

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSH SUB REGISTRY
AT ARUSHA**

LAND APPEAL NO. 191 OF 2022

(Originating from Land Application No. 55 of 2022 before the
District Land and Housing Tribunal of Arusha at Arusha)

DAUDI MEVAASHI SABORE.....APPELLANT

VERSUS

JOHN MEVAASHI SABORE.....RESPONDENT

JUDGMENT

30th October & 20th December, 2023

KAMUZORA, J.

This appeal is against the decision of the District Land and Housing Tribunal in Land Application No. 55 of 2022. The brief background of the matter albeit is that, the respondent herein instituted land dispute before the DLHT at Arusha claiming land measuring 14 x 27 paces from the appellant herein. The decision of the DLHT was in favour of the respondent herein and the appellant was declared a trespasser. Permanent injunction was issued against the appellant and any other person from entering into the suit land. Aggrieved by that decision the appellant brought this appeal on the following grounds: -

- 1. That, the trial tribunal erred in law and fact for believing that the estate of the late Mevaashi Sabore was properly distributed without sufficient proof.*
- 2. That the trial tribunal erred in law and fact for relying on the exhibit A1 collectively which is not part of the administration of the Estate of the late Mevaashi Sabore.*
- 3. That, the trial tribunal erred in law and fact by failure to evaluate evidence and therefore, reached a shoddy decision.*

Both parties to this case were unrepresented and on agreement by the parties, the Court ordered the appeal to be disposed of by way of written submissions.

Submitting in support of first ground, the appellant argued that the trial tribunal erred in believing that the estate of the late Mevaashi Sabore was properly distributed without sufficient proof. That, the District Land and Housing Tribunal erroneously decided that the disputed property from the record itself remains the property of the father to the parties herein who is now deceased. That, from the Tribunal decision, the testimony shows that suit property belonged to the deceased and was distributed as estate of the deceased after his demise but, this was not done through probate cause or estate administration as required by the law. To him, the evidence reveals that after

the death of the late Mevaashi Sabore, the Washili wa Ukoo resorted in administering the estate in line with annexure AI collectively as that was the wish of the deceased before his death. That, this was however done without reverting to mandatory estate administration process. It is the Appellant's humble submission that, once the property remains in the hand of a person on his demise, that property can only be transferred through Probate process before a Court of law. That, the Traditional mechanism of distribution will only be considered in a lawful Probate and administration of estate process pending in an ordinary Court not at home as was done in this particular case. He referred Section 16 of the Probate and Administration of Estates Act which provides that.

A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong:

He insisted that the above section protects an estate of any person after his or her death while there is no rightful executor or administrator in existence. That, the section bars any person (as in this case Washili wa Ukoo) from intermeddling with the estate of a deceased person, subject to provision (a) to (d) to section 16, while there is no duly appointed executor or administrator. He

insisted that any such intermeddler acting without authority is legally known as "executor of his own wrong." Meaning a *person who, without legal authority, takes on the responsibility to act as an executor or administrator of the deceased's property [usually] to the detriment of the estate beneficiaries or creditors*, as per the Black's Law Dictionary, 9th Edn. He added that the illegal action of the purported Wazee wa Ukoo as intermeddler are answerable to the executor or administrator of the estate pursuant to section 17 of the Probate and Administration of the Estate Act.

The counsel for the appellant added that given that there was never any probate or Administration of estate proceedings following the demise of the father to the parties herein, whatever was conducted by family led by " Wazee wa Ukoo" in disturbing the estate of the deceased without proper appointment makes them executors of their own wrong. He insisted that no title passes to any person on the distribution made by Executors of their own wrongs.

On the 2nd ground of appeal the appellant argued that trial tribunal erred in law and fact for relying on the exhibit A1 collectively which is not part of the administration of the Estate of the late Mevaashi Sabore. That, the trial Tribunal reliance on Exhibit A1 Collectively was erroneously made as it was based on illegal intervention of the estate by unappointed executors who in law cannot

pass a good title to anyone in the cause of intervention on the estate business. That the district Tribunal ought therefore to have ignored Exhibit A1 collectively as it did not result from deceased's estate lawful proceedings rather action of executors of their own wrongs as discussed above.

On the 3rd ground, the appellant submitted that, the trial Tribunal failed to properly evaluate evidence adduced by parties before it. For the Appellant, had the Tribunal properly directed its mind on the facts disposed by the parties, it would have realized that the case at hand fall within purview of the deceased estate proceedings other than an ordinary land suit. He therefore urged this honourable court to be pleased to nullify the trial tribunal proceedings and the judgement thereon and step into the shoes of the trial tribunal by striking out the suit for being filed prematurely without canvassing on the administration of the estate or probate cause as required by the law as the disputed property is part of the estate of the Late Mevaashi Sabore and has never been adjudicated in any competent Court. He added that, since the Appellant is an aided person under section 31(2) of the Legal Aid Act, 2017 and the dispute arise from family members, an order that each party bears its own costs be issued.

In reply, the respondent submitted that the only issue in the matter at hand which could be determined is whether, is it true the Respondent was given

the suit land by their late father in his life time or not as the matter is not about the distribution of their late father's estate. He argued that, issues raised by the Appellant in his written submission were raised and determined by the trial Tribunal. That, from the appellant's evidence before the trial Tribunal, the Appellant was well aware about the distribution done by their late father on 20th December, 2014. To him, the issue of distributions of their late father's estate was not an issue for determination as no one claimed that there was the deceased's property which remained undistributed after his death. The only issue which was was the act of the Appellant to invade the portion of land given the Respondent by their late father while still alive. That, the evidence that the Respondent was given the suit land was not disputed by both parties while called to adduce their testimonies. That, to support his claim, the Respondent herein produced before the DLHT, the minutes titled KIKAO CHA WOSIA WA BABA MEVAASHI SABORE which was admitted by the trial Tribunal and marked exhibit "A1 collectively" and never objected by the Appellant. That, in the said minutes, twenty-two members of the deceased family including the Appellant and three wives of their deceased father one being, the Appellant's mother.

The respondent was of the view that the allegation raised by the Appellant that the portion of land in dispute was part of their deceased's estate is an

afterthought argument as it was not raised before the trial Tribunal and that, the distribution of their late father's estate was not at all an issue therein.

The respondent further submitted that the Appellant tendered before the DLHT, the minutes titled "MAELEKEZO YA MZEE MEVAASHI SABORE JUU YA ENEO LA SHAMBA LILILOPO OLOSIVA-17/05/2018" which was admitted as exhibit "D2". That, exhibit D2 show that only nine family members participated in the meeting as opposed to a big number of family members who participated in KIKAO CHA WOSIA WA BABA MEVAASHI SABORE which took place on 20/12/2014 when the Respondent was given a portion of land in dispute. That, minutes tendered by the Appellant shows that the meeting was conducted in the absence of the Respondent herein and other members who were part of the other meeting which gave suit land to the respondent. The respondent claimed forgery of the minutes tendered by the appellant (exhibit D2) on account that it bared a different stamp. He concluded with that this court be pleased to find that this Appeal has no merit and dismiss the same with costs.

In rejoinder, the appellant submitted that before his death, the late Mevaashi Sabore revoked the earlier distribution against the Respondent for they had fight between them. He reiterated his submission in chief that the Respondent relied on the document titled Wosia to acquire the disputed property

but, this could have been effective upon reverting to Administration of the estate procedure in known judicial system not through Wazee wa ukoo as relied by the Respondent. He added that, before the late Mevaashi Sabore passed on, the disputed property was in the deceased's hands and nothing was done to formally endorse the wishes of the deceased by resorted in administrating the estate. He therefore reiterated his prayer in the submission in chief.

I have clearly gone through the tribunal records, grounds of appeal and submissions by parties. From evidence of parties, the late Mevaashi Sabore died in 2021. Before he died 2014 the late Mevaashi Sabore distributed his properties to his wives and children in the presence of all family members including parties to this appeal. Now the question is whether, in the circumstance where the property is alleged to be distributed by the decease before his demise, there is still need for institution of probate matter.

There is no dispute that the alleged distribution was done through exhibit A-1 collectively in a minute titled **"20/12/2014: KIKAO CHA WOSIA WA BABA MEVAASHI SABORE"**. The content of the said minute as also supported by witnesses from both sides shows that the suit land was allocated to the respondent by the late Mevaashi Sabore. Although dispute by the appellant there is evidence from majority of witnesses who testified before the DLHT that

soon after such distribution and before their father's death, each of the beneficiaries started using properties distributed to them including the respondent herein who also started using the disputed land. In my view, the circumstance in this case would not require filing of probate matter to officiate the distribution. I say so because, the said distribution was done by the deceased's himself before he died and the beneficiaries took over possession meaning that the ownership was directly transferred by the deceased before his death by such distribution. Thus, the argument that the respondent could not claim ownership before distribution through the probate and administration of estate proceedings is filed in court is unfounded.

It was however argued by the appellant that such distribution was revoked by the deceased himself before he died. He presented before the tribunal the minutes (exhibit D2) showing that in 2018, the deceased took back his land which he had distributed to the respondent way back in 2014. The said minutes was challenged by the respondent and on account that it lacked qualification of being considered as minutes for family meeting. The tribunal also observed the inconsistency and concluded that the said minutes could not be relied upon to conclude that the disputed land was re-possessioned by the deceased and the respondent ownership was revoked.

I have clearly read the said exhibit D2 and the evidence in record. The said exhibit is titled; MAELEKEZO YA MZEE MEVAASHI SABORE OLOSIVA JUU YA ENEO LAKE LA SHAMBA LILILOPO OLOSIVA-17/05/2018." The said minutes shows that the deceased called for the family meeting and declared that he was re-possessing his properties which he distributed to the respondent herein including the suit land. The said meeting was attended by 9 people whom the respondent and other witnesses challenged as not forming the coram of the family members of the deceased.


The respondent and his witnesses claimed that the purported meeting revoking his ownership was convened between members of one wife of the deceased who is appellant's mother and excluded other members from other wives of the deceased. The appellant admitted in his evidence that apart from his mother and siblings from his mother, no other wives and children who attended the meeting. He also admitted that even other family elders who usually form the family coram were not part of the said meeting. In that regard, the said minutes was collectively doubted because, in no way, the deceased could have allocated the land to the respondent in a meeting involving all family members and revoked the same in a meeting involving member from the appellant's mother only. The tribunal therefore correctly disregarded that minute

and correctly considered exhibit A-1. The said exhibit A-1 passed title to the respondent and nothing else was presented by the appellant to challenge that title.

I therefore find this appeal devoid of merit and proceed to dismiss the same. As well pointed out in the appellant's submission, the appellant was receiving legal aid in this matter thus, I will not order for costs.

DATED at **ARUSHA** this 20th December, 2023.




D.C. KAMUZORA
JUDGE

