filed at the District Tribunal of Kinondoni at Mwananyamala (herein the trial Tribunal), the current respondents were the applicants and the current appellant was the respondent. That the said Application was struck out with costs on 28/6/2023 for being defective.

Mr. Joachim stated that the trial Tribunal decision was in favour of the appellant hence it was strange that the appellant is the one who have filed this appeal. He said that as of now, the suit property which was the subject in the trial Tribunal is in possession of the appellant. He added that he is questioning the competency of this appeal before this Court and whether the Court is in the position to grant the sought reliefs. He prayed for the dismissal of appeal and each party to bear their own costs of this appeal.

Having heard the parties to this appeal, the major issue for determination is whether the appeal has merit. I must say that this is a very strange appeal where the party who have succeeded in the lower *Allo*

court is the one who lodged the appeal contesting the decision of the same court which is in her favour!

The brief background of this matter as per the records of the trial Tribunal is that the now respondents Mashauri Jeremia Mabula(1st respondent) and Sabina Charles Mashauri(2nd respondent) instituted an Application No.286 of 2008 before the trial Tribunal against one Simon Mazengo, the late father of the now appellant. The Application was instituted on 20/8/2008 by the applicants claiming that the then respondent Simon Mazengo has trespassed into the suit property described as Plot No. 45 Block "E", at Goba area, Ubungo District then Kinondoni District which the 1st respondent Mashauri Jeremia Mabula claimed it was allocated to him by Kinondoni Municipal, while Simon Mazengo also claimed the ownership of the suit property. The matter was heard to the finality and the trial Tribunal decided in favour of the respondents.

While the matter was still pending at the trial Tribunal, Simon Mazengo passed away and his daughter Sechelela Simon Cleopa was appointed the administratrix of his estate. The said administratrix appealed against the decision of the trial Tribunal before this Court in Land Appeal No. 60 of 2020. The appeal was heard on merit and this Court found that

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there was irregularity which was fatal and nullified the proceedings, judgment and decree of the trial Tribunal and ordered for trial de novo before another Chairman.

Following that order, the matter was set for retrial. At the hearing, the applicants (now respondents) were represented by Mr. Amani Joachim, learned advocate while the respondent (now appellant), was represented at one time by Kulubone Pasensa, and at other time by Francis Nkoka, all learned advocates. On that date when the matter was set for hearing, the Hon. Chairman *suo motu* raised a point of law to the effect that the Application was defective as it did not disclose the date when the dispute arose. The Chairman stated that under Regulation 3(2) (c) of the Regulations, it is mandatory for the Application to disclose the cause of action and the time when it arose.

The trial Chairman invited the counsels for the parties to address him on the point of law and after having heard the submissions from both parties, he found the Application to be fatally defective and strike it out with costs, with leave to refile.

Having gone through the background of this dispute, I agree with the submissions of the counsel for the respondents that this appeal is incompetent before this Court. I add that it is misconceived and

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meaningless. I say so for the reason that, the appellant have paraded the two grounds of appeal challenging the decision of the trial Tribunal. The 1st ground is that the trial Tribunal erred to entertain the matter which was a nullity for being instituted by the respondents against the deceased person. However if the deceased person being referred here is one Simon Mazengo, it is clear on the trial Tribunal record that he was declared to have passed away and his daughter who is the current appellant was appointed the administratrix and stepped into shoes of her late father. Hence the 1st ground of appeal has no merit at all.

On the 2nd ground of appeal where the appellant averred that the trial Tribunal erred when it refuse or barred the counsel for the appellant to address the Tribunal on the competency of the Application, I also find it to be totally untrue. Looking at the records of the trial Tribunal, as I have narrated earlier, the trial Chairman having raised a point of law *suo motu*, called upon the counsels for the parties to address him on that point which they did. The appellant at that time was being represented by Francis Nkoka who well addressed the Tribunal on the matter. Hence I also find this ground to have no merit and I dismiss it.

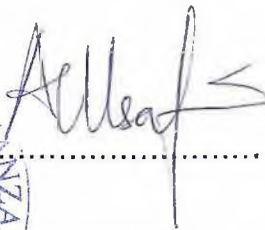
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During the hearing of this appeal, the appellant was asked by the Court on her reasons of lodging this strange appeal, she replied that she wanted to stop the respondents from disturbing her.

For the foregoing reasons, I find this appeal to be incompetent and devoid of merits and I dismiss it in its entirety.

Each party shall bear their own costs of this appeal.

It is so ordered.



A. MSAFIRI
JUDGE

22/11/2023