

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

LAND APPEAL NO. 62 OF 2022

(Arising from Land Case No. 6 of 2021 District Land and Housing Tribunal for Muleba)

MARIA GABRIEL MZAURA..... 1ST APPELLANT

DEOGRATIUS GABRIEL (Administrator of the
Estate of the late GABRIEL MZAURA)..... **2ND APPELLANT**

VERSUS

MAGDALENA GABRIEL MZAURA..... RESPONDENT

JUDGMENT

24th May and 23rd June 2023

BANZI, J.:

The 1st appellant is the biological mother of the 2nd appellant and the respondent. The duo shares the same father Gabriel Mzaura who is now a deceased. The trio are fighting over a piece of land measuring nine acres located at Bugasha hamlet, Nshambya village, within Ijumbi ward in Muleba District (the suit land). The respondent instituted a suit before the District Land and Housing Tribunal for Muleba (the trial tribunal) claiming that, the suit land is her property which she acquired from the deceased by way of purchase since 4th November, 1979 in consideration of Tshs.8,000/= . She further claimed that, the 2nd appellant is fully knowledgeable over the sale

of the suit land and he should exclude it from the estates of the deceased. On the other hand, the appellants claimed that, the suit land belong to the deceased and the 1st appellant and hence, part of the estate of the deceased subject to distribution to the rightful heirs.

At the trial tribunal, the matter proceeded *ex-parte* against the appellants and at the end, the trial tribunal declared the respondent as the lawful owner of the suit land. Aggrieved with the findings of that tribunal, the appellants appealed before this court on three grounds which, for the reasons to be stated shortly, I am not going to reproduce them. When the appeal was called for hearing, the appellants were represented by Mr. Eliphazi Bengesi, learned counsel, while the respondent enjoyed the services of Mr. Derick Zephurine, learned counsel. Mr, Bengesi raised a point of law concerning the jurisdiction of the trial tribunal.

Addressing the court on that point of law, Mr. Bengesi stated that, the parties are fighting over the property of the deceased and thus, the trial tribunal had no jurisdiction to determine over the said property but it is the probate and administration court which is vested with such jurisdiction. To support his position, he cited the case of **Isack Stephen Mganga v. Joyce Derefa Machimu**, PC Civil Appeal No. 48 of 2022 HC (unreported). He

therefore concluded that, since the trial tribunal had no jurisdiction to decide on the property of the deceased, its judgment is nullity.

In response, Mr. Zephurine stated that, the 2nd appellant as administrator of estate of the deceased Gabriel Mzaura wanted to distribute the suit land to heirs as part of the deceased estate. He added that, the trial tribunal issued stop order against the 2nd appellant not to continue to distribute the estate of the deceased. He further submitted that, since the probate and administration case is not yet closed, it was proper to sue the 2nd appellant as administrator of the estate of deceased as it was stated in the case **Andrew C. Mfuko v. George C. Mfuko**, Civil Appeal No. 320 of 2021 CAT (unreported). According to him, the trial tribunal had jurisdiction to determine this matter as the dispute concerns whether the 1st appellant consented to the said sale. In that regard, he prayed for the appeal to be dismissed with costs.

In his brief rejoinder, Mr. Bengesi insisted that, the trial tribunal had no jurisdiction to determine the suit land which belongs to the deceased. Such jurisdiction is vested to the probate and administration court.

Having heard the submissions of both sides and after passing through the record of the trial tribunal, the issue before this court for determination is whether the trial tribunal had jurisdiction to entertain this matter.

It is settled law that, where there is a competing claim between two parties over the deceased person's estate, it is only the probate and administration court which can explain how the deceased person's estate passed on to another party or beneficiary either by purchase or by gift. This position was settled in the case of **Mgeni Seifu v. Mohamed Yahaya Khalfani**, Civil Appeal No. 1 of 2009 CAT at Dar es Salaam (unreported) where the Court of Appeal of Tanzania at page 8 stated that:

"It seems to us that there are competing claims between the applicant and the respondent, over the deceased person's estate. In the circumstance, only probate and administration court can explain how the deceased person's estate passed on to a beneficiary or a bonafide purchaser of the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of administration, where the deceased died intestate or probate, where the deceased passed away testate."

At page 14 the Court of Appeal concluded that:

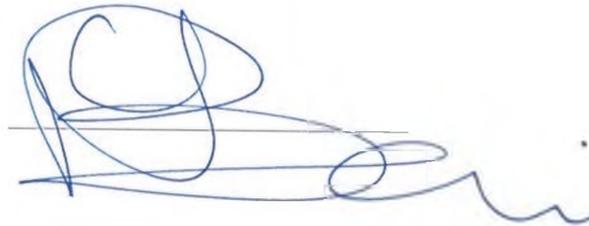
"As we have said earlier, where there is a dispute over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership."

What I gathered from the extract above is that, it is now settled law that, where there are rival claims between parties over the property of the deceased, the only court which is seized with jurisdiction to decide on the ownership of that property is probate and administration court depending on whether the deceased died testate or intestate. This position was also underscored by this court in various the cases such as **Isack Stephen Mganga v. Joyce Derefa Machimu** [2022] TZHC 11617 TanzLII and **Makoye Joseph (The Administrator of the estate of the Joseph Nyara) v. Betha Ndodi (The Administratrix of the estate of Ndodi Itaba)** [2022] TZHC 14160 TanzLII.

In the case at hand, the respondent herein instituted this matter before the trial tribunal against her mother (the 1st appellant) and the 2nd appellant in his capacity as administrator of the estate of the deceased Gabriel Mzaura. Among her claims pleaded under paragraph 6 (a) (ii) of the application was for the 1st appellant to exclude the suit land from the estates of the deceased. On the other hand, the appellants under paragraph 8 of their written

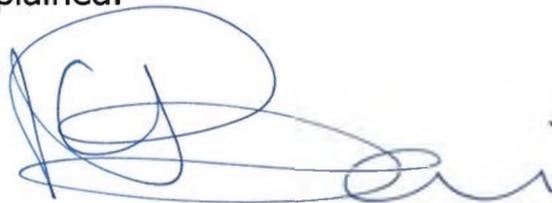
statement of defence filed at the trial tribunal alleged that, the suit land belongs to the deceased and the 1st appellant. From their pleadings, it is undisputed that there is competing claims between the appellants and the respondent over the deceased person's property. While the respondent claimed to have interest on the suit land by way of purchase from the deceased way back in 1979, the appellants claimed that, the same still belongs to the deceased and hence, it is subject to distribution to rightful heirs. Under these circumstances, and basing on the position of the law in the case of **Mgeni Seifu**, it is apparent that, only the probate and administration court is seized with jurisdiction to decide on the whether the suit land is the property of the deceased or any other person including the respondent or 1st appellant. In that regard, I am constrained to agree with Mr. Bengesi that, as this matter is related to the deceased's estate, the trial tribunal had no jurisdiction to entertain this dispute between the appellants and the respondent which traces its root from the deceased person's estate. In that view, it is only Kashasha Primary Court which appointed the 2nd appellant as administrator of estate of the deceased that is seized with jurisdiction to determine whether the suit land is the property of deceased or the respondent. Therefore, whatever transpired at the trial tribunal was a nullity.

That being said, I find the legal issue raised by learned counsel for the appellants with merit. As a result, I invoke revisional powers under section 43 (1) (b) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] and nullify the entire proceedings of the trial tribunal, quash the judgment and set aside the decree. Parties should refer this matter to Kashasha Primary Court for it to determine whether or not the suit land is the property of the deceased. Considering that the parties are siblings, I make no order as to costs. It is accordingly ordered.



I. K. BANZI
JUDGE
23/06/2023

Delivered this 23rd day of June, 2023 in the presence of the 2nd appellant and the respondent both in person and in the absence of the 1st appellant. Right of appeal explained.



I. K. BANZI
JUDGE
23/06/2023