

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: KILEO, J.A., JUMA, J.A., And MWARIJA, J.A.)

CIVIL APPLICATION NO.34 OF 2014

**ATHUMANI AMIRI PLAINTIFF/ APPLICANT
VERSUS**

**1. HAMZA AMIRI }
2. ADIA AMIRI } DEFENDANT/ RESPONDENTS**

**(Application from the Ruling of the High Court of
Tanzania at Arusha)**

(Mugasha, J.)

Dated the 14th day of August, 2013

In

Civil Case No. 28 of 2013

RULING OF THE COURT

9th & 13th October, 2015

KILEO, J.A.:

Athuman Amiri, Hamza Amiri and Adia Amiri, who are the parties to this matter are siblings. For the purposes of this matter we will refer to them simply by their names.

Athumani Amiri filed a plaint against Hamza Amiri and Adia Amiri vide Civil Case No. 28 of 2010 in the High Court claiming for his share in a property jointly owned by the three siblings. In support of his plaint Athumani Amiri annexed a judgment of the High Court in Civil Appeal No. 14 of 2006 in which Sambo, J. had allowed the appeal. That appeal had been filed against the decision in Arusha District Court Civil Case No. 34 of 2004

where the parties were Hamisi Amirion the one part and Athumani Amiri, Hamza Amiri and Adia Amiri on the other part. The learned judge nullified the whole proceedings, judgment and decree in the District Court Civil Case mentioned above. Further to that he declared Hamza Hamisi Amiri, Adia Hamisi Amiri and Athumani Hamisi Amiri (the parties to this matter) to be the owners of the disputed property.

On 22/7/2013 the High Court Case No. 28/2010 came before Mugasha, J., (as she then was) for framing of issues. The main issue in the case was whether the plaintiff – i.e Athuman Amiri owned 41.6% of the shares in a house known as Plot No. 16 Block "W" area "F" Arusha Municipality.

After she had heard the plaintiff's case the learned judge made the following order:-

"As the decision of Hon. Judge Sambo in Civil Appeal No. 14 of 2006, is the basis of plaintiff's case before me, it is imperative that the matter be referred to the Court of Appeal for direction and guidance."

The judge's order was followed by a Ruling "on her concern." Land Case No. 28/2010 was in the event stayed. In so doing, the learned judge stated:-

"This is what made me to stay Land Case No. 28 of 2010 in order to seek directions and guidance of the Court of Appeal Tanzania as to whether the High Court in Civil Appeal No. 14 of 2006 after nullifying the decision of the trial court was mandated to determine ownership of the disputed property which is also in dispute in land case No. 28/2010 before this court."

When the matter came up for hearing before us we invited both Mr. John Shirima learned counsel for Athumani Amiri and Mr. Ezra Mwaluko, learned counsel for Hamza Amiri and Adia Amiri to address us.

Both learned counsel were of the view that there was no need to bring the matter to the Court of Appeal. Mr. Shirima opined that having heard the plaintiff's case to its closure, the learned judge ought to have continued with the defence and made a decision on the matter instead of staying it and bringing it to this Court.

Agreeing with his learned friend, Mr. Mwaluko submitted that there were no legal provisions under which the matter was brought to the Court of Appeal and that in any case Sambo, J's decision which was given in 2009 was not before the honorable judge. Moreover, the parties in Civil Appeal No. 14/2006 were not the same as the parties in the Land Case No. 28 of 2010, Mr. Mwaluko argued.

The learned counsel argued further that the nature of the claim in Land Case No. 28/2010 was different from that in Civil Appeal No. 14 of 2006.

Having heard both counsel and having considered the matter before us we are of the settled mind that the matter which was at an interlocutory stage, ought not to have been brought before this Court. Indeed, like Mr. Mwaluko, we have been unable to find any provision of the law under which the matter was brought to us.

Moreover, the matter before the High Court in Land Case No. 28/2010 was not *per se* on ownership but it concerned entitlement of shares. The nature of claim in Land Case No. 28/2010 was different from the nature of claim in Civil Appeal No. 14 of 2006.

Needless to say, the parties in Civil Appeal No. 14 of 2006 were different to those in Land Case No. 28 of 2010.

At most, if the learned judge had noted some anomaly in the appeal before Sambo, J., what she could have done was to administratively bring the matter to the attention of the Hon. Chief Justice for appropriate action as deemed fit.

We need not tarry more on this matter. We are satisfied that bringing the matter to the Court at the stage it was, was not proper.

In the circumstances we order that the matter be remitted to the High Court for it to proceed from where it had reached in accordance with the law.

As the dispute which involves close relatives has been in the courts since 2004, it should be given priority in setting dates for hearing.

It is ordered accordingly.


DATED at **ARUSHA** this 13th day of October, 2015.

E. A. KILEO
JUSTICE OF APPEAL

I. H. JUMA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL