

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 2 OF 2023

**(C/F Land Application No. 46 of 2017 in the District Land and Housing Tribunal for
Karatu)**

QWENGA MANDOO.....1ST APPELLANT

DANIEL PAULO.....2ND APPELLANT

VERSUS

MARIETHA PAULO.....1ST RESPONDENT

SISILIA PAULO.....2ND RESPONDENT

JUDGMENT

19/10/2023 &19/12/2023

GWAE, J

Dissatisfied with the decision of the District Land and Housing Tribunal for Karatu, the appellants have filed this appeal with a total of six grounds of appeal namely;

1. That, the trial chairman of the tribunal erred grossly in law and facts when he failed to analyse properly the evidence from both sides as a result the Tribunal delivered a wrong decision.
2. That, the trial tribunal erred in law and fact to determine the case and delivering the judgment in favour of the respondents

by relying on advocate's submission instead of evidence adduced by both parties contrary to the law.

3. That, the trial tribunal misdirected itself and wrongly determined the matter without ascertaining when the cause of action arose since the appellant's were living in disputed land and after the death of Paulo Thwart to date.
4. That, the trial chairman erred in law and fact by relying on submissions made by an advocate without clearing doubt on the balance of probabilities arising from conflicting evidence on when exactly between 2009 and 2017 did the 1st respondent obtain letters of administration of the estate of the late Paulo Tluway and close the probate.
5. That the evidence contained in exhibit P3 was wrongly admitted and relied upon for determination of the case contrary to the law.
6. That the trial chairman of the Tribunal erred grossly in law to deliver the judgment without recording and reading the opinion of assessors to the parties, the violation of which goes to the root of the matter which vitiates the entire proceedings and the judgment to be a nullity.

When the matter was called on for hearing, advocate Tumain Isara Iteremi represented the appellants from Siay Chambers, on the other hand, the 1st respondent appeared in person unrepresented however the 2nd respondent enjoyed legal services from advocate **Samwel Welwel** who was engaged only for drawing.

Before going to the merit of the appeal, it is apposite to briefly state the background-giving rise to this appeal. Basically, the parties herein are related whereby the 1st appellant and the 2nd appellant are mother and son respectively. The 1st appellant was the 4th wife to the deceased one Paulo Tluway, on the other hand, the 1st respondent and the 2nd respondent are the children of the late Paulo Tluway where by the 1st respondent was the child of the 1st wife who is also deceased and the 2nd respondent was the daughter of the 3rd wife who is reported to have separated from the late Paulo Tluway.

The respondents herein filed a suit against the appellants on the claim that, they are the owners of the land in dispute measuring 6 acres where they obtained the same through Probate and Administration of the Estate of their late father Paulo Tluway. The respondents further stated that, the appellants have been using the said land since 2017 and they have denied the respondents access to use the same. Among others, the respondents sought for reliefs that, they be declared as lawful owners of the disputed land and the appellants herein to be declared as trespassers and be evicted from the suit land.

The respondents in proving their case summoned three witnesses and three exhibits namely; Judgments from both Karatu Primary Court

and Monduli District Court, Letters of Administration (Form IV) and the inventory forms (Form No. V and VI).

Opposing the application, the appellants filed their written statement of defence, and stated that given an account of what transpired in the probate case the tribunal lacked jurisdiction to entertain the matter. Expounding to the above the appellants under paragraph 3 of their written statement of defence stated that the 1st respondent herein unsuccessfully filed a petition to Karatu Primary Court vide Administration Cause No. 26 of 2006. Dissatisfied the 1st respondent filed an appeal to Monduli District Court where she was appointed as an administratrix of the estate of the late Paulo Tluway.

After being appointed by the Karatu Primary Court and issued with letters of administration, on 13/06/2012 the Karatu Primary Court wrote a letter to the Ward Executive Officer directing him not to convene any meeting discussing the deceased's properties. Reasons for such prohibition being that, the 1st appellant together with one Eufracia Margwe had lodged a petition for appeal to the High Court against the decision of the Monduli District Court in Civil appeal No. 11 of 2010. Following that letter, the 1st respondent filed a Civil Revision to Karatu District Court challenging the letter written by the Primary Court to the

WEO. In its finding the District Court dismissed the application on the reason that, the alleged order was not a court order subject to the sought revision by the court as the same letter was only an administrative correspondence.

Still aggrieved, she filed an appeal to the High Court where she was the losing party as the High Court upheld the decision of the District Court. Again, the 1st respondent filed a notice to appeal to the Court of Appeal and to date the said notice has not been withdrawn and that is the reason the appellants herein stated that as the notice to appeal to the Court of Appeal of Tanzania had never been withdrawn then technically, the tribunal lacked jurisdiction.

After evaluation of evidence from both parties, the trial tribunal gave its judgment in favour of the respondents stating that, the land in dispute belonged to them as they obtained the same through probate and administration cause and that the respondents' portion of lands belonged to their mothers. It was further held that, the 1st appellant was given his portion of land, therefore he cannot hold all properties even if she is the remaining wife of the deceased.

In disposing this appeal, the parties argued the appeal by way of written submissions. Nevertheless, before going to the gist of the appeal,

following the sequential chain of events narrated above, a key point was observed by this court that, the first respondent had filed the notice to the appeal to the Court of Appeal. When parties were probed by this Court to address it on the existence of the said notice to the Court of Appeal of Tanzania, it appears that, since 11/12/2014 to date the said notice has never been withdrawn.

It is the further observation of this court that this issue was raised by the appellants at paragraph 3 of their written statement of defence but it is unfortunate that, the trial tribunal did not take into consideration this issue.

It has been the position of the Court of Appeal of Tanzania that once the notice has been lodged to the Court of Appeal of Tanzania the High Court ceases to have jurisdiction over the matter. See the decision in the case of **Serenity on the Lake Ltd vs Dorcus Martin Nyanda**, (Civil Revision 1 of 2019) [2019] TZCA 65 (11 April 2019). This position was also reiterated by the Court of Appeal of Tanzania in the case of **Attorney General vs Tanzania Ports Authority & another**, Civil Application No. 467/17 of 2016 CAT sitting at Dar es Salaam (Reported] Tanzlii) where it was stated that;

"As to the submission of the counsel for the applicant that the notice of appeal is automatically deemed to have been withdrawn, with profound respect, we do not agree with that proposition as it is not backed by the settled position of the law. In Mohamed Enterprises Tanzania Limited v. The Chief Harbour Master and The Tanzania Ports Authority, Civil Appeal No, 24 of 2015 the Court stated in clear terms that the notice of appeal does not automatically cease to have effect upon the party's failure to take essential steps to institute the 9 appeal. It emphasized that a notice of appeal ceases to have effect upon a Court order deeming it to have been withdrawn in terms of Rule 91 (a) of the Rules."

In the matter at hand, since the notice to appeal to the Court of Appeal of Tanzania is in relation with the appointment of an administrator of the estate of the late PAULO TLUWAY (deceased) and the dispute at the trial tribunal was on the property of the deceased which was alleged to have been distributed by an administrator. It is thus, increasingly view of the court that, the tribunal had no jurisdiction to entertain the said dispute over the diseased property while the issue of appointment of an administrator is still undetermined.

It is therefore my opinion that, the parties should have first resolved the issue of appointment of an administrator through either proceeding with the appeal before the Court of Appeal. Alternatively,

either of the parties should file an application for a withdrawal of the notice of appeal that was filed to the Court of Appeal before filing the suit over the land dispute.


The above being said, since the trial tribunal had no jurisdiction to determine the matter I see no reason to proceed to determine the grounds of appeal.

That said and done , the judgment, decree and proceedings of the trial tribunal are hereby quashed and nullified. Taking into consideration the relationship that exists between the parties, I refrain from giving orders as to costs.

It is so ordered.

DATED at ARUSHA this 19th December 2023




MOHAMED R. GWAE
JUDGE
19/12/2023