

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND REVISION NO. 14 OF 2022

(Originating from Land Application No. 78 of 2015 in the District Land and Housing Tribunal for Babati at Babati)

AMINA ABASI.....1ST APPLICANT

SAKINA ABDULRAHMAN..... 2ND APPLICANT

MWADAWA ABDULRAMAN..... 3RD APPLICANT

VERSUS

DICKY ALLY.....1ST RESPONDENT

MAJEMBE AUCTION MART.....2ND RESPONDENT

NASORO MDANGA..... 3RD RESPONDENT

RULING

18th October & 04th November 2022

TIGANGA, J.

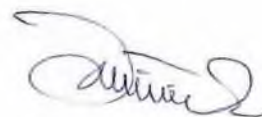
The Chairman of the District Land and Housing Tribunal for Babati at Babati, "DLHT" upon being confused by the way forward on the Application No. 78 of 2015, referred the file to this Court for necessary orders through the order dated 24th May, 2021. I directed the Deputy Registrar to open *suo moto* the revision proceedings.



However, upon reading the record of the matter, I realized that, there was something wanting correction. Therefore, I summoned the Advocates for the parties in order to address me on the issues of concern. By consent, the learned Advocate agreed to address the court by way of written submission. It was Mr. Hamis Mkindi, learned Advocate for the respondents alone who filed written submission. The Advocate for the applicant did not file one.

Before going to the root of the matter, I will albeit briefly, introduce the factual background led to the contention as gleaned from the record.


The three applicants are the grandchildren of the late Johari Mwalimu (The deceased) who passed away on 17th December, 2002. The 1st respondent applied and was granted letters of administration vide Probate Cause No. 17 of 2003 by the Primary Court of Babati District at Babati. After assuming the office of the Administrator, the 1st respondent started collecting properties which belonged to the deceased. Some of the alleged properties forming part of the estate of the deceased was the land located on Plot No. 20 Block 'C' in Babati town. Among the people alleged to have been in possession of the

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deceased's estate was the 1st applicant who was called to surrender the property to the 1st respondent.

Aggrieved by the call to surrender the properties to the administrator for distribution, the 1st applicant together with Juma Musa and Issa Juma wrote a letter to the primary court challenging the call by the administrator. Instead, the primary Court advised them to appeal against the decision of appointing the 1st respondent as an administrator of the deceased's estate. After being so advised, they filed the appeal to the District Court of Babati at Babati which was lastly dismissed for the appellants being not parties to the Probate Cause No.17 of 2003 in the Primary Court.

Sleeping on her right of ownership of the land on Plot No. 20 Block "C" at Babati town and the piece of land with ¼ acreage, the 1st applicant filed Land Application No. 57 of 2005 before the DLHT for Babati at Babati in which it was held that, the 1st applicant is among the heirs and beneficiaries of the estate of the deceased and that the properties in dispute forms part of the deceased's estate. The 1st applicant was aggrieved by the decision of the DLHT for Babati, he unsuccessfully appealed against it before the High Court vide Land Appeal No. 28 of 2010, Nyerere, J. At almost the same time, the 1st

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respondent sought execution of the said decree vide Miscellaneous Application No. 216 of 2011. The application was allowed and therefore, it was ordered that the said, Plot No. 20 Block "C" located in Babati town and a ¼ acre of land also located in Babati be handed over to the 1st respondent for him to distribute together with other properties of the deceased to the legal heirs.

Exercising his powers as Administrator of the deceased's estate, the 1st respondent via public action conducted by the 2nd respondent on 24th July, 2015 sold the disputed house on Plot No. 20 Block "C" to the 3rd respondent who was the highest bidder. Aggrieved by the said sale the three applicants instituted Land Application No. 78 of 2015 in the DLHT for Babati seeking the following reliefs;

1. That the applicants be declared to be among the lawful heirs of the deceased's estate of the late Johari Mwalimu.
2. That, the auction conducted by the 2nd respondent with regard to the suit land be declared null and void.
3. That, the 3rd respondent be ordered to vacate the suit premise forthwith.



4. That, the respondents be ordered to pay costs of the Application and;

5. Any other relief the District Land and Housing Tribunal deems fit and just to grant.

Against that application before the DLHT for Babati, the respondents raised the preliminary objection on points of law that, the DLHT for Babati lacks jurisdiction to hear and determine the application and prayed for dismissal of the application with costs. The basis for the preliminary objection was on the proposition that, the matter is of probate and administration of estate therefore the tribunal has no jurisdiction. Overruling the objection, the tribunal chairman (T.J. Wagine) reasoned that, holding otherwise would be assuming the powers of the Court of Appeal of Tanzania because the High Court of Tanzania, Arusha District Registry in Land Appeal No. 28 of 2010 upheld the decision in Application No. 57 of 2005 of the DLHT for Babati (P.J. Makwandi) which were on the same issues.

In the same impugned proceedings of Application No. 78 of 2015 the same objection on the lack of jurisdiction to hear and entertain probate and administration of estate matters was raised this time before another Chairman (Hon. F. Mdachi) who rejected to rule on the preliminary



objection on the ground that, it has already been ruled out by the same tribunal (T.J. Wagine) on the same application 78 of 2015 and therefore he could not overrule the decision given by the fellow chairman of the concurrent jurisdiction. Thus, he decided to bring the file in this Court for directives on how the matter could be handled.

In his submission, Mr. Mkindi argued this court to consider Land Application No. 78 of 2015 as *res judicata*. The basis for his argument is founded on the reason that, the matter has already been determined by the same tribunal vide Land Application No. 57 of 2005, the decision which was upheld by this Court in Land Appeal No. 28 of 2010 (Nyerere, J). Therefore, he considers the application as *functus officio*. He cited the cases of **Kamundu versus The Republic** (1973) EA 540 and **Bibi Kisoko Medard versus Minister for Lands, Housing and urban Developments and Another** (1983) TLR 250 to support his proposition.

Furthermore, Mr. Mkindi argued that, the District Land and Housing Tribunals have no powers to declare a person to be lawful heir of the deceased's estate but only determination of land ownership which is not the case in the impugned application. That the matter of probate and administration of the deceased's estate was supposed to be dealt with the

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primary court which appointed the 1st respondent the Administrator of the estate of the late Johari Mwalimu. Fortifying the reason, he cited the case of **Salama Ismail Hanya (suing as the Administratrix of the Estate of the late Ismail Omary Hanya) and Another versus Tunu Ismail Hanya as the Administratrix of the estates of the late Ismail Omary Hanya and 2 Others**, Land Appeal No. 88 of 2020 (unreported).

I have gone through the record of the matter. It is very apparent that, the cause of action in Application No. 57 of 2005 is substantially the same with that in Application No. 78 of 2015 which is pending before the DLHT for Babati. Also, the 1st applicant and the 1st respondent are the same. Only that the 2nd and 3rd applicants and 2nd and 3rd respondents are new, they were not parties to the land Application No. 57 of 2005. The reason, for them being made parties in the current application is crystal clear that, like the 1st applicant, the 2nd and 3rd applicants are claiming recognition as legal heirs to the estate of their deceased's grandmother. The 2nd and 3rd respondents were made parties due the fact that, the 2nd respondent was the auctioneer and the 3rd respondent is the buyer of the land in dispute.

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In my view, the position taken by Mr. Mkindi that application No. 78 of 2015 is res judicata sounds more legally convincing than never. I hold so because the law prohibits matters of the same parties and same cause of action which have been finally determined to be filed again.

Section 9 of the Civil Procedure Code, [Cap. 33 R.E 2019] on the issue of res judicata provides as hereunder;

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."

Amplifying the above position of the law, the Court of Appeal of Tanzania in the case of **The Registered Trustees of Chama cha Mapinduzi versus Mohamed Ibrahim Versi & Sons and Another**, Civil Appeal No. 16 of 2008 (unreported)

"It is well settled law and leading authorities are at one, that order for the plea of res judicata to successfully operate, the following conditions must be proved; namely,



- (i) *the former suit must have been between the same litigating parties or between parties under whom they or any of them claim;*
- (ii) *the subject matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and subsequently in issue in the former suit either actually or constructively;*
- (iii) *the party in the subsequent suit must have litigated under the same title in the former suit;*
- (iv) *the matter must have been heard and finally decided;*
- (v) *that the former suit must have been decided by a court of competent jurisdiction."*

In the right of the above cited provisions of the law, it is quite obvious that, the Land Application No. 78 of 2015 was filed in contravention of the law because, it had already been decided via Land Application No. 57 of 2005. It also falls within the thresholds enunciated by the Court of Appeal in the abovementioned case law. The issue as to whether, that decision was right or wrong cannot be ruled upon by this Court because it has already been determined by the Count in Land Appeal No. 28 of 2010 (Nyerere, J). Whoever dissatisfies with the




decision in the said Land Appeal No. 28 of 2010 obviously, knows the proper avenue to follow.

Having said so, in exercise of the powers conferred upon me under the provisions of Section 43(1)(b) of the Land Disputes Courts Act, [Cap. 216 R.E 2019], I hereby quash and nullify the whole proceedings in Land Application No. 78 of 2015 for the application was filed in contravention of the law.

It is accordingly ordered.

DATED at **ARUSHA** on this 04th day of November 2022.




J.C. TIGANGA
JUDGE.