

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

**LAND APPEAL NO. 374 OF 2023**

(Originating from Application No. 228/2021,  
Temeke District Land and Housing Tribunal)

**HABIBA JUMANNE KILOLO (Administratrix of the Estate of the Late  
Jumanne Juma Kilolo .....APPELLANT**

***Versus***

**ASHA KILOLO.....1<sup>ST</sup> RESPONDENT  
HERI KASSIM CHEKA.....2<sup>ND</sup> RESPONDENT  
FATUMA LUGOMBA.....3<sup>RD</sup> RESPONDENT  
SELEMANI KAPARATA.....4<sup>TH</sup> RESPONDENT  
BOARD OF TRUSTEE OF MASJID RAWDHA.....5<sup>TH</sup> RESPONDENT  
FARIJIKA MAABARA.....6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

24/01/2024 to 16/02/2024

**E.B. LUVANDA, J**

The Appellant mentioned above who is a grantee of the letters of administration of the estate of the late Jumanne Jumba Kilolo is aggrieved by the decision of the Tribunal which dismissed her claim for ownership of the suit land located at Mikwambe Toangoma Ward Temeke.

The Appellant at the Tribunal accused the First, Second and Third Respondent to have muddled up with the Fourth Respondent to make secret arrangements and commit trespass into the estate of the late Jumanne Juma Kilolo thereby frustrating her mandate to administer the above estate.

In the petition of appeal, the Appellant raised four grounds of appeal. However, she abandoned ground three and four and argued jointly ground number one and two, by combining it to read. The Honourable Chairman erred in law and fact when he failed to evaluate the evidence presented by the Appellant.

It is to be noted that the appeal against the Fourth Respondent was withdrawn. Meanwhile the appeal proceeded in absence of the Third Respondent.

The Appellant submitted in brief and on general terms that the Tribunal relied on weak evidence adduced by the Respondent without considering the strong and credible evidence adduced by the Appellant. She submitted that the Tribunal failed to analyze the evidence of the Appellant hence reached unfair decision. She submitted that the Respondent during the hearing of the case at the Tribunal had a weak evidence while the Appellant adduced strong evidence but to her astonishment the Tribunal dismissed her case.

In reply, the First, Second and Fifth Respondent jointly opposed the appeal attacked the submission of the Appellant that is tainted with generality and failed to link her complaint with specific issues and corresponding evidence. They argued that the appeal is lingered on the legality of the ownership of the suit land by the Fifth Respondent and the legality of the tenancy of the Six Respondent in the suit premises.

Regarding legality of ownership of the Fifth Respondent, they submitted that the testimony of the Second Respondent (DW2) was affirmatively considered by the Tribunal in that the suit land was under original ownership of the deceased, who prior his demise in 2010, issued directives to his widow (DW3) that the suit land should be given to the Mosque (Fifth Respondent) by way of wakf. They submitted that the evidence on record suggest that the deceased had a good title to pass to the Third Respondent as well as to pass the Wakf to the Fifth Respondent. They submitted that on the balance, the evidence adduced by the Respondents on this fact was correctly considered and evaluated without leaving doubt in that the Firth Respondent legally acquired the suit land.

In respect of a question on the tenancy of the Sixth Respondent, the Respondents submitted that the land which is an extension on the South and

East of the Mosque, the evidence of the Third Respondent (DW3) suggest that she was the beneficiary of the suit land from the deceased husband. They submitted that the Third Respondent directed the Second Respondent to construct the building (pharmacy) which is being leased to the Sixth Respondent, where the proceed of rent is given by the Second Respondent to the Third Respondent to cater for the upkeep.

They submitted that the suit land which is a property of the deceased, was distributed by the deceased himself in the presence of his widow (Third Respondent) and the heirs of the deceased, way back in 2010 prior his demise, as stated by the Second Respondent (DW1), Third Respondent (DW3) and Fifth Respondent (DW3). They submitted that the said property legally passed to the deceased's widow (DW3) who disseminated the decision by giving the suit land to the Fifth Respondent by way of wakf. They submitted that the Tribunal carefully evaluated and considered the evidence on record.

On rejoinder, the Appellant submitted briefly generally that at the trial court (sic, tribunal) the Respondent had failed to establish their evidence hence their submission in reply that the property belonged to the deceased's and that before his demise he left directives to his widow that the property should

be given to the mosque and the deceased's children were witnesses, argued are all hearsay hence the Respondent failed to submit any evidence or document to subscribe (sic, substantiate) that claims. She reiterated her concern that the Tribunal went on to held in favour of the Respondents despite weak evidence they had submitted.

To my view, it is pertinent to comment that the case at the Tribunal was on the Appellant who asserted that she is the lawful owner of the suit land, as such in law she was under paramount duty to prove her claim. In her submission the Appellant dwelled on much to deliberate on the evidence adduced by the Respondent, alleging it was too weak. That was a misconception, because the Respondent had no claim to prove, they were merely defending a claim by the Appellant. The law is that who allege must prove.

Be as it may, the Tribunal is faulted for nothing. At page fourteen to sixteen inclusive, of the impugned judgment the learned Chairman deliberated, evaluated and assessed the evidence tendered by the Appellant as well as the defence by the Respondents.

The learned Chairman considered all pieces of evidence presented by the Appellant which were material to the adjudication of issues in question, in

particular to the areas on dispute which were pinpointed to be an area on a rear house of the late Jumanne Juma where a water tank is situated on a tower constructed by the side of the Mosque and an area of a laboratory of the Sixth Respondent.

To my opinion the conclusion of the Tribunal was a proper verdict in the circumstances. This is because the case of the Appellant was mishandled from the initial stage of framing a cause of action in the pleadings (application). In the application (plaint) the Appellant alleged she was collecting the estate or asset of the late Jumanne Juma Kilolo whose letter of administration were granted to the Appellant as per exhibit P1. However, at the relief she prayed to be declared as the lawful owner of the disputed property. One could wonder as to how she could be declared lawful owner of the estates of the deceased, while she contemplated to be at a stage of collecting, meaning the estate of the deceased were yet to be transferred into her name under capacity of administratrix.

In her testimony, the Appellant alleged to had encountered obstacle or handicap in the course of administering the estate of her late father, she accused her mother Asha Kilolo (DW3), Fatuma Lugomba for being incorporative, vending land and leasing a house of the deceased to the Sixth

Respondent, accused the Fifth Respondent for being fickle and trespassers. However, when the Appellant was cross examined by the Fifth Respondent stated that *"mgawanyo wa mirathi tayari"*. This statement correspondent and was supported by Asha Jumanne Kilolo (DW3) who testified at length, but in a nutshell DW3 stated that the estate of the late Jumanne Juma Kilolo was distributed at family level and every heir including children and grandchildren of the deceased were given their share and the widow (wife of the deceased) who is still alive but aging, handed over the disputed area to the Mosque in compliance with the wish of the deceased whom Sadick Omary Mutulya (DW2) alleged were (deceased and widow) among the Trustees who assisted activities of the Qoranic Shool and Mosque.

Above all, in exhibit D2 which is a decision of Toangoma Ward Tribunal, where the Appellant herein had sued one Sheikh Seleman Maulid Kiparate over the same disputed area of a mosque, after hearing both the Appellant and the Respondent therein, the Ward Tribunal ruled

*"...hivyo Baraza hili kwa kauli moja kwa makubaliano ya wajumbe wote kwamba shauri hili tulitupilie mbali, malalamiko aliyolalamika mlalamikaji ameshindwa kuleta ushahidi wa uhakika na malalamiko yake. Hivyo Imamu wa Msikiti wa Msjid*

*Raudhwa na waumini wa msikiti huo wanaweza kuendelea na shuguli zao kwa kufuata mipaka ya eneo lao kama ilivyo bila kubughudhiwa na mtu yeyote kuanzia leo tarehe 12/10/2021 na kuendelea. Shauri tumelitupa"*

This verdict of the Ward Tribunal remain unchallenged todate. Meaning is still valid and enforceable.

Therefore the learned Chairman and wise assessors were justified to rule unanimously that the Appellant failed to prove her claim.

The appeal is dismissed. I make no order for costs, because the matter borders probate and some of the parties are sibling (related).



E. B. LUVANDA  
**JUDGE**  
16/02/2024

Judgment delivered in the presence of the Appellant, Fifth and Respondent and in the absence of the First, Second, Third and Sixth Respondents.



E.B. LUVANDA  
**JUDGE**  
16/02/2024