

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB-REGISTRY

AT ARUSHA

LAND APPEAL NO. 214 OF 2022

(C/F District Land and Housing Tribunal of Arusha at Arusha,

Application No. 53 of 2018)

WILBROAD AKOMBOLWA KAJIRU (Legal personal

Representative of the Late Akombolwa Kajiru Taluka

and Kiochedi Akombolwa.....**APPLICANT**

VERSUS

ERICK JACOB AKOMBOLWA (Legal Personal

Representative of the Late Jacob Akombolwa).....**RESPONDENT**

JUDGMENT

20 November, 2023

D.D. NDUMBARO J

The matter is the dispute of ownership of land plot no. 115a block 21 with certificate no. 1028 LO NO. 438004 situated Kaloleni Arusha. The late Wilbroad Akombolwa Kajiru and Respondent who's administrator of the Late Jacob Akombolwa.



The appellant filed two grounds of appeal, that the appellant erred in law and fact order division of suit land into two halves for applicant and respondent. That order of division is based on the unproven fact that the respondent helped in finishing the construction of the house.

The appellant was represented by advocate Benjamin Mtenga while the respondent enjoyed the service of Advocate Elaikaim Sikawa.

On the first ground, the appellant submitted that the trial court ordered the sale of the suit property and distributed it in half between the applicant and respondent. he was only mandated to determine ownership and not distribute the property. The trial court did not have the mandate to distribute probate property, only the probate court has such jurisdiction in support of his argument he cited a case of **Oswald Mwanisava vs Alistid Jumbe and 3 others** Land Appeal Case No. 10 of 2022 page 11 that trial court cannot grant an order which he did not have jurisdiction.

He further argued that the title of the disputed property belonged to the appellant's late father, the trial did not consider that the applicant was supposed to inherit all.

On 2nd ground, the appellant faulted that, the trial court made an order of distribution of proceeds of a sale of suit property without

considering that no evidence was shown as to the contribution on the construction of the said suit property as claimed by respondent.

He, therefore, prays to this Court to quash the decision of the district land and housing tribunal and order the matter to be determined by a competent court.

In responding to the first ground respondent faulted that, the tribunal has a mandate to deal with land matters, what the chair did to determine ownership between appellant and respondent.

Argued, it is a solid principle in probate matters that, one among duty of the administrator is to collect property of decease and if there is any claim as to ownership to stand on behalf, to ascertain ownership. it was clear that the suit property was built by Jacob Akombolwa with the permission of her late mother, this is enough implication that she intended the house to belong to her son.

He further argued that the respondent's late father died in 2002 and the late applicant's father died in 2009. The house was finished before the death of the applicant's father, The Respondent enjoyed staying in the house without any disturbance with the respondent's father till he died and after the respondent opened a probate matter in

2014, the applicant also opened a probate of the property of his late father on 2016.

On 2nd ground, the appellant never disputed land ownership till 2016 this signifies that he knew that the owner was Jakob Akombolwa (Respondent's father) and he found no reasons to disturb him.

In the issue of ownership transfer argued that, the late appellant and the late respondent were mother and son and therefore were not bound to write any agreement therefore absence of any written agreement was not fatal to proof of ownership.

Therefore we pray that this court, uphold decision of trial court and cost to the applicant.

On Rejoinder's applicant insisted that the Land tribunal has no jurisdiction to entertain the matter of distribution of proceeds of the sale of probate property, supporting his argument on the case of **Oswald supra** that there was no proof of contribution by respondent's late father without showing the per cent of contribution or receipt thereto. Therefore pray to this Court to nullify the Judgment and order to be determined by competent jurisdiction and pray for the order of cost.

The court will combine two grounds submitted by the appellant as look similar. That appellant disputed on as a division of proceeds of sale into two halves between parties on behalf of other beneficiaries simply because the respondent is the administrator of the late Jacob Akombolwa who contributed to the construction of the suit property. Respondent claims that his late father to have built the house.

Going through the submission of both parties and evidence from the court record on the first and second grounds, PW1 (in trial court proceedings page 11-12) confirmed that Jacob Akombolwa accomplished the building of the suit house after the death of his late mother Kiochedi in 2002. His young brother late Jacob Akombolwa died in then in 2009. DW1 and DW2's testimony corroborates that, Jackob Akombolwa had finished the houses and stayed and had possession of that house till his death in 2009. Dw1 further testified, He also used to pay rent TRA. Appellant despite agreeing that, the late Jacob Akombolwa had built a suit house (in the trial court proceeding) during his submission in chief, argued that the trial court did not consider any evidence to show that the late Jacob Akombolwa to have contributed to the building of the suit house, taking into consideration that, title on the suit house belongs to his late mother Kiochedi Akombolwa.

It is common for African families to transact without documentary evidence; DW1 and DW2 testified to the effect that a great percentage of the suit house was built by the late Jacob Akombolwa, which PW1 confirmed on his evidence on pages 11-12 of trial court proceedings.

In determining the contribution made by parties in the suit properties, I may wish to make reference to the court's interpretation on the issue of distribution of properties acquired together. In the case of **Gabriel Nimrodi Kurwijila Vs Theresia Hassan Malongo**, Civil Appeal No 102 of 2018 (Unreported) the court held that:

"...The extent of contribution is of utmost importance to be

Determined..... In resolving the issue of the extent of contribution, the court will mostly rely on the evidence adduced by the parties to prove the extent of contribution..."

I am of the considered view that, the decision of the trial court was based on evidence of DW1 on pages 11-12 of trial court proceedings, and collaborated evidence of PW1 and PW2. DW1 confirmed that the late Jakob Akombolwa contributed to the building of the suit house. his confirmation positively built a case in favour of the respondent, which rendered the court to divide the suit property based on the contribution made by the respondent's late father.

Despite that there is a thin line between probate and ownership of suit property under this case; I consider there was no way that the suit property was left undivided between the appellant and respondent because those are two administrators of two different estates. The best option for the trial court was to divide the suit property into two portions of two administrators so that they could proceed with an application to divide the said probate with their heirs to the competent court with competent jurisdiction, based on the portion determined by the trial court.

I find that, the order of division of suit property was properly made by the trial court. Based on those reason, therefore this appeal to have no merit, I therefore uphold the decision of the trial Court.

It is ordered accordingly.

The right of appeal is explained

DATED at ARUSHA this 20th day of November 2023.


D. D. NDUMBARO

JUDGE

20/11/2023

Judgment delivered this 20th Day of November 2023 in the presence of



the appellant in person and respondent in person is hereby certified as a true copy of origin.




D. D. NDUMBARO

JUDGE

20/11/2023