

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
TEMEKE SUB-REGISTRY  
(ONE STOP JUDICIAL CENTRE)  
AT TEMEKE**

**PC CIVIL APPEAL NO. 16 OF 2021**

*(Appeal from the decision of the District Court of Ilala at  
Kinyerezi in Probate Appeal No. 16 of 2021, Originated from Buguruni Primary Court  
at Kawe in Probate Cause No. 250 of 2012)*

**MAFUNDA ABOUD HASSAN.....APPELLANT**

**VERSUS**

**DUNSTAN KABELWA** *(as the administrator and legal personal  
representative of the estate of the late Aboud Hassan Ally)* ..... **RESPONDENT**

**JUDGMENT**

Date of last order: - 01/09/2022  
Date of the judgment: - 14/12/2022

**OPIYO, J.**

The appellant named above is aggrieved by the decision of the District Court of Ilala at Kinyerezi in Probate Appeal No. 16 of 2021, delivered on 30/11/2022 before Honourable H. M. Marando, SRM appeals to this court based on the following grounds;

1. The honourable District Court of Ilala erred in law and facts in striking out the petition for want of jurisdiction.
2. The honourable District Court of Ilala erred in law and facts in denying the parties the opportunity to be heard on the issues or points of jurisdiction raised by the court itself.



3. The honourable District Court of Ilala or Resident Magistrate erred in law and facts in superimposing a court order dated 30/11/2021 without conducting any court proceedings or coram and without taking into account that the matter was scheduled for hearing of the preliminary objection raised by the respondent pending calling for record or forwarding the record of Buguruni Primary Court.
4. The honourable District Court of Ilala erred in law and facts and indeed misdirected in her decision in interpreting and applying the law to the matter in dispute or appeal of the appellant. (sic)
5. The honourable District Court of Ilala erred in law and facts in not transferring the case giving an order for the transfer for the speedy and effective trial of the appellant.

Wherefore, the appellant prays for the appeal to be allowed, the decision of Ilala District Court dated 30/11/2022 be quashed and set aside, the appeal to proceed and be determined by another Magistrate, and any other reliefs deemed fit and just to be awarded by this court,

Alternatively, the appellant prays for the decision of Ilala District Court dated 30/11/2022 to be quashed and set aside, the District Court of Ilala to be ordered to transfer the appeal to One Stop enter of Temeke for speedy and effective trial on merits of the Probate Appeal No. 16 of 2021

On 6/7/2022 the parties herein agreed to dispose of this matter by way of a written submission, submitting in chief on grounds 1 and 4 the

appellant stated that the said appeal at the District Court was filed within the time and by that time One Stop Judicial Centre of Temeke was not in operation. The formation of the court did not oust any jurisdiction of the former system of courts for cases already started by that old system. The aim of One Stop Centre was for the speedy and effective trial of Probate and Matrimonial matters originating from Dar es Salaam, it has nothing to do with jurisdiction with cases already in progress, started in another ordinary court in Dar es Salaam. The appellant further stated that the remedy was to transfer the matter and not dismiss it for want of jurisdiction.

Submitting together grounds 2 and 3, he stated that, the dismissal based on the issue of jurisdiction was raised by the court without affording the parties an opportunity to be heard, moreover there was no coram of the court and there was a point of preliminary objection to be determined raised by the respondent but it was not determined and the trial Magistrate raised the issue of jurisdiction without hearing the parties which is irregular in violation of law (**M/S Consolidated Holding Corporation & Another v Consolidated Investment, Civil Appeal No. 65 of 2021, CAT, at Arusha, Mjasiri, J. A**). Thus, based on the above submission, the appellants insisted his prayers be granted. Replying grounds 1 and 4, the respondents side submitted that, indeed there was an objection scheduled to be heard on 30/11/2021 and it was at this time the District Magistrate reminded herself of the effect of GN No. 640/2021. By that time hearing of the said appeal had not commenced before the publication of GN No. 640/2021 to warrant the continuation of the proceedings as suggested by the appellant. The court found lacking jurisdiction, as the matter was to be filed in proper

forum, as the court where it was taken had no jurisdiction over it anymore and for the reason, it could not even have the power to transfer it.

Submitting on grounds 2 and 3, the respondent stated that, giving the opportunity to the parties to address their respective matters goes parallel with the hearing of the matter by the same court which had no jurisdiction. Even the raised preliminary objection by the respondent could not have been determined on the same ground of lack of jurisdiction, thus there is no reason to fault the district court decision of 30<sup>th</sup> November 2021, the appellant by preferring this appeal is wasting her own time and resources and the time of the respondent. All she could have done was to heed to the instructions of the Magistrate Marando, SRM. He then prayed for the matter to be dismissal with costs.

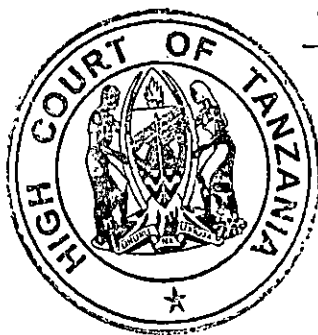
In the rejoinder, the appellant reiterates what has been submitted in chief. I find no need to repeat the same here.

Parties' submissions have been dully considered. I will start with disposition of grounds 1 and 4, it is correctly as stated by the appellant that on 27/8/2021 the Chief Justice of Tanzania established One-Stop Judicial Centre of Temeke, this can be referred to Judicature and Application of Laws (One-Stop Judicial Centre of Temeke) (Establishment) Order, 2021, GN No. 640 published on 27/8/2021. The purpose of establishment of this registry is for speedy disposal and effective trial of probate and administration causes and matrimonial matters originating from Dar es salaam Region.

Perusing the District Court file, it is noted that the petition of appeal was lodged on 28/8/2021 a day after the establishment of the One-Stop Judicial Centre of Temeke. Above all, parties appeared for the first time before Honourable Mrema on 6/9/2021. It is admitted that, it was an oversight that the District Court received the petition while there was an establishment of a new registry for that purpose. However after such realisation it took a proper step by dismissing the same for want of jurisdiction. Jurisdiction is a creature of law and therefore it is important for the court to satisfy itself of its powers to determine matters firstly and prior to attending to them (see **Mic Tanzania Limited V Hamisi Mwinyijuma & Another, Civil Appeal No. 112 OF 2019, HC, DSM**).

Im my view, the trial Magistrate was correct in dismissing the case *suo motu* as she lacked jurisdiction. Such lack of jurisdiction could not give her a chance to determine the preliminary objection as argued by the appellant. The matter that have been dismissed for want of jurisdiction is better dealt with by simply putting it before a proper forum than engaging in unnecessary long process of appeal. Having said so, this appeal is on the onset dismissed for lack of merits. I need not dwell determination of other grounds of appeal. No order to costs due to the relationship between the parties.

It is so ordered.



A handwritten signature in black ink, appearing to be "M. P. Opiyo", written over a horizontal line.

**M. P. OPIYO,  
JUDGE  
14 /12/2022**