

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

PC CIVIL APPEAL NO. 45 OF 2022

*(Arising from the District Court of Babati at Babati Civil Appeal No. 6 of 2022,
Originally from Babati Primary Court at Babati Probate and Administration Cause No.
103 of 2021)*

YUSUPH ABDALA SWALEHE.....APPELLANT

VERSUS

MIRAJI IDD KIDEBE.....RESPONDENT

JUDGMENT

7th November & 8th December, 2022

TIGANGA, J.

This is a second appeal by the appellant after unsuccessfully appealing to the District Court of Babati at Babati against the decision of the trial Primary Court of Babati at Babati herein to be referred as the **"trial court"**.

To understand what triggered this appeal, a brief background is important. Briefly, way back in 2021 the respondent filed the Probate and Administration Cause No. 103 of 2021 before the trial court seeking for being appointed an administrator of the estate of the late Hadija Abeid Kisanya, "the deceased". The respondent objected his petition for

appointment. After the matter had been heard on merit, the objection by the appellant was dismissed for want of merits, and the trial court was satisfied that, the respondent qualified to be appointed the administrator of the estate of the deceased and consequently appointed him as such.

That aggrieved the appellant, he appealed to the District Court of Babati at Babati. However, his appeal was dismissed for being without merits. Still searching for his right, he lodged this appeal raising three grounds of appeal as follows.

- i) That, the first appellate court erroneously decided the matter in upholding the decision of the trial court without evaluating the evidence of the trial court which failed to pay heed to the required standard of proof.
- ii) That both, the trial and first appellate court erred when they failed to rule on the objection regarding to plot No. 46 Block Dlocated in the town of Babati.
- iii) That, the trial court erred in law and fact where it failed to give reasons and the rationale thereby resulting into an erroneous decision.

With leave of the court the appeal was heard by way of written submissions. Parties were represented by Advocates, whereas the appellant had the service of Mr. Fides Sariko Mwenda, learned Advocate Mr. Nasibu Juma Mkopi in gratis represented the respondent.

At the outset, the appellant's Advocate in his submission in chief brought to the attention of the court one issue which was not part of the grounds of appeal. He said, the Advocate who appeared representing the respondent in the trial court violated rule 5(1) and (3) of the Magistrates Courts (Appearance of Advocate and Public Prosecutors in Primary Court) Rules, 2022. In his view, according to that rule, Advocates are supposed to abide to the mandatory requirement of filing Form A which in his view, the Advocate who appeared for the respondent in trial court did not fulfil such requirement. Basing on that shortcoming, he asked this court to quash and set aside the decision and proceedings of both courts below and order the matter to be heard afresh.

Arguing against that newly raised ground, Mr. Mkopi, requested this court not to consider the newly raised ground as it was raised unprocedurally. However, he went on submitting alternatively that, at the time when the Advocate appeared in the trial court the said Rules

had not been in force and operative for being not made and gazetted by the Chief justice. In rejoinder Mr. Mwenda reiterated his position in the submission in chief. He added further that, raising it at this stage is permissible because it is the point of law.

This ground in my view, should not detain me much. The principle of law is louder and clear that parties are bound by the grounds of appeal. This was promulgated by the Court of Appeal of Tanzania in the case of **Bahari Oilfield Services FPZ Ltd versus Peter Wilson**, Civil Appeal No. 157 of 2020 (unreported) where it was said:

"We therefore agree with Mr. Mushi that the principle that requires parties to be bound by their pleadings extends to grounds of appeal in an appeal. On that basis our conclusion is that an appellant's written and/or oral submission must be in consonance with the grounds of appeal."

Further to that, in as far as I am in agreement with the position by the counsel for the appellant that a ground which constitute a point of law, can be raised at any, including the appellate stage. The question which calls for determination is whether this is a point of law. In law, the ground become a pure point of law if it does not require to be proved by evidence. In this case the point raised requires an ascertainment of

facts, regarding the compliance of the alleged Form A of the said rule. Thus, on the strength of the above cited case law and position of the law, I firmly decline to entertaining the ground of appeal which was not made part of the ground of appeal in this appeal, or the 1st appeal before the first appellate Court and was not raised and argued and decided before the trial court.

That having been resolved, and before going to the merit of the substantive grounds of appeal, basing on the record and the argument made by the parties, I find the issue for determination to be whether the appeal at hand has merits.

Arguing in support of the first ground, Mr. Mwenda contended that the courts below did not evaluate the evidence properly, therefore, following that failure to evaluate, the court failed to grasp that, the respondent was not endorsed by the family members. According to the counsel, the purported minutes of family members meeting filed together with the petition before the trial court is not a result of a family members meeting because there was no meeting sat for the purpose of endorsing the respondent to be appointed an administrator of the deceased's estate. One of the evidence to show that it was forged is the fact that, the minutes bears the name o the appellant while he was not

of the said land as he intends, he would have taken proper legal action before the competent court or tribunal where the matter should be filed. If I may add, it is not the duty of the court to direct the matter to a proper jurisdiction forum as argued by Mr. Mwenda. That duty is solely casted to the parties. Courts are required to either dismiss or strike out, as the case may be, the matter filed in its registry where it finds itself without jurisdictional mandate. That being so, this ground also lacks merit. It is dismissed.

For the reasons given, this court being the second appellate, it can not intervene and disturb the concurrent findings of the two courts bellow. That said and done, this appeal is therefore dismissed in its entirety for not being meritorious. Costs to be paid by the appellant.

It is accordingly ordered.

DATED at ARUSHA, this 08th day of December, 2022



A handwritten signature in blue ink, appearing to read "J. C. Tiganga", is written over a horizontal line.

J. C. TIGANGA

JUDGE