

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND CASE NO. 4 OF 2018

MATHILDA LEO HENJEWELE

(Administratrix of the estate of the late Leo Henjewele).....PLAINTIFF

VERSUS

HAMISI JUMA NCHII AND 128 OTHERS.....DEFENDANTS

EX- PARTE JUDGMENT

9 April & 8 June, 2021

DYANSOBERA, J:

The plaintiff herein is, according to the amended plaint filed on 16th November, 2020, praying for judgment and decree against the defendants as follows:-

- i. For an order of the this Honourable Court declaring that the suit and forms part of the estate of the late Leo V. Henjewele and currently it is under the hands of the plaintiff.

- ii. An order for the defendants to give vacant possession of the suit land.
- iii. A permanent injunction restraining the defendants from entering the suit land or dealing with it in any manner whatsoever
- iv. Costs of the suit be borne by the defendants
- v. Any other relief this Honourable Court may deem fit and just to grant.

It is the plaintiff's case that she is an appointed administratrix of the estate of the late Leo Victor Henjewele and the suit land located at Chipuputa area, Magomeni Ward within Mtwara Region with an estimated value of Tshs. 350, 000,000/= forms part of the estate of the deceased. That the defendants engaged in unlawful action of trespassing the suit land way back in not less than ten years past hence making her fail to administer the estate according to law and directions of the court which granted her letters of administration.

The defendants neither appeared in court nor filed any written statement of defence. On 1st December, 2020 Ms Rose Ndemeleje, learned counsel holding brief for Mr. Mecomillan Festo Makawia, learned Advocate for the plaintiff informed the court that the defendants were duly served but refused to acknowledge receipt of the summons. This court, after was

satisfied that the defendants were duly served but for undisclosed reasons, they did neither made appearance in court nor file any written reply to the plaint upon the production of proof of service titled, 'Kukataa Kusaini Wito wa Mahakama Kuu Kitengo cha Ardhi Kesi No.4 Hamis Juma Nchii by Bariki Mwakipesile, Afisa Mtendaji, Mtaa wa Chipuputa, Manispaa ya Mtwara Mikindani, and after taking into account the affidavit of David Mfilinge, the court process server sworn before Gide Magila, Advocate, ordered the case to proceed ex parte

This is, therefore, an ex parte judgment.

Although strictly speaking no issues should be framed as there is no written statement of defence, the amended plaint in particular, has essentially raised three questions calling for determination by this court.

They are the following:-

1. Whether the suit land forms part of the estate of the late Leo V. Henjewele.
2. Whether the defendants have trespassed on to it
3. Reliefs to which she is entitled.

In proof of her case, the plaintiff called in eight (8) witnesses, namely, Matilda Leo Victor Henjewele (PW 1), Frida Leo Victor Henjewele (PW 2), Augusta Leo Henjewele (PW 3), Charles Leo Victor Henjewele (PW 4), Felista Leo Henjewele (PW 5), Rose Leo Henjewele (PW 6), Patrick Leo

Victor Henjewele (PW 7) and Salama Leo Victor Henjewele (PW 8). All these are children who survived the deceased except PW 3 who is the widow.

The plaintiff's case according to these eight witnesses was as follows. Leo Victor Henjewele, the deceased met his demise on 21st July, 2016 after a long illness as evidenced by the certificate of death (exhibit P 2). After the death, PW 1 was, on 7th September, 2020, granted letters of administration in Probate and Administration Cause No. 68 of 2016.

It was her evidence that the suit property which was marked by boundary beacons KU 361, 411, 412, 157, 475, 463, 255, 234, 232, 409, 266, 263, 264, 294 and 240 being beacons of Henjewele L.V. and Sons Poultry Farm, Mbae area belongs to the deceased and forms his estate. In proof of this fact, PW 1 tendered in evidence the Certificate of Acceptance of Boundary Beacons marks (exhibit P 3). It is her contention that she has failed to discharge both legal and judicial obligation of administering the deceased's estate as the suit land which is among the estate of the deceased is being unlawfully occupied by the defendants who have refused to vacate the premises and hand over it to her so that she distributes it to the proper heirs. The plaintiff asserts that the suit land was lawfully

allocated to the deceased by the proper land authorities and the deceased was paying land rent (exhibit P 5). The plaintiff argued that the defendants are trespassers as the land was not lawfully allocated to them. She told the court that after the invasion, complaints were lodged to various authorities. She supported this argument by producing the letter from *Afisa Mtendaji wa Mtaa wa Chipuputa Kata ya Magomeni* addressed to the Municipal Director whereby PW 3 was claiming compensation for the trespassers, this is exhibit P 4.

It is the plaintiff's further testimony that in her efforts to administer the deceased's estate by marshalling the property, the defendants have refused to hand over the suit land and hence this suit. The plaintiff is supported in her evidence by the rest seven witnesses as indicated above.

On the evidence adduced by the plaintiff which is fully supported by seven witnesses as well as the documentary exhibits admitted in evidence, I am satisfied that the plaintiff has proved her case on balance of probabilities and the first and second issues are answered in the affirmative.

Accordingly, judgment is hereby entered for the plaintiff as follows:-

1. The suit land is declared to form part of the estate of the late Leo Victor Henjewele.
2. The defendants are ordered to give vacant possession of the suit land so that it is handed over to the plaintiff.
3. The defendants are permanently restrained from entering the suit land or dealing with it in any manner whatsoever.
4. No order as to costs is made as the defendants neither made appearance in court nor filed the written defence.

It is so ordered.




W.P. Dyansobera

Judge

8.6.2021

This judgment is given under my hand and the seal of this Court on this 8th day of June, 2021 in the presence of the plaintiff and Ms Rose Ndemeleje holding brief for Mr. Mecomillan Festo Makawia, learned counsel for the plaintiff but in the absence of the defendants.




W.P. Dyansobera

Judge