

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MWANDAMBO, J.A., KIHWELO, J.A. And MGONYA, J.A.)**

**CIVIL APPEAL NO. 407 OF 2021**

**PHILEMON VANAI SAITERU MOLLEL ..... APPELLANT**

**VERSUS**

**WILLIAM TITUS MOLLEL** (as an Administrator  
of the Estate of Late

**TITUS ARON MOLLEL) ..... 1<sup>ST</sup> RESPONDENT**

**PETER FRIDOLIN TEMU** (as an Administrator  
of the Estate of the Late

**TITUS ARON MOLLEL) ..... 2<sup>ND</sup> RESPONDENT**

**(Appeal from the judgment and decree of the High Court of Tanzania,  
at Arusha)**

**(Mzuna, J.)**

**dated the 7<sup>th</sup> day of May, 2021**

**in**

**Land Case No. 1 of 2017**

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**JUDGMENT OF THE COURT**

9<sup>th</sup> February, & 05<sup>th</sup> March, 2024

**MGONYA, J.A.:**

This appeal is against the decision of the High Court in Land Case No. 1 of 2017, entered in favour of the respondents. The centre of the dispute was trespass to land known and described as Plots Number 29, 30, 31 and 32 in Block "BB" Ngulelo Arusha (hereinafter referred to as the suit properties).

The facts giving rise to the appeal are not intricate. Before the High Court of Tanzania at Arusha, the respondents William Titus Mollel and Peter Fridolin Temu being the administrators of the estate of late Titus Aron Mollel sued Philemon Vanai Saiteru Mollel (the appellant) alleging trespass to the suit properties. The respondents prayed for an order of permanent injunction and general damages for the alleged trespass.

On his part, the appellant vehemently refuted all the claims. He contended that the disputed properties did not form part of the estate of the late Titus Aron Mollel. It was his further claim that the suit properties were legally owned by him having bought from Jimmy Titus Mollel, a legitimate child of the late Titus Aron Mollel. He thus prayed to the trial court to dismiss the respondents' suit with costs. After the trial, the learned trial judge was satisfied that, all plots constituting the suit properties registered in the deceased's name were part of his estate in which the respondents were the administrators. The trial judge also found that the purported sale between Jimmy Titus Mollel and the appellant was invalid and inoperative for transferring the interest in the suit properties to the appellant. Consequently, the trial court declared the appellant a trespasser followed by an order evicting him therefrom.

Dissatisfied, the appellant has preferred the instant appeal predicated upon six grounds of complaint namely:

- 1. That the learned trial Judge erred in law and fact to hold that at the time, that is in November, 2009 and in the year 2010, when Jimmy Titus Mollel sold the landed properties in Plots numbers 29, 30, 31 and 32 at block BB Ngulelo Area within Arusha City, the said Jimmy Titus Mollel had no legal capacity to sell the said landed property as he was not appointed administrator of the estates of the late Titus Aron Mollel;*
- 2. That the learned trial Judge erred in law and fact for his failure to hold that the actions of selling and purchasing the disputed landed properties, that is Plots Numbers 29, 30, 31 and 32 at Block BB Ngulelo Area, within Arusha City, were part of the process of transfer of titles from the seller to the bonafide purchaser who is the appellant;*
- 3. That the learned trial Judge erred in law and fact for his failure to hold that the sell agreements in respect of the Plots Numbers 29, 30, 31 and 32 at Block BB Ngulelo Area, within Arusha City were valid in law and were thereby protective of the interest of the appellant before further process or steps of transfer of the titles from the seller to the appellant;*
- 4. That the learned trial Judge erred in law and fact to hold that the sell agreement between the appellant and Jimmy Titus Mollel was tainted with fraud and illegality.*
- 5. That the learned trial Judge erred in law and in fact to hold that the appellant failed to trace the seller's titles to the*

*properties allegedly bought under the contracts and further erred in law and fact to hold that the appellant did not buy the landed properties, that is Plots Numbers 29, 30, 31 and 32 at Block BB Ngulelo Area within Arusha City, from the true owner; and*

*6. That the learned trial Judge erred in law and fact to hold that the appellant committed an act of trespass to the suit properties against the owner.*

When the appeal was placed for hearing, Mr. Francis Stolla learned counsel appeared for the appellant, whereas, the respondents were represented by Messrs. Moses Mahuna and Andrew Maganga learned advocates.

Arguing in support of the appeal, Mr. Stolla implored the Court to consider the grounds of appeal and his written submission he had lodged earlier. In his brief oral submission before the Court, he submitted that, the trial court erred to hold that Jimmy Titus Mollel was not an administrator while he had letters of administration issued to him by the primary court. He referred the Court to section 58 and 59 of the Evidence Act, stating that, a letter of administration is a court document to be taken judicial notice without the need to prove. It was his stance that Jimmy had authority to sell the suit properties as he was the administrator.

Further, arguing through his written submission on the 1<sup>st</sup>, 4<sup>th</sup> and 6<sup>th</sup> grounds of appeal, Mr. Stolla submitted that, the trial judge erred in law to hold that, the sale agreements were a nullity while the same were entered by one Jimmy Titus Mollel, who at the time of conclusion of the said agreements was the administrator of the estate of the late Titus Aron Mollel. According to Mr. Stolla, Jimmy Titus Mollel, had the requisite capacity to enter into the contract of sale of the disputed land to the appellant. It was his stance that the sale was lawful.

Submitting on the 2<sup>nd</sup> and 3<sup>rd</sup> grounds, Mr. Stolla submitted that the sale agreements between the appellant and one Jimmy Titus Mollel was in its initial stage of the process to transfer the title from the seller to the buyer. Therefore, in his view, there were protective interest of the appellant in respect of the disputed land.

On the last ground of appeal, where the appellant faults the trial judge finding that he committed an act of trespass to the suit properties against the owner, the appellant's counsel submission was to the effect that, the appellant did not commit an act of trespass because he purchased the suit properties from Jimmy Titus Mollel who had capacity to sell as he was the administrator to the estate of Titus Aron Mollel.

In his reply, Mr. Mahuna contended that, an appointment of one being administrator does not give him a right to sell the property instead, he has to adhere to section 67 of the Land Registration Act, so as to acquire good title to pass. To fortify his stance, he referred us to our decision in **Amina Maulidi Ambali & 2 Others v. Ramadhani Juma**, Civil Appeal No. 35 of 2019 (unreported).

Submitting on the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> grounds where the main issue was on the appellant to be considered a *bonafide* purchaser, Mr. Mahuna contended that in terms of section 67(b)(i) of the Land Act, for the buyer to be considered a *bonafide* purchaser, it must be proved that he bought the property in good faith. He went on to submit that, in this case, the appellant reveals in his testimony that he knew that the owner of the suit properties was Titus Aron Mollel and not Jimmy Titus Mollel. Therefore, he submitted, the appellant cannot benefit from the purchase which was not lawful. To cement his position, he cited the case of **Idrisa Ramadhan Mbondera (Administrator of the Estate of the Late Ramadhani Ally Mbondera) v. Allan Mbaruku & Another**, Civil Appeal No. 176 of 2020 (unreported).

In his brief rejoinder Mr. Stolla reiterated what he submitted and urged the Court to consider the appellant a *bonafide* purchaser hence his right should be protected. To cement his arguments, he referred the Court to the case of **Jane Kimaro v. Vicky Adili (As Administratrix of the Estate of the Late Adili Daniel Mande)** Civil Appeal No. 212 of 2016 (unreported).

Having heard the counsel's rival submissions in support and against the appeal and our perusal on the evidence and exhibits tendered before the trial court, it is beyond dispute that the suit properties were part of the estate of the late Titus Aron Mollel. It is also uncontested that after the demise of the late Titus Aron Mollel, Jimmy Titus Mollel was once appointed to be the administrator of the estate until when his appointment was revoked. That being the uncontested facts, we thus find the vital issue to be determined in the instant appeal turn to be *whether the appellant proved ownership of the suit properties.*

The trial court determined the suit on the sole issue that is, who is the lawful owner of the suit properties. Upon analysis of the evidence, it was the finding of the court that, the appellant and his witnesses admitted that the title deeds were and are still in the name of the deceased. Therefore, the appellant knew at the time of sale of the suit properties

that, the same never belonged to Jimmy Titus Mollel. The trial judge at page 7 para 3 of the impugned judgment stated:

*"On the same token the disposition has never been formalized by the registration as required by the law. This could not have been possible since the official search, still reveals the properties were and still are registered in the deceased name. In that regard, the sale is not only tainted by uncertainty but also illegality. I say so because it is trite law that no one can give a better title than he himself possess."*

Finally, the trial judge concluded that the appellant was not the rightful owner of the suit properties.

In this case the dispute involves the disposition of land which forms part of the deceased's estate. In our view, mere proof that the suit properties were sold by the administrator could not suffice to prove change of ownership unless the administrator complied with section 67 and 68 of the LRA. Section 67 provides:

*"67. On the death of the owner of any estate or interest, his legal personal representative, on application to the Registrar in the prescribed form and on delivering to him an office copy of the probate of the will or letters of administration to*



*the estate of the owner, or of his appointment under Part VIII of the Probate and Administration of Estates Act or the Fourth Schedule to the Magistrates' Courts Act shall be entitled to be registered as owner in the place of the deceased”.*

In the instant appeal the facts speak loudly that, on the dates the appellant claim to have purchased the suit properties, the certificates of title (exhibits P4-P7) were still in the deceased's name. Likewise, it was not established that the said vendor before selling the suit properties made an application to be registered as the owner in place of the deceased. Since this was not done, the appellant could not have acquired title from a sale by a stranger.

In a bid to prove ownership of the suit properties, the appellant tendered before the trial court the sale agreements (exhibits D1-D4), which shows that on diverse dates between July, 2009 to 2010, the appellant entered into sale agreements of the suit properties with one Jimmy Titus Mollel. However, as it was rightly found by the trial court, the said agreements were inoperative as the purported vendor was not the owner hence, he had no good title to pass to the appellant. See: **Pascal Maganga v. Kitinga Mbarika**, Civil Appeal No. 240 of 2017 (unreported).

Like the trial court, we find that the appellant failed to prove ownership of the suit properties.

In his submission Mr. Stolla invited the Court to consider the appellant a *bonafide* purchaser, as he purchased the property from Jimmy Titus Mollel who was the administrator of the estate of the late Titus Aron Mollel. With respect, we do not agree with the counsel's views. According to **Black's Law Dictionary**, a *bonafide* purchaser is defined as:

*"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."*

In the case of **Idrissa Ramadhani** (supra), the Court stated:

*"In any common law jurisdiction like ours and, particularly in the law of real property, a bonafide purchaser is someone who purchases property in good faith, believing that he or she has clear rights of ownership after the purchase and having no reason to think that there is any other party's claim to the title of that property."*

Earlier, in the case of **Suzana S. Waryoba v. Shija Dalawa**, Civil Appeal No. 44 of 2017 (unreported), a *bonafide* purchaser was defined as:

*"One who received the land in good faith and without knowledge of any fraud."*

From the above definitions, it is clear that for a buyer of the disputed property to be a *bonafide* purchaser, it must be proved that he bought a property in good faith believing that the vendor had good title to it.

The learned trial judge found that even if Jimmy Titus Mollel was appointed administrator, he could not dispose the deceased's estate as his own properties. The learned judge held further that; the appellant did not purchase the suit properties in good faith because he admitted that the sale agreement for plot No. 29 was not signed.

We agree with the trial judge that the appellant did not purchase the suit properties in good faith for reasons: **One**; in July, 2009 when the appellant alleged to buy Plot No. 29, Jimmy Titus Mollel was yet to be appointed as administrator of the estate of the late Titus Aron Mollel and, **two**; it is on record that before purchasing the suit properties, the appellant conducted a search with the Land Registry on the ownership and found the same to be in the name of Titus Aron Mollel. Therefore, the appellant had knowledge that the vendor had no right to sell. That notwithstanding, he went ahead with the sale as if Jimmy Titus Mollel was the owner of the suit properties.

In the premises, we find no reason to fault the findings of the trial court. Consequently, we find no merit in this appeal and we dismiss it with costs.

**DATED** at **DAR ES SALAAM** this 05<sup>th</sup> day of March, 2024.


L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

P. F. KIHWELO  
**JUSTICE OF APPEAL**

L. E. MGONYA  
**JUSTICE OF APPEAL**

The Ruling delivered this 05<sup>th</sup> day of March, 2024 in the presence of Mr. Francis Stolla, learned counsel for the Appellant and Messrs. Moses Mahuna and Andrew Moses Maganga leaned counsels for the Respondents, is hereby certified as a true copy of the original.



  
A. S. CHUGULU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**