

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(ARUSHA DISTRICT REGISTRY)**  
**AT ARUSHA**  
**CIVIL APPEAL NO. 8 OF 2021**

*(C/f Resident Magistrates' Court of Arusha Civil Case No. 16 of 2018)*

**CHRISTINA LEMBRIS MOLLEL .....1<sup>ST</sup> APPELLANT**  
**MUSTAPHA BOAY AKUNAAY.....2<sup>nd</sup> APPELLANT**

**VERSUS**

**MOSES MEIMARI LAIZER.....RESPONDENT**

**JUDGMENT**

**12/05/2022 &12/07/2022**

**GWAE, J**

This appeal emanates from the ruling of the District Court of Arusha at Arusha (trial court) on a point of law raised by the respondent against the suit filed and registered as Civil Case No. 16 of 2018 which was preferred by the appellants. The impugned dismissal order of the trial court was to the effect that and I quote;

"Therefore, this court lack (sic) jurisdiction to entertain the mater (sic) which is supposed to institute in a proper forum. I hereby dismiss the case with costs".

It is perhaps pertinent to have brief facts that led to the institution of the appellants' suit recapitulated; they as follows; that, the 1<sup>st</sup> appellant and

respondent were duly appointed as co-administrators of the estate of the late Lucia Lutorovoki Laizer who died on the 20<sup>th</sup> September 2014. It was Arusha Urban Primary Court which granted letters of administration to the 1<sup>st</sup> appellant and respondent vide Probate and Administration No. 265 of 2016 on the 16<sup>th</sup> January 2016. However, the appointment of the 1<sup>st</sup> respondent was subsequently revoked by the same primary court on the 2<sup>nd</sup> November 2016 thereby leading the respondent to remain as a sole administrator of the deceased's estate

Similarly, it is through the appellants' plaint especially at paragraph No. 9, where it is the appellants' assertion that, the respondent denied them their rights of bequeathing some estate as stated in the deceased's will and that the appellants' prayers according to the plaint were; the defendant now respondent be ordered to comply with the deceased's will or compensate in terms of monetary value thereof and payment of general damages in the tune of Tshs. 100,000,000/=.

Aggrieved by the dismissal order made by the trial court on the basis that the trial court lacked jurisdiction, the appellants filed this appeal after they had obtained leave of the court to appeal out of the time on the 26<sup>th</sup> February 2021. The following are the appellants' complaints;

1. The trial court grossly erred in law and fact in dismissing the appellants; suit
2. The trial court grossly erred in law in failing to realize the cause of the plaintiffs' suit in the plaint
3. The trial court has dismissed the suit at the preliminary stage

On the 14<sup>th</sup> March 2022 this appeal was ordered to be disposed of by way of written submission. Subsequently, the parties' advocates filed their respective submissions in accordance with the court's filing schedule dated 8<sup>th</sup> April 2022.

Supporting this appeal, Ms. Fauzia Mustapha Akonaay argued that the only remedy whenever a probate and administration cause is closed is an institution of a civil suit as the appellants rightly did since the appellants' claims are based on misappropriation of the estate and compensation of damages caused to the deceased person's beneficiaries and not claim on land ownership.

In her opinion, the trial court had jurisdiction to hear and determine the dispute. She then urged this court to make reference to judicial decisions in **Meet Singth Bhachu vs. Administrator General and another**, Misc. Civil Appeal N0. 12 of 2020 (unreported-H.C) adopting the principles

articulated by the Court of Appeal of Tanzania in the case of **Ahmed Mohamed Almaar vs. Fatuma Bakari and another**, Civil Appeal No, 71 of 2012 (unreported). She attacked the impartiality of the presiding magistrate on the ground that he was/is husband of the one who revoked grant of letters of administration to the 1<sup>st</sup> appellant.

Before responding to the appellants' grounds of appeal, the counsel for the respondent argued that the suit filed in the trial court was time barred in terms of section 9 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 360, that, this appeal is the abuse of the court process as the appellants have filed multiple suits on land courts relating to the same subject matter, that the allegation that the minute sheet appointing the respondent is an afterthought since the same was not raised during trial and that the appellants had no locus standi since they could not legally sue on their personal capacity on the estate of the deceased person.

The respondent's counsel also argued that the trial court had no requisite jurisdiction since the appellants are complaining to have been denied their right to the estate which is not within the trial court's jurisdiction.

It is the rejoinder of the appellants' counsel that the respondent's submission on limitation of time is baseless since it was not raised by the

appellants adding that the presiding magistrate ought not to have heard and determined the case whose grant of letters of administration was revoked by his wife.

Having examined the parties' rival written submissions and the trial court's records as well as the grounds of appeal raised by the appellants, it is very clear that there were only three grounds. Hence, there is no ground of apprehended bias which also ought to have been raised before the trial magistrate nor did the appellants complain that the trial court erred in law by holding that the suit was time barred. It is therefore improper, in my considered view, to determine issue on the alleged bias by the appellants or limitation of time as wrongly submitted by the respondent unless such issue was raised, argued or advanced as one of the grounds of appeal or the court raises it suo motto and thereafter such observation the parties are entertained to address the court.

Courts' determination of the appellants' ground of appeal 1 and 2 is combined since both are about jurisdiction of the trial court. As earlier explained that the trial court dismissed the appellants' suit with costs for want of requisite jurisdiction. The respondent who raised the issue objection on jurisdictional issue relied on the paragraph 9 of the amended plaint that

the respondent distributed the estate to himself and other persons not mentioned will and thereby denying the appellants their rights of the estate.

It is my view that the word "estate" does not necessarily connote landed property though it may include landed property or any other property including money, households extra, a property that belongs to a deceased person. More so, when I carefully examined the appellants' prayers as seen in the amended plaint, it goes without saying that it is not clearly indicative in the appellants' plaint at para.9 if the appellants claimed ownership over a parcel of land but rather on the deceased person's estate, compensation and general damages.

Therefore, with prudent observation, it is clear that, it cannot be confidently and certainly said that, the appellants' suit is founded in land. In **national bank of commerce limited vs. National Chicks Corporation Limited Issack Bugali Mwamasika Harold Issack Mwamasika Atuganile Issack Mwamasika Innocent Issack Mwamasika**, Civil Appeal No. 129 of 2015 (unreported), the Court of Appeal of Tanzania whose decision was delivered on 18<sup>th</sup> September 2019 had these to say;

"It is inevitable that evidence is required for the court to sufficiently and fairly resolve those doubts and issues. In terms of the decision in the often-cited case of Mukisa Biscuits

Manufacturing Co. Ltd vs. West End Distributors 37 Ltd [1969] EA 696, that point does not qualify to be a point of law. Parties should lead evidence on those issues before the court makes its decision. The scanty facts availed to the High Court in the course of hearing the points of preliminary points of objection were insufficient to make the court arrive at a fair decision. The finding on that point is hereby set aside”.

According to the above authority, a preliminary objection must be on a pure point of law capable of disposing of the suit and without any other propositions. In our instant case if the deceased person’s will is or was to be relied by the appellant as brightly noted in the plaint and there is a claim of ownership of a house (s) or a relief of compensation emanating from unjustifiable distribution by the respondent in the capacity of an administrator that ought to have been instituted in the Land Registry and not Civil Registry as was correctly held by the District Court.

Nevertheless, since there are other deceased’s properties namely; deceased’s personal chattels and household’s good which constitute an estate whose an institution of case after the close of the Probate and Administration Cause may be in the trial court or primary court. Hence, the impugned order dismissing the appellants’ suit was partly justified and partly not. The proper course to have been adhered, in my considered view, is

causing an amendment of the suit excluding landed properties pursuant to Order VI Rule 17 of the Civil Procedure Code Cap 33, Revised Edition, 2019.

Similarly, if one would base his or her decision on limitation of time as provided under 9 (3) of Cap 360 as argued by the respondent's counsel still it is not certainly clear from the parties' pleadings as to when the respondent concluded his duty and when the Probate and Administration Cause was closed by the primary court.

I am in agreement with the learned counsel for the appellants that once a Probate and Administration Cause is closed, a remedy available for an aggrieved party who is interested in the deceased person's estate in the distribution of the estate or excess use of the administration mandate or waste of estate or damage or any other complaint associated with deceased's estate, is to file a civil case or land case or criminal case as the case may be (See of **Ahmed Mohamed Almaar vs. Fatuma Bakari and another**, Civil Appeal No, 71 of 2012 (unreported). Yet the appellants' claims on the landed property were to be instituted in the proper court forum.

That said and done, the appeal is partly allowed. The impugned order dismissing the appellants' suit is partly quashed and set aside. I order that




the record be immediately returned to the District Court which shall cause an amendment of the appellants' plaint relinquishing the claim over landed properties and thereafter proceed with the hearing of the case. Each party shall bear its own costs.

It is so ordered

Dated and Delivered at Arusha this **12<sup>th</sup> July, 2022**



  
**M. R. GWAE**  
**JUDGE**  
**12/07/2022**