

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT MOSHI

LAND APPEAL NO. 57 OF 2022

(Originating from District Land and Housing Tribunal of Moshi in Land Case 11 of 2021)

ESTOMIH WILLIAM ULOMI APPELLANT

VERSUS

ANDREA NEHEMIA SWAI..... 1st RESPONDENT

ANNA ANGA SWAI2nd RESPONDENT

OKULI WILLIAM SWAI..... 3rd RESPONDENT

MAGRETH WILLIAM SWAI4th RESPONDENT

JUDGMENT

12th December 2022 & 17th January, 2023

A.P.KILIMI, J.:

The first and second respondents were appointed by Moshi Urban Primary court on Probate no. 155 of 2018 to be the administrators of the estate of Kaisa Anga Swai died on 4th July, 2018. This Primary court identified among the children of the deceased to be the second respondent hereinabove and the appellant himself.

While these Administrators were in the process of collecting the said deceased estates for purpose of distributing to the lawful heirs, The Appellant rushed to Moshi Land and Housing Tribunal and instituted Land Application NO. 11 of 2021 suing all the respondents above mentioned praying to be declared that he is the lawful owner of the Suitland to be distributed and also prayed an order restraining permanently the Respondents from interfering with his possession of the said land. At the Tribunal, the respondents raised a preliminary objection on the point of law contending that, the said application is bad in law and incompetent before the District Land and Housing Tribunal as it lacks jurisdiction to entertain the matter.

After hearing the said objection, the said tribunal reasoned that the said disputes being arisen from probate dispute, then the tribunal has no jurisdiction and further observed that the appellant ought to have filed an objection to the competent court, showing on how appointed administrators are executing the deceased estate, also the said tribunal concluded and held that, it could had jurisdiction if the said probate could have been closed according to the law and probate rules.

The appellant having dissatisfied of the said decision has moved to this court by way of appeal basing on the following grounds;

1. That, the Honorable Chairman of the Tribunal erred in law and facts in holding that the application before him was not a land dispute.
2. That, the Honorable Chairman of the Tribunal erred in law and fact in holding that the Tribunal has no jurisdiction to hear and determine the dispute.
3. That, the Appellant is aggrieved by both the ruling and orders in land dispute No.11 of 2021 in the District Land and Housing Tribunal for Moshi at Moshi as there has been an error material to the merits of the case involving injustice to the Appellant.

At the hearing of this appeal both parties were unrepresented, both respondents this appeal be argued by way of written submission, this was not objected by the appellant, thus this court acceded to their proposal. I thank them all for complying the scheduling order. I will refer to these submissions whenever necessary.

The appellant regarding the first ground of appeal submitted that, the dispute before the tribunal was due to the trespass done by the Respondents

on the suit property. Since the dispute at the District Land and Housing Tribunal was on the ownership of the disputed land by the appellant against the respondents that was a pure land case in which its jurisdiction is exclusively vested to the Land Court as per section 3(2) of the Land Disputes Courts Act, 2002.

In regarding the second ground of appeal, the appellant submit that, the fact that the suit property was originated from the Probate and Administration matter was only assumed by the Hon. Chairman of the Tribunal as there was no room for the parties to lead evidence to prove that the said suit property was involved in any Probate and Administration Court as decided. The matter was only dismissed on a preliminary objection on point of law regarding the jurisdiction issues and the parties had no opportunity to give their evidence in support or opposition on the merits of the land dispute.

Further appellant submitted that, there was no any evidence before the Tribunal to indicate the fact that the said issue of the suit property before him was raised and determined in the Probate and Administration of Estate Court of which the appellant herein above was never a party to the proceedings. Also there was no inventory filed in the Probate and

Administration of Estates Court by the Respondents a fact which would require the appellant to seek a relief from the Probate and Administration Court involved with the issue as the same was the only Court seized with the jurisdiction to determine the ownership of the suit property if at all was involved in a Probate and Administration of estate Court.

He also submitted that, the fact that the issue regarding the ownership of the suit property was never raised and determined in the said Probate and administration of Estate Court and the fact that no any inventory was filed in the Probate and Administration of Estate Court by the administrators of the estate of the deceased to date to suggest that the said suit property form part of the estate of the deceased, it was unjustified for the Hon. Chairman of the Tribunal to dismiss the application albeit with costs properly before him for the reasons of lacking jurisdiction as decided. Therefore, in dismissing the application, the Hon. Chairman of the Tribunal did not take into consideration the requirement of the law that the said probate case was Res Judicata, thus dismissed the application without affording the litigants an opportunity to be heard leaving the land dispute undetermined.

The respondents replied jointly, and contending in regard to ground one and two, submitted that the Chairman of the Tribunal held that the

application before him was not a land dispute. What he held was that the tribunal Chairman decision was legally justified to hold that it has no Jurisdiction to entertain the same as it was purely a Probate matter. Appellant wants to mislead this Court due to his bad intention of infringing the rights of the respondents to their due share from the estate of their late mother Kaisa Anga Swai and the records are self-explanatory. Appellant knows very well that the matter at hand is purely a Probate matter that is why after the delivery of the decision at the Tribunal he at the same time opened this appeal and at the same time he opened Probate matter at the Moshi Primary Court challenging the first and second Respondents to be revoked as administrators via Application Na. 943 of 2022 at the Primary Court, because delayed to fulfill the Administration of the estate of their late. It is further submitted by the respondents that the matter is still pending at the Primary Court of Moshi for determination. Therefore, there was no misdirection on the part of the tribunal.

The respondents moreover submitted that, the contentions that the matter was only dismissed on the preliminary objection on point of law regarding the jurisdiction issue and the parties had no opportunity to give their evidence in support or opposition on the merits of the land dispute; this

is grave misconception. Because neither party was condemned unheard, these allegations are thus frivolous and unfounded. The tribunal dealt with the issue of Jurisdiction which was very fundamental to be considered n before proceeding with any matter before the Tribunal. Thus, the tribunal was right in its decision.

In regard to ground three, respondents contended that ,the facts that the appellant alleges that there was no any evidence before the Tribunal to indicate the fact that the said issue of the suit property before him was raised and determined in probate and Administration of Estate Court of which the Appellant herein was never a party to the proceeding. By saying so, the appellant is misleading the Court as he has an opportunity to do the same as he is a lawfully heir of the deceased estate he has raised objection as he did after the delivery of the said ruling at the Tribunal.

They further added that, there is no dispute from the record that the Appellant and Respondent are blood brothers and lawful heirs of the estate of their late mother Kaisa Anga Swai and as such they are all entitled to a share thereof. As a matter of law and equity the Appellant cannot exclude the right and share of his sisters over deceased's estate simply because he is the brother; that is a grave misconception and very absurd. Respondents

finally concluded that neither party was condemned unheard as the Appellant tries to insinuate

In rejoinder, the appellant prayed to reiterate what submitted in chief and further briefly added that, the issue of jurisdiction is very crucial as submitted by the Respondents but the same must be correctly arrived at. There was no any evidence before the Tribunal to indicate that the said issue of the suit property before him was raised and determined in the Probate and administration Court of which the appellant herein above was never a party and no inventory filed in the Probate and Administration of Estates Court by administrators that would show that the suit property was indeed among the estates under the Probate and Administration at issue. Therefore, it was practically impossible the Appellant, to go and seek remedies to the Probate and Administration Court for the issue never before it. The appellant had no option than seeking his remedies from the Tribunal after the trespass by the Respondents. In the absence of such crucial evidence impose a legal right for the Respondent to exercise the law under section 3(1) of the Land Disputes Courts Act, 2002 as he did.

Having considered the above submissions and entirely scanned the records in respect to this matter, it is not true as asserted by the appellant that the Chairman of the Tribunal held that the application before him was not a land dispute. What he said in his ruling was to the effect that, since the disputes emanate from probate dispute, then the tribunal has no jurisdiction and further observed that the appellant ought to have filed an objection to the competent court, showing on how appointed administrators are executing the deceased estate, and further held that, it could have jurisdiction if the said probate could have been closed according to the law. Therefore, it is my considered opinion he acknowledges it may be a land dispute after the Probate matter is finalized. Having observed above, I find this ground want of merit and is accordingly dismissed.

In regard to ground number two and three as to their nature, they both deal with the point of objection raised at the tribunal which was in respect to whether it had jurisdiction and consequently decided on merit at the said tribunal, thus I wish to deliberate them jointly.

According to his submission, the appellant maintained that, there was no inventory filed in the Probate and Administration of Estates Court by the

Respondents a fact which would require the appellant to seek a relief from the Probate and Administration Court involved with his dispute.

In my view this means, the landed property which claimed by the appellant at the tribunal was yet to be distributed to the conclusive to anybody, in my view it was pre mature to be concluded that is a land dispute, even if it was a proposal, appellant allegation as stipulated in his application filed on 2nd February, 2021 at the tribunal was misguided, at para 6 (a) (ii) of the said application specifies that;

*(ii) That, the applicant is claiming against the first and second Respondents jointly and severally for their action of trespassing his land and **partitioned the same into different plots and divided it to the 3rd and 4th Respondents claiming the same to be part of the estate of the late Kesaeli Angaukiron Swai.***

[Emphasize Added]

Having this assertion in mind, it also my opinion, the appellant had other avenue to place his matters at the Probate court as a person interested to the deceased estate even before administration of estate is concluded. Thus,

the fact that he was not a party to the proceeding at the Probate Court does not hold water. It is therefore my considered opinion; the Trial Tribunal had no jurisdiction to deal with the said premature matter which was still under the realm of administration of the estate.

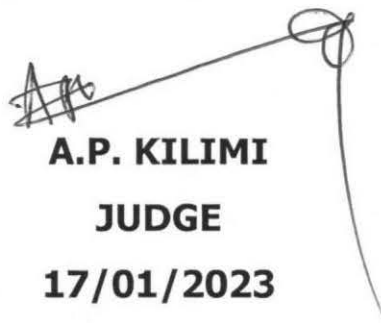
Nonetheless, the Land Tribunal was eloquently clear that, when it was concluding its decision by holding that, it could have jurisdiction if the said probate could have been closed according to the law and probate rules. I also maintain that this might be postdated advise to the appellant if he still succumb with same dispute he anticipated.

In conclusion thereof, I find this appeal must fail and consequently I proceed to dismiss it in its entirety. The circumstances of this appeal do not attract costs, thus not awarded to any party.

It is so ordered



Dated at MOSHI this 17th Day of January 2023


A.P. KILIMI
JUDGE
17/01/2023

Court: - Ruling delivered today on 17th day of January, 2023 in the presence of both parties.

Sgd: A. P. KILIMI
JUDGE
17/01/2023

Court: - Right of Appeal duly explained.

Sgd: A. P. KILIMI
JUDGE
17/01/2023