

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

CIVIL CASE NO. 7 OF 2021

(Arising from Civil Case No. 1 of 2019 in the Resident Magistrates Court of Tanga at Tanga)

MWANAHAMISI ABDALLAH.....APPELLANT

-VERSUS-

SAIDA SALEHE MAULID.....1st RESPONDENT

HAMIS MEZA.....2nd RESPONDENT

JUMA SABURI.....3rd RESPONDENT

ABDALLAH MAULID *(Administrator of the estate of the late)*

MAULID ABDALLAH.....4th RESPONDENT

JUDGMENT

Date of Last Order: 23/09/2021

Date of Judgment: 11/03/2022

AGATHO, J.:

The Appellant herein is dissatisfied with the decision of the Resident Magistrate's Court of Tanga at Tanga in Civil Case No. 1 of 2019 hence appealed before this Honourable Court on the following grounds;

- (1) That the trial Magistrate grossly erred in law for entertaining cause of action and relief of claim of purchase price prayed arising from sale agreement of 5th September, 2011 while the suit is time barred.

- (2) That the trial Magistrate grossly erred in law for entertaining the matter in which the court is not vested with jurisdiction.
- (3) That the trial Magistrate grossly erred in law by disregarding the consistent and cogent evidence adduced on part of the Appellant.
- (4) That the Resident Magistrate grossly misdirected himself and erred in holding the Appellant liable to pay purchase price disregarding the fact that the Appellant did not involve in sharing the same.
- (5) That the Resident Magistrate grossly misdirected himself and erred in holding that..... (sic) purchased the house Plot No. 157 Block "D" without concrete evidence.

The instant Appeal originates from Probate Cause No. 88 of 2011 at the Tanga Urban Primary Court where as per the trial Court's decision one Maulid Abdallah applied for letters of administration to administer the estate of Zaina Mohamed (his mother). In the course of administration, the Administrator of the estate sold/transferred the sole estate of the deceased (a house) to one Saida Salehe Maulid (the 1st Respondent). However as per the decision of the Primary Court, it appeared that one Mwanahamisi Abdallah amongst the deceased's heirs objected the sale on the

ground that she was not involved in the process of the sale of the house.

The trial Court also observed that the procedures of administration were not adhered to and therefore nullified the sale and ordered a re-sale be conducted at a valuable/satisfactory price in compliance with the procedure so as to refund the purchasing price to the 1st Respondent. In the decision, the Administrator of the estate was also ordered to issue notice of vacation to the tenants to the house in dispute including the Appellant paving the way for the administrator of the estate to conduct sale of the house.

The Appellant herein was dissatisfied with the decision appealed to the District Court of Tanga via Civil Appeal No. 11 of 2012. In its decision, the District Court did set aside the decision of the trial Court regarding an order requiring the Appellant to vacate the house until the house in question is properly sold as per the trial Court's decision. The Respondent in that appeal who was the administrator of the estate (Maulid Abdallah) was also ordered to collect rent from the tenants therein.

On the 20th day of February, 2019 the purchaser Saida Salehe Maulid/ the 1st Respondent filed a civil suit registered as Civil Case

No. 1 of 2019 at the Resident Magistrate's Court of Tanga at Tanga against Mwanahamisi Abdallah, the Appellant herein, Hamis Meza, Juma Saburi and Abdallah Maulid as an administrator of the estate of the late Maulid Abdallah the then administrator of the estate (2nd, 3rd and 4th Respondents respectively) claiming for the following reliefs;

- (a) Return of the purchase price to the Plaintiff at the current value of Tshs. 32,525,709.39.
- (b) In the alternative to (a) to surrender to the Plaintiff, the ownership of the property on Plot No. 157 Block "B" Makorora Tanga City.
- (c) Payment of general damages to the tune of Tshs. 60,000,000.00.
- (d) Payment of interest on decretal sum at the Court rate from the date of Judgment to the date of final payment.
- (e) Costs of the suit be borne by the Defendants.

Determining the suit, the Resident Magistrate's Court decided in favour of the 1st Respondent who was the purchaser thereby awarding the payment of Tshs 32,525,709.39 or in the alternative the purchaser to

be entitled to the house/building referred as Plot No. 157 Block "D" Makorora area within the Municipality, District and Tanga Region on the ground of failure of the beneficiaries to convene a clan/ family meeting to determine the price of the house and to refund the Respondent as per the order of the Court.

The Appellant who was the 1st Defendant in the suit was dissatisfied with the decision of the Court hence the instant appeal.

On the 23rd day of September, 2021, the Court preferred the matter to proceed by way of written submissions. A schedule for filing was fixed and complied. In the appeal, the Appellant is represented by Mr. Christopher Wantora, whereas the Respondents are represented by Method Atranus of Mkago Law Associate.

Now, regarding the grounds of appeal I prefer to begin determining the first and the second ground of appeal altogether because they are both issues of law, they are interrelated and they are based on the jurisdiction of the Court.

It is a matter of practice that before the Court proceeds with the matter it is important to make sure that it has jurisdiction to determine the same.

In his submission, the Counsel for the Appellant submitted that the subject in the sale agreement is the landed property/ the house and that the trial Court had no jurisdiction. The Counsel referred the case of **Shyam Thanki v New Palace Hotel [1971] 1 EA 199** stating that courts are creatures of the statutes and their jurisdiction is pure statutory and further argued that Land Tribunals have exclusive jurisdiction on matters concerning land as it is provided for under Section 167 of the Land Disputes Courts Act, Cap 216.

In reply, the counsel for the Respondent submitted that the Respondent did not claim for ownership of the landed property Plot No. 157 Block "D" Makorola Area, Tanga and that the dispute is not a land matter but rather a claim for the refund of the purchasing price and therefore the Court had pecuniary jurisdiction to determine the same as per the Written Laws Miscellaneous Amendment Act No. 4 of 2019 which amended Section 40 of the Magistrate's Courts Act Cap 11 R.E 2002.

In his rejoinder, the counsel for the Appellant maintained that the Resident Magistrate's Court had no jurisdiction since the matter is purely a land matter.

Regarding, the first ground of appeal, the Appellant submitted that the suit was time barred because the cause of action was about the claim for purchase price arising from the sale agreement of the 5th September, 2011 and that the cause of action as per paragraph 4 and 5 of the plaint arose on the 5th day of September 2011 the date under which the sale agreement was nullified by the trial Court.

The counsel further submitted that there is a lapse of 8 years, the suit was supposed to be filled within six years and therefore it is time barred because under Section 5 of the Law of Limitation Act [Cap 89 R.E 2019] the time under which the cause of action accrues has to be the date under which the cause of action arose.

The Respondent's counsel submitted that the plaintiff's claim is founded on the judgment. That under item 16 of Part one of the Law of Limitation Act [Cap 89 R.E 2019] the time limit for suits founded on judgment is twelve years. The counsel added that the Respondent is claiming for recovery of the property she purchased

in 2011, a landed property and that under Item 22 of Part One of the Law of Limitation Act [Cap 89 RE 2019] time limits for suits to recover landed property is twelve years.

In his rejoinder, the counsel for the Appellant submitted that the 1st Respondent was not a party to the decision of the probate matter and that the decision did not determine her rights and that there was no order that was issued against her.

Before determining these grounds of appeal, this Court has taken judicial notice under Section 59 (1) (a) of the Evidence Act [Cap 6 R.E 2019] of the Ruling of His Lordship Masoud, J in **Land Revision No. 2 of 2017** of this Court between the Appellant and the 1st Respondent the Court noted that the Respondent instituted a land matter at the District Land and Housing Tribunal and was declared as the lawful owner of the landed property.

The Court adopted the principle established in the case of **Mgeni Seifu v Mohamed Yahaya Khalfani, Civil Application No. 1 of 2009, CAT at Dar es Salaam (unreported)**. In that case it was inter alia held that a person claiming any interest in the estate of the deceased must trace the root of title back to a letters of

administration, where the deceased died intestate or probate, where the deceased passed away testate.

In reliance of the principle, the Court found that the District Land and Housing Tribunal of Tanga had no jurisdiction to entertain the matter and the decision was set aside because the District Land and Housing Tribunal of Tanga disregarded the Court decisions over the suit land.

In the instant matter the Plaintiff/the 1st Respondent claimed for the refund of the purchasing price and that was the cause of action in the suit. As I have stated earlier that the issue of jurisdiction of the Court is of paramount consideration.

The instant matter traces its origin from the Probate Cause No. 88 of 2011 of the Tanga Urban Primary Court. The cause of action at the trial Court was the claim for the refund of the purchasing price to the tune of Tshs 32,525,709.39.

In my view I am at the same footing with His Lordship Masoud in Land Revision No. 2 of 2017 and find that the trial Court had no jurisdiction to determine the matter since regardless of the fact that the suit was based on the claim for purchasing price, the purchasing price emanates from the house which is subject to a

probate cause and the matter trace its origin from the probate cause which is still pending in Court and even instituting the case at the trial Court while there is a previous decision of the same Court directing the proper way to resort to justice amounted to misuse of the judicial forum.

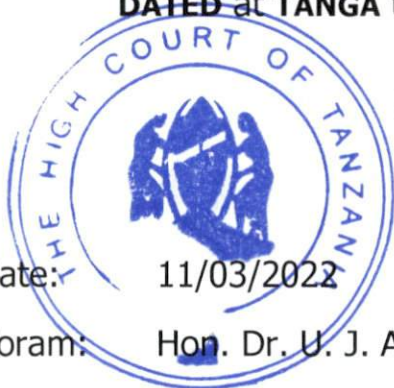
But on the other hand, the Court has found it relevant to inquire as to whether the 1st Respondent had a cause of action against the Appellant, 2nd, 3rd and 4th Respondents.

In my view, since the 1st Respondent had lawful claims arising from the probate cause then the same ought to be against the administrator of the estate in Probate Cause No. 88 of 2011 as such, the 1st Respondent had no cause of action against the Appellant and the 2nd, 3rd and the 4th Respondent in the suit and merely on the issue of jurisdiction and the issue of cause of action can finally dispose the appeal, I cannot proceed discussing the rest of the grounds of appeal.

In finality, I find the appeal to have merits. I therefore proceed to set aside the decision of the trial Court in its entirety. The appeal is therefore allowed and since the matter emanates from the probate cause, no order for costs is given.

It is so ordered.

DATED at TANGA this 11th day of March, 2022.




U. J. AGATHO
JUDGE
11/03/2022

Date: 11/03/2022

Coram: Hon. Dr. U. J. Agatho, J

Appellant: Present

Respondent: 1st Present with her Advocate Method Atranus

2nd Present

3rd & 4th Absent

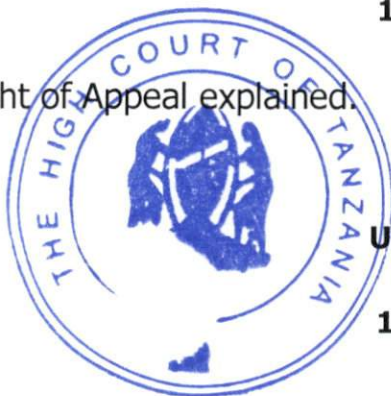
C/C: Zayumba

Court: Judgment delivered today in the presence of the Appellant, 1st

Respondent, her Advocate Method Atranus, and the 2nd Respondent.


U. J. AGATHO
JUDGE
11/03/2022

Right of Appeal explained.




U. J. AGATHO
JUDGE
11/03/2022