

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**LAND CASE NO. 11 OF 2020**

**HANIFU ABDALLAH** (*Administrator of*

*Estate of the late Sakina Selemani*) ..... **PLAINTIFF**

**Vs**

**MOHAMED HUSSEIN DARSI**..... **1<sup>ST</sup> DEFENDANT**

**ZAINABU MOHAMED HUSSEIN DARSI** ..... **2<sup>ND</sup> DEFENDANT**

**SUKAINA MOHAMED HUSSEIN DARSI** ..... **3<sup>RD</sup> DEFENDANT**

**ZERA MOHAMED HUSSEIN DARSI**..... **4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

18/7/2022 & 9/9/2022

**ROBERT, J:-**

The Plaintiff, Hanifu Abdallah, filed an action in his capacity as the administrator of estate of the late Sakina Selemani against the four Defendants named hereinabove claiming that the 1<sup>st</sup> defendant, Mohamed Hussein Darsi illegally transferred Plot No. 192 Block 'R' Rufiji Street in Mwanza City (hereinafter referred to as the disputed property) from the name of the deceased Sakina Selemani to himself and later transferred it to his wife and children (the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants).

A brief background of this dispute reveals that, the Plaintiff and first defendant are half-brothers born by the late Sakina Selemani who died

on 26<sup>th</sup> May, 2004. After the death of their mother, the plaintiff successfully applied for letters of administration at the Primary Court of Mwanza Urban to administer the estate of their late mother and listed Plot No. 192 Block "R" Rufiji Street, Mwanza City (the disputed property) in the estate of the deceased. Dissatisfied, the first defendant filed an appeal at the District Court of Nyamagana against the appointment of the plaintiff and the inclusion of the disputed property in the estate of the deceased. He alleged that the disputed property was already transferred to him by their late mother prior to her death and, subsequently, he also transferred the same to his wife (second defendant) and children (3<sup>rd</sup> and 4<sup>th</sup> defendants). The District Court decided that it was wrong to include the disputed property in the estate of the late Sakina Selemani.

Aggrieved by the decision of the District Court, the plaintiff appealed to this Court in PC Probate Appeal No. 6 of 2010. This Court nullified the proceedings and decision of the District Court for deciding on the question of ownership of the disputed property and part of the decision of the Primary Court which made a determination on the question of the rightful owner of the disputed property. As a consequence, the Court ordered parties to refer the dispute over the ownership of the disputed property to the competent tribunal or Court with jurisdiction to try the same. Hence, the Plaintiff lodged this suit against the defendants.

In this suit, the Plaintiff prays for the Court to declare the transfer of the disputed property illegal; order the registrar of title to rectify the title and insert the original information of ownership before the illegal transfer; order for vacant possession in disputed property by the 2<sup>nd</sup> to 4<sup>th</sup> defendants; and cost of the suit.

Parties in this suit enjoyed the legal services of Messrs. Acram Adam and Alex Bantulaki, learned counsel for the plaintiff and defendants respectively.

In the course of proceedings, the Court framed four issues for the determination of this matter. **One**, whether the disputed property was legally transferred to the 1<sup>st</sup> defendant by the deceased one Sakina Selemani. **Two**, whether the 1<sup>st</sup> defendant had the capacity to transfer the title of the disputed property to the 2<sup>nd</sup> and 3<sup>rd</sup> defendant. **Three**, whether the disputed property belong to the estate of the deceased one Sakina Selemani. **Four**, to what relief(s) are the parties entitled.

To prove his case, the Plaintiff testified as PW1 and didn't call any other witness. On the defence side, the first defendant, Mohamed Hussein Darsi testified as DW1; the third Defendant, Sukaina Mohamed Hussein Darsi testified as DW2; an officer from Registrar of Titles Office, Mr. Anantory Wilson Bwekumburwa testified as DW; Mr. Mohamed Hanif Azar

Kubaj testified as DW4; and the fourth defendant, Zera Mohamed Hussein testified as DW5.

On the first issue, whether the disputed property was legally transferred to the 1<sup>st</sup> defendant by the deceased one Sakina Selemani, the plaintiff testified as PW1. He recounted that, when he started to collect and distribute the deceased's properties as administrator of estate he found out that, the first defendant had transferred the disputed property to himself and later transferred it to the second, third and fourth defendants as the owner of the disputed property. He stated that he saw a document indicating that the late Sakina Selemani had transferred the disputed property to the first defendant but the said document had no signature of the late Sakina Mohamed. He tendered a copy of the said document (Transfer of the Right of Occupancy) which was admitted in evidence as exhibit P2. He maintained that, the alleged transfer document (exhibit P2) lacks the vendor's signature and therefore the alleged transfer is void which means the first defendant had no title to transfer to the other defendants.

He insisted that, the late Sakina Selemani started to own the disputed property in 1950 (under Tanganyika territory) and in 1968 she gave him a document evidencing title to the disputed property. He tendered a

Certificate of Occupancy to a Native for Building Purposes which was admitted in evidence as exhibit P1.

In response to this issue, DW1 informed the Court that, the disputed property was given to him by her late mother when she was still alive. He explained that her mother went to court where an affidavit was prepared to give him ownership of the said house. After that, he went to the City Council's office together with his mother where a deed of transfer was prepared. Later he went to the land office where he was given some papers and told that the house is his property. After that, he repaired the house and transferred it to his wife and children.

His testimony was supported with that of DW2 who informed the Court that, the disputed property belonged to her grandmother Sakina Suleiman who gave it to her father, the first defendant. She stated that the original certificate of occupancy of the disputed property was stolen in 1985 before the death of her grandmother. After that, her grandmother filed a loss report at the police station but the said certificate was never recovered. Thereafter, her grandmother decided to give ownership of that house to her son, the first defendant. She stated that, to transfer ownership, her grandmother went to Mirongo Ward Office then to court where she prepared an affidavit to that effect. Thereafter the first defendant went to a land office for a change of ownership from the name

of Sakina Suleiman to Mohamed Hussein Darsi which was effected. Then, the first defendant transferred the disputed property to his wife and children.

The defendants also called an officer from the Registrar of Titles office, Mr. Anatory Wilson Bwekumburwa who testified as DW3. He informed the Court that, according to the records at the Registrar of Titles' office, the disputed plot is currently owned by three individuals as joint tenants by the names of Zainab Mohamed Hussein Darsi, Zera Mohamed Hussein Darsi and Sukaina Mohamed Hussein Darsi.

He explained that, according to the records, the office received a draft certificate of title from the Commissioner of Land in the name of Mohamed Hussein Darsi on 28/08/1992 which was registered in title No. 033019/37 being ownership for 33 years which will expire on 30/09/2023. On 28/06/2002 the office received an application for change of ownership from Mohamed Hussein Darsi to Zainabu Mohamed Hussein Darsi, Zera Mohamed Hussein Darsi, and Sukaina Mohamed Hussein Darsi as joint tenants. He stated that there has been no any other change of ownership in respect of the said property. He tendered the Certificate of Title in respect of Plot No. 192 Block 'R' Rufiji Street Mwanza Municipality which was admitted in evidence as exhibit D1.

Mr. Mohamed Hanif Azar Kubaj (DW4) testified that, the deceased Sakina Selemani was his sister. He explained that, Sakina lived in Mwanza at Rufiji Street, in the house built by her late husband who died later leaving ownership of the house to Sakina. Before Sakina's death, she gave the certificate of title of the said house to her son Mohamed Darsi (DW1) who took care of her when she was sick.

There was also the evidence of DW5 who testified that, the disputed property, it used to belong to their grandmother who gave it to their father. Later their father gave it to them when their grandmother was still alive.

From the evidence adduced, it appears that DW1, DW2, DW4 and DW5 maintains that the disputed property was given to the first defendant by the late Sakina Selemani while PW1 maintains that the document purporting to transfer title from the late Sakina Selemani to the first defendant (exhibit P2) was not signed by the late Sakina Selemani and further that, the original document evidencing title to the disputed property is in his custody (exhibit P1). At the same time, the officer from the Registrar of Titles (DW3) testified that they received a draft certificate of title from the Commissioner of Land on 28<sup>th</sup> August, 1992 in the name of Mohamed Hussein Darsi (first Defendant) and registered the same as Certificate of Title No. 033019/37. He also clarified that the Registrar of

Title do not have any information related to previous ownership of the disputed land as that information can be provided by the Commissioner of Land. Further to that, the Court was told by DW2 that the original certificate of the disputed land was lost before the change of ownership to the first defendant when the late Sakina Selemani was still alive and it was never recovered.

In the circumstances, it is not clear if exhibit P2 was indeed the document used by the land granting authority to exchange ownership from the late Sakina Selemani to the first defendant as alleged by the plaintiff and there is no evidence to establish that vesting of title or ownership of the disputed property to the first defendant was illegal or was procured by fraud. DW3 made it clear that the Registrar of Title received the draft certificate of Title in the name of the first defendant from the Commissioner of Land and proceeded to register it. Therefore, it appears to this Court that, in order to resolve this issue exhaustively a lot more information is needed from the official land authority that granted the disputed land to the first defendant from the late Sakina Selemani. This will help to determine if at the time the land was being granted to the first defendant all documents required for change of ownership were present and the said property did not have any subsisting third-party interests. In the absence of such evidence, one cannot answer with

certainty if the first defendant was an authentic holder of the disputed property or not.

That said, this Court finds and holds that, the underlying issue on the legality or lawfulness of allocation of the disputed land to the first defendant cannot be resolved completely without the addition of the land granting authority which granted land to the first defendant as a necessary party in this case under Order I Rule 10(2) of the CPC.

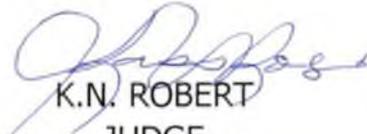
Coming to the second issue, whether the 1<sup>st</sup> defendant had the capacity to transfer the title of the disputed property to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendant. Again, DW3 informed this Court that, on 28/6/2002 the Registrar of Title received an application for change of name through a deed of gift from the first defendant to the rest of the defendants and proceeded to effect the said changes. However, this Court is of the considered view that, the response to this issue is predicated to the determination of the first issue above. This is due to the fact that, in order to determine if the first defendant had the capacity to transfer the disputed property to the other defendants it must be proved that the first defendant had a valid title to the disputed land. Since the first issue remains unresolved due to absence of a necessary party, this issue is equally affected.

The 3<sup>rd</sup> issue seek to determine whether the disputed property belongs to the estate of the deceased one Sakina Selemani. The Court was informed by an officer from the Registrar of Titles that according to the records in their office the current owner of the disputed property is the three defendants (1<sup>st</sup> to 3<sup>rd</sup> Defendant) who owns the same as joint tenants. He tendered the certificate of title (exhibit D1) as proof of ownership. However, as I noted on the previous issues, the determination of this issue is equally predicated on whether the first defendant who transferred ownership to the current occupiers had a valid title to the disputed property. Unfortunately, that issue has not been resolved.

On the foregoing reasons, since the party not joined is a necessary party in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, this Court finds it necessary for the Mwanza Municipal Council or the Commissioner for Lands whichever granted the disputed land to the first defendant to have been joined as a party to the suit. Since the necessary party was not joined, I strike out this suit for failure to join the necessary party. The Plaintiff is at liberty to file another suit and join all necessary parties. In the circumstances, I make no order as to costs.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
9/9/2022