IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: MZIRAY, J.A., MWAMBEGELE, J.A. And KWARIKO, J.A.)

CIVIL APPEAL NO. 44 OF 2017

SUZANA S. WARYOBA ..... APPELLANT

VERSUS

SHIJA DALAWA .....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Mwanza)

(Mwangesi, J.)

Dated the 16th day of September, 2013
in
Land Appeal No. 129 of 2012

.....

JUDGMENT OF THE COURT

10th & 11th April, 2019.

MWAMBEGELE, J.A.:

This is a third appeal. It emanates from the decision of the Ward Tribunal of Buruma in which the appellant Suzana Waryoba sued the respondent Shija Ndalawa for trespass on 18.11.2011 vide a case christened Land Dispute No. 5 of 2011. The Ward Tribunal decided in favour of the appellant. The respondent successfully appealed to the District Land and Housing Tribunal. Aggrieved, the appellant appealed to the High Court where Mwangesi, J. (as he then was) dismissed the appeal.

Undeterred, she has come to this Court on an appeal with three grounds of complaint; namely:

1. *That, the 2nd Appellate Court Judge erred in law to uphold the 1st appellate Tribunal decision after one Mathew S. Warioba, the appellant brother if had the power to sell the house to the respondent herein while the applicant herein was already appointed to be administratix of the estate of her deceased brother.*
2. *That, the 2nd Appellate Court Judge erred in law for failure to know that its only the Appellant herein have power and lawful administratix of her deceased brother estate property not the respondent.*
3. *That, the 2nd Appellate Court Judge erred in law for failure to know that one Mathew S. Waryoba had no locus standi to sell the Appellant deceased brother estate property.*

The High Court (Matupa, J.) endorsed the following point of law for consideration by the Court:

> *"Whether Mathew S. Warioba, the applicant's brother had power to sell the house to the*

respondent while the applicant herein was appointed to be the administrator of the deceased brother."

When the appeal was placed for hearing before us on 10.04.2019 both parties appeared, unrepresented. Being lay persons, they had very little to contribute to the arguments in appeal. While the appellant was insistent that Mathew Warioba had no right to dispose of the disputed land while she was administratrix of the estate of the late Stanslaus Waryoba, the respondent, equally insistent, was of the stance that in view of the fact that he was the one in occupation of the land ever since Stanslaus Waryoba passed away, and as the village authorities endorsed the disposition of the disputed land, the said Mathew Waryoba as the heir of the deceased, was legally clothed with power to dispose of the same.

In order to appreciate the foregoing contending arguments in the present appeal before us, it may perhaps be fitting, at this juncture, to set the factual background to it which is, as good luck would have it, very short, undisputed and not difficult to comprehend. It is this. Mathew Warioba and the appellant are siblings. They have other siblings as well. Their father died intestate on 30.04.1975 leaving behind his wife who lived

in the disputed land until her death. After her death, Mathew Warioba lived in the disputed land.

In 2000, vide Shauri la Mirathi No. 95 of 2000, Musoma Urban Primary Court appointed the appellant as an administratrix of the estate of the late Stanslaus Waryoba.

In 2008, Mathew Waryoba sold the disputed land to the respondent. That sale was witnessed by, *inter alia*, the Hamlet Secretary; Robert Lucas, who testified in the Ward Tribunal for the respondent. Six other members of the village government witnessed the sale including Juma Mafutar and Joshwa Maguru, who also testified in the Ward Tribunal.

Both appellate courts below decided against the appellant. In deciding for the respondent, the High Court [Mwangesi, J. (as he then was)] was satisfied that the respondent was a bona fide purchaser and defined who a bona fide purchaser was by giving the definitions thereof which we think merit recitation here. The first definition was from **Black's Law Dictionary**:

"A purchaser for a valuable consideration paid or parted with in the belief that, the vendor had a right to sell and without any suspicious circumstances to put him on inquiry."

The High Court went on to quote the following definition from **Oxford Scholarship Online**:

"A bona-fide purchaser is someone who purchases something in good faith, believing that he/she has clear rights of ownership after the purchase and having no reason to think otherwise. In situations where a seller behaves fraudulently, the bona-fide purchaser is not responsible. Someone with conflicting claim to the property under discussion would need to take it up with the seller, not the purchaser, and the purchaser would be allowed to retain the property."

Then the High Court went on to decide in favour of the respondent as follows:

"The circumstances under which the respondent in the instant matter purchased the disputed plot of land, at a sale that was made before the

leadership of the area, did not give him a chance of suspecting that, there was anything fishy. The foregoing position therefore, goes on to dispose of the grounds of appeal that have been raised by the appellant that, the title of the ownership did not pass to the respondent. It is the finding of this Court that, the fact that, Mathew Waryoba was the de facto owner of the disputed plot of land, he did pass title to the respondent, and to that effect, the respondent was entitled to effect developments on the same and there was no any risk which he was undertaking as he believed to have purchased it lawfully."

We find nowhere to fault the finding of the second appellate court. The respondent was certainly a bona fide purchaser for value; that is, one who received the land in good faith and without knowledge of any fraud – see: **Manual on Land Law and Conveyancing in Tanzania** by Dr R. W. Tenga and Sist Mramba at p. 220.

A somewhat akin situation was the case in **Stanley Kalama Masiki v. Chihiyo Kuisia w/o Nderingo Ngomuo** [1981] TLR 143. In that case, at page 144 (holding viii) it was held that the bonafide purchaser for

value was entitled to a declaration that he was the lawful owner of the suit plot. The Court held:

> *"... where an innocent purchaser for value has gone into occupation and effected substantial development on land the courts should be slow to disturb such a purchaser and would desist from reviving stale claims."*

In the case at hand there is no gainsaying that the respondent bought the land from Mathew Waryoba on 11.06.2008 at Tshs. 160,000/= and by the following year he made substantial developments to it reaching Tshs. 1,500,000/= which the appellant, on a special agreement with the respondent, agreed to refund so that the latter would give vacant possession. The appellant did not walk the talk and by 2011 the respondent had developed the land to the tune of Tshs. 4,500,000/= which was certainly beyond what the appellant could manage to compensate. The appellant is still living in the disputed land and eight years down the lane, the developments thereon must be well above the value of Tshs. 4,500,000/= in 2011. In the premises, it would not be in the interest of justice to disturb the respondent's occupation as held in **Stanley Kalama Masiki** (supra).

As an extension to the above, according to paragraph 11 of the Fifth Schedule to the Magistrates' Courts Act, Cap. 11 of Revised Edition, 2002 (hereinafter referred to as the Magistrates' Courts Act) which provides for powers and duties of administrators appointed by primary courts, an administrator is mandatorily required to account to the primary court for his administration:

> *"11. Account*
>
> *After completing the administration of the estate and, if the primary court orders, at any other stage of the administration an administrator shall account to the primary court for his administration."*

And according to The Primary Courts (Administration of Estates) Rules, 1971 - GN No. 49 of 1971, a time frame has been provided within which an administrator is mandatorily supposed to submit to the Primary Court a statement in a prescribed form on how the estate has been administered. We will let rule 10 speak for itself:

> *"10. Statement of assets and liabilities and accounts of the estate*

(1) Within four months of the grant of administration or within such further time as the liabilities court may allow, the administrator shall submit to the court a true and complete statement, in Form V, all the assets and liabilities of the deceased persons' estate and, at such intervals thereafter as the court may fix, he shall submit to the court a periodical account of the estate in Form VI showing therein all the moneys received, payments made, and property or other assets sold or otherwise transferred by him.

(2) The statement and accounts referred to in subrule (1) may, on application to the court, be inspected by any creditor, executor, heir or beneficiary of the estate."

We have reproduced the above provisions of the Fifth Schedule to, and The Primary Courts (Administration of Estates) Rules made under the Magistrates Courts Act, to show that the same did not come out clearly in evidence thus casting doubts if the appellant was still an admistratrix of the estate of the late Stanslaus Waryoba since 2000 when she was so appointed. As Mathew Waryoba was not impleaded, it is also doubtful if he

did not legally own it after administration. By not impleading Mathew Warioba, the appellant did that at her own peril.

In the peculiar circumstances of this case we find and hold that Mathew Waryoba had power to dispose of the land irrespective of the fact that the appellant was appointed administratrix of the estate of the late Stanslaus Waryoba in 2000. After all, as already alluded to above, the said Mathew Waryoba was not made a party to the suit the subject of this appeal. We therefore are not sure what transpired in the eight years the appellant was administering the estate of the late Stanslaus Waryoba. No one knows if the appellant presented an inventory to the court as prescribed by the law. No one knows if Mathew Waryoba, as one of the heirs, was allotted the disputed plot.

Before we pen off we wish to address one little disquieting aspect. This is that the appellant sued as an administratrix of the estate of the late Stanslaus Waroyba. However, that aspect did not reflect in the title of the case. We are of the considered view that the fact that Suzana Waryoba was suing in her capacity as an adminitratrix of the estate of the late Stanslaus Waryoba should have been reflected in the title of the case.

However, we haste the remark that the omission is not fatal given that it was clear throughout that she was suing in that capacity and the judgment of the Primary Court which appointed her as such, was tendered in evidence at the very outset. We only wish to accentuate that when a litigant sues as an administrator or administratrix of estate, it is desirable that the same should be reflected in the title.

The above said, we, like the second appellate court, find this appeal without merit and dismiss it with costs.

Order accordingly.

DATED at **MWANZA** this 11th day of April, 2019.

R. E. S. MZIRAY
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL