

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND APPEAL NO. 40 OF 2020**

**(C/F Application No. 29 of 2016 at Karatu District Land and Housing Tribunal)**

**ANTONI TLUWAY** }  
**FILMATI TLUWAY** } .....**APPELLANTS**

**VERSUS**

**LEA AMA LULU (Administratrix of the Estate  
Of the late VERONICA AMNAAY).....RESPONDENT**

**JUDGMENT**

**16/11/2021 & 18/03/2022**

**GWAE, J**

This appeal originates from the application filed by the respondent at Karatu District Land and Housing Tribunal against the appellants on the claim that, the appellants have invaded into the land measuring 4 ½ acres belonging to the respondent's late mother. Basically, the parties herein are related as the respondent is the auntie to the appellants.

It was the respondent's version that, she was appointed as an administrator of the estate of her late mother on the 8<sup>th</sup> January 2014, that, the appellants used to stay with their late mother however after her death

and they remained in the suit land claiming to have been given the same by their grandmother (respondent's mother) before her death. The respondent maintained that the suit land is the property of their late mother whose heirs they are entitled to inherit from estate as there since there is no evidence that, the same was given to the appellants. Moreover, the respondent that the appellants are supposed to inherit from their father who is also a brother to the respondent.

The appellants on the other hand testified that, the land in dispute was given to them by their grandmother before her demise and that the family members confirmed the same during a family meeting that was held after the burial of their late grandmother.

On hearing, two issues were framed **first**, who is the lawful owner of the suit land and **second** what reliefs are parties entitled to. After hearing of evidence from both parties, it was the finding of the DLHT that the land in dispute belonged to the late VERONICA AMNAAY and as the appellants failed to sufficiently establish how they were given the same by their late mother, therefore, the land in dispute falls among the estate of the late Veronica Amnaay which were to be administered by the respondent.

Dissatisfied by the decision of the trial tribunal, the appellants have filed this appeal with a total of nine (9) grounds of appeal with an addition of three grounds of appeal which I need not reproduce herein. The appellants in this appeal were represented by the learned counsel **Mr. Qamara Valerian** while the respondent enjoyed legal services from **Mr. Sabato Ngogo**. With leave of the court the appeal was disposed by way of written submission which I shall consider while disposing the grounds of appeal in the manner they have been submitted.

To begin with, the appellant submitted **grounds number 1 and 5** together on the reason that they are closely related. In the submission, the appellant basically faulted the power of attorney issued to one Emmanuel Bayo stating that, the donor issued the same under her own capacity and not in the capacity as an administratrix of the estate of the late Veronica Amnaay. The appellant contended that during trial he had tried to raise the issue of the validity of the power of attorney issued to said Emmanuel Bayo in vain. He also questioned the appearance of the holder of the power of attorney who appeared and testified as AW1. It was his further argument that even the older of the said power of attorney did not satisfy the tribunal

as to why the said Lea Ama Lulu was incapable of defending her case. He thus urged the court to quash and proceedings and judgment thereto.

Reply to the above submission, Mr. Sabato response was that under the law when a person is issued with the power of attorney then he has all the right to appear and represent the donor in all matters which he/she has been permitted by the said power of attorney and actually it is what has been done by the said Emmanuel Bayo in the matter at hand who appeared on behalf of the donor one **Lea Ama Lulu**. The counsel went further to state that it was the duty of the appellants to object the power of attorney at the trial however their silence amounted to acceptance of the power of attorney issued to the said Emmanuel Bayo.

Having gone through the rival submission by the parties I wish to begin by addressing a well cherished principle of the law which has been set by the Apex Court of this land in the case of **Richard Majenga vs. Specioza Sylivester**, Civil appeal 208 of 2018 (Unreported) where it was stated that;

“It is a settled principle of the law that at an appellate level the court only deals with matters that have been decided upon by the lower court.”

More so, in the above cited case the Court of Appeal of Tanzania in reaching its decision cited its own decision in the case of **Hotel Travertine Limited and 2 Others v. National Bank of Commerce Limited** [2006] TLR 133 where the Court stated that;

"As a matter of general principle an appellate court cannot consider matters not taken or pleaded in the court below to be raised on appeal."

Guided by the above positions of the law which have been laid down by the superior court of the land and which the courts below are bound with their decisions, similarly, in these two grounds of appeal to which the appellant is faulting/questioning the power of attorney that was issued to one Emmanuel Bayo is a new issue which has been raised at this stage. I have carefully gone through the proceedings of the trial tribunal, contrary to what the appellants have submitted that they tried on several occasions to raise an issue on the power of attorney but I have found none of such allegations in the entire records.

In the trial tribunal the issues that were to be dealt with the tribunal were one, who is a lawful owner of the suit land and second, to what reliefs are the parties entitled to. It is the view of this court that the above being

the position of the law then it will be improper for this court to proceed in determining these grounds of appeal, consequently, grounds number 1 and 5 are hereby dismissed.

Coming to the court's determination on the **second ground** in the additional grounds of appeal. In this ground of appeal the appellant is challenging the trial tribunal decision stating that the trial chairman failed to conclusively determine the rights of the parties. In support of this ground the appellants submitted that reading from the judgment it does not determine the rights of the parties as it depends on the future actions of the parties for its implementation by placing the land in dispute among the estate of the late the late Veronica Amnaay to be administered by the respondent. According to him the decree is incompetent in the eyes of the law as it depends on the occurrence of the future event which is not guaranteed. Therefore, it was their view that the decree did not determine the rights of the parties and the same should be quashed and set aside.

The respondent on the other hand submitted that, the trial chairmen determined the rights of the parties by making a consideration to the nature of the dispute in relation to the issues framed and there after came into a decision which based on the parties' evidence adduced during hearing before

the tribunal. The respondent therefore prayed for the dismissal of this ground of appeal.

In fact, this ground of appeal is dismissed as prayed by the respondent for the simple reason that, reading from the judgment and the proceedings it is evident that the parties herein, before commencement of the hearing, framed two issues as explained herein above. In answering the issues, parties brought their witnesses to prove their cases, and my reading from the judgment, the trial chairperson did properly consider the evidence of each party and came up with the finding that the appellants herein failed to sufficiently prove that the suit land was given to them by the late Veronica Amnaay prior to her death. In the event, the suit land was declared to belong to the late Veronica Amnaay and therefore is among the estate of the deceased subject to the administration of the deceased person's estate by the respondent.

Guided by the framed issues at the trial tribunal the judgment was well composed and it did determine the rights of the parties by declaring the suit land to be among the estate of the late Veronica Amnaay subject to administration since the appellants failed to establish their ownership. It is a common principle that where the deceased has left some properties behind,

the properties left out shall be subjected to administration so that they are not misused and to enable the legal heirs to inherit the properties of their beloved. Therefore, the order by the trial tribunal that, the suit land to be among the estate of the deceased and to be administered by the respondent should not be faulted correct. As stated above, this ground of appeal is dismissed for want of merit.

The above ground of appeal also dismisses **ground number three** in the additional grounds of appeal where the appellants alleges that the trial tribunal gave reliefs that were not prayed for. As already stated above, the findings of the trial tribunal were subject to the framed issues, and as it was already decided by the trial tribunal that the suit land was among the estate of the late Veronica Amnaay, it is my view that, the trial court could not again give the relief sought as the appellants were inevitably restrained from interfering with the suit land subjected to administration.

As to the grounds number **3, 6, 7, 8 and 9** in the petition of appeal, the appellants submitted that in the case at hand instead of the respondent proving her case the burden of proof shifted to the appellants contrary to the requirements of section 110 (2) and (3) of the Evidence Act Cap 6 R. E 2019.

The respondent on the other hand submitted that at the trial tribunal both parties presented their evidence through their respective witnesses and the trial chairperson when making his findings did consider the evidence of both parties and as a principle guiding Civil Cases the person whose evidence is heavier than the other is the one who wins the case which is what the trial chairperson precisely did when making his decision.

It should be remembered that in civil cases, the law places a burden of proof upon a person who desires a court to give judgment in his or her favour and such a person who states the existence of facts has to prove existence of those facts. Such fact is said to be proved when, in civil matters, its existence is established by a preponderance of probability (See the decision in the case of **Ernest Sebastian Mbele vs. Sebastian Sebastian Mbele**, Civil Appeal No. 66 of 2019 (unreported)).


In the matter at hand the appellants are alleging that the trial tribunal chairperson shifted the burden of proof to the then respondents and that when making the decision the trial chairman evaluated the evidence of the appellants only without touching the evidence of the respondent.

In the matter at hand, it is apparent that it is undisputed fact that the suit land was initially owned by the late Veronica Amnaay, the controversy is whether the appellants herein were given the disputed land by the late Veronica Amnaay prior to her death. Under the circumstances surrounding the dispute between the parties, it was expected for the appellants to establish their ownership from the late Veronica Amnaay as the respondent had credibly proved that, the land belonged to their late mother (Veronica Amnaay).

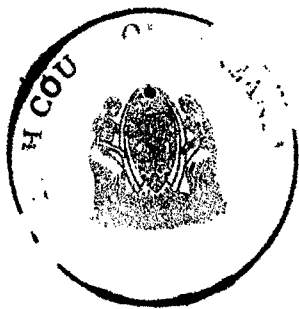
Therefore, it is not correct to hold that the trial tribunal chairperson did not evaluate the evidence as wrongly argued by the by the appellants' advocates. The evaluation of the respondent's evidence is clear and credible. This ground of appeal is also bound to fail and is hereby dismissed.

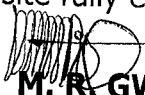
In view of the above deliberations, I find no merit in the appellants' appeal. Consequently, I dismiss it with costs.

It is so ordered.

  
**M. R. GWAE**  
**JUDGE**  
**18/03/2022**

**Court:** Right of Appeal and its requisite fully explained



  
**M. R. GWAE**  
**JUDGE**  
**18/03/2022**