

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**TEMEKE SUB-REGISTRY**

**(ONE STOP CENTRE)**

**AT TEMEKE**

**MISC. CIVIL APPLICATION NO. 51 OF 2023**

*(Arising from Civil Revision No. 9 of 2022 at Temeke High Court at One Stop Centre)*

**IBRAHIM ZUBERI MTEMVU ..... 1<sup>ST</sup> APPLICANT**

**JASMINE ZUBERI MTEMVU ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**DILIGENT GROUP LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ABASI ZUBERI MTEMVU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

01/03/2024 & 08/05/2024

**BARTHY, J.:**

This application arises from the ruling and drawn order of the High Court at the Temeke Sub-registry in Civil Revision No. 9 of 2022, which annulled the findings of the district court of Temeke in Civil Revision No. 29 of 2022.

Discontented with the High Court's decision, the applicants herein seek to appeal to the Court of Appeal and have thus approached this court with an application for a certificate on a point of law. The application is supported by an affidavit sworn by Ibrahim Zuberi Mtemvu.



During the hearing of this matter, the applicants were represented by Ms. Liz Minja, whereas the 1<sup>st</sup> respondent, a registered company, was represented by Mr. Laswai, and Mr. Masse appeared for the 2<sup>nd</sup> respondent. The matter was heard viva voce.

In her submission, Ms. Minja argued several points that she believed warranted certification for determination by the Court of Appeal. Firstly, she contested the High Court's acceptance of the primary court's jurisdiction in a probate matter despite evidence that the deceased professed Christianity, which falls outside the primary court's jurisdiction offending the interpretation of section 18(1)(a)(i) of the Magistrates' Courts Act, Cap 11, R.E. 2019.

To support her argument, she referenced the cases of **Gibson Kabumbule v. Rose Nestory Kubumbule**, (Probate Appeal 12 of 2020) High Court at Mwanza [2021] TZHC 6009, which approved the decision in the case of **Florian Katunzi v. Goodluck Kusora**, PC probate appeal No. 2 of 2014, High Court at Mwanza, both of which emphasized the primary court's jurisdiction over Islamic and customary law matters. She highlighted inconsistencies in court decisions and urged clarity on the interpretation of relevant legal provisions.



Secondly, Ms. Minja challenged the High Court's decision regarding the filing of an inventory after the prescribed deadline. She cited Rule 10(1) of the primary court Administration of Estates Rules and the case of **Beatrice Beatrice Brighton Kamanga and Another v. Ziada William Kamanga** (Civil Revision 13 of 2020) High Court at Dar es salaam [2020] TZHC 1428, arguing that the administration of the estate becomes null and void if the inventory is filed beyond the stipulated time frame.

Thirdly, Ms. Minja objected to the closure of the matter by the court without proper documentation, asserting violations of Rule 10(1) of G.N. 49/1971. She argued that incomplete documentation, specifically Form No. 5 and 1, indicated procedural irregularities that warranted consideration by the Court of Appeal.

Additionally, Ms. Minja raised concerns about the High Court's failure to address fraud in the appointment of the administrator, citing the case of **Jacqueline Ntuyabaliwe Mengi v. Abdiel Reginald Mengi & Others** (Civil Application 332 of 2021) [2021] TZCA 583, where the Court of Appeal quoting the case of **Halais Pro Chemical** and emphasized on the need for legal justification in court decisions.



Furthermore, she questioned the administrator's authority to enter into a sale agreement after the expiration of their term, referring to the case of **Abbas Ally Athuman Bantulaki & Another v. Kelvin Victor** Mahity (Civil Appeal 385 of 2019), Court of Appeal at Dar es salaam [2022] TZCA 509. She argued that the sale agreement was invalid, as it occurred beyond the administrator's mandate.

Lastly, Ms. Minja disputed the designation of a party as a bona fide purchaser without sufficient evidence, citing the case of **Balozi Abubakar Ibrahim & Another vs Ms. Benandys Ltd & Others** (Civil Revision 6 of 2015), Court of Appeal at Dar es salaam [2015] TZCA highlighting that bonafide purchaser is protected only where there is no material irregularities.

In conclusion, Ms. Minja urged the court to certify these points for determination by the Court of Appeal.

Having heard the applicant's submission, Mr. Laswai, representing the 1<sup>st</sup> respondent, countered by referring to the counter affidavit sworn by Ghulam Mustafa and Ashfaq Lakhu, requesting its inclusion in his argument.

He emphasized the central issue of Civil Application No. 9 of 2022, revolving around the district court's decision affecting the applicant's

rights on plot No. 1036/2. The applicant, Abbas Mtevu, sold the property to the 2<sup>nd</sup> respondent, without allowing the 1<sup>st</sup> respondent, who had already bought part of the estate, to be heard. The court's ruling favored the 1<sup>st</sup> respondent, considering him a *bona fide* purchaser, citing the case of **Dativa Nanga v. Jibu Group Company Limited & Another** (Civil Appeal No. 324 of 2020), Court of Appeal at Arusha [2023] TZCA 39, as precedent.

Mr. Laswai dismissed other points raised in the supplementary affidavit as extraneous to the main issue and irrelevant to the application. He argued that fraud allegations lacked specificity and failed to comply with legal requirements, citing the case of **NMB Bank Plc vs Mafubilo General Supplies Ltd & 5 others** By way of counter claim **Rose Mutagonga Kundecha v. NMB Bank Plc & 2 Others** (Commercial Case No. 93 of 2021) High Court, Commercial Division [2023] TZHCComD 319 and **Twazihirwa Abraham Mgema vs James Christian Basil** (Civil Appeal 229 of 2018), Court of Appeal at Dar es salaam [2022] TZCA 91.

Furthermore, he explained the legality of the 1<sup>st</sup> respondent's status as a purchaser and the process of property registration, refuting the applicant's claims.



Mr. Masse, representing the 2<sup>nd</sup> respondent, aligned with the arguments presented by the counsel for the 1<sup>st</sup> respondent and sought to incorporate their supplementary affidavit into his submission. He explained that the application stemmed from the High Court's decision to overturn the district court's order nullifying the appointment of an administrator, citing the case of **Ahmed Mohamed Al Laamar vs Fatuma Bakari & Another** (Civil Appeal 71 of 2012), Court of Appeal at Tanga [2012] TZCA 135.

According to Mr. Masse, the district court's order was invalid as it was issued after the administrator had already vacated the office. He dismissed the applicant's claims regarding jurisdiction, arguing that the High Court's decision not to open probate was in line with established law. Regarding the issue of the incompetent inventory, he contended that challenging it at this stage was improper and should have been addressed before the trial court.

He refuted the applicant's assertion that the administrator's office ceased after four months, arguing that there was no order prohibiting filing of the, leading to the cessation of the matter. He also clarified the interpretation of sections 67 and 68 of the Land Registration Act, stating

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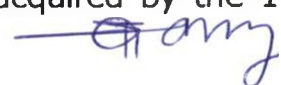
that the first respondent's registration of the land precluded the applicability of the personal representative concept.

Additionally, he argued that the issue of fraudulent acquisition of estate administration was not pertinent to the determination of Revision No. 9/2022. He emphasized the legal requirement for the issuance of citation under Form No. II and asserted that the applicant's failure to appear and raise objections precluded them from challenging jurisdiction.

Furthermore, he highlighted the High Court's findings regarding the filing of the inventory and addressed other grounds raised by the applicant, concluding that there were no points of law to be certified by this court being worthy of determination by the Court of Appeal.

In rejoinder submission, Ms. Minja addressed on the point whether the 1<sup>st</sup> respondent is a *bona fide* purchaser for value by raising the issue of whether the vendor had the mandate to dispose of the property at the time of the transaction. He referred back to his initial submission, emphasizing that the 2<sup>nd</sup> respondent had no authority to sell the property to the 1<sup>st</sup> respondent.

The applicant argued that the 1<sup>st</sup> respondent cannot prove to be a *bona fide* purchaser without evidence of payment. Additionally, the certificate of title presented to the court, allegedly acquired by the 1<sup>st</sup>



respondent, was not legally obtained under sections 67 and 68 of Cap 334. Even if subdivision proceedings were pending at the land registry, it was the duty of the 2<sup>nd</sup> respondent, as the estate administrator, to ensure that the property was registered in his name before selling it to the 1<sup>st</sup> respondent. If the property was registered under the 1<sup>st</sup> respondent's name, the sale would be in violation of sections 67 and 68 of Cap 334 since there would be no need for the transfer of ownership.

Ms. Minja also dismissed the argument regarding the subdivision of the plot, stating that it was not raised by the counsel for the first respondent and should therefore be disregarded.

Additionally, the absence of objections to the inventory and accounts of the estate does not justify non-adherence to the law. She concluded by urging the court to recognize that there are points of law worthy of certification for determination by the Court of Appeal.

Having gone through the submissions of both sides with respect to the application, and it is now up to the court to consider the arguments presented in relation to the matter at hand, including the supporting supplementary opposing affidavits, and determine whether there are points of law worth to be certified for determination by the Court of Appeal.

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The foundation of this application rests on sections 5(1) (c) and 5(2) (c) of the Appellate Jurisdiction Act, Cap 141 R.E 2019. These provisions stipulate that a party seeking to appeal to the Court of Appeal, regarding a matter originating from the primary court, must first obtain a certificate affirming the existence of a point of law to be determined by the Court of Appeal.

This requirement serves to restrict parties from appealing solely on factual grounds, emphasizing the importance of legal issues in appellate proceedings. This position is stated in the case of **Wilson Andrew vs Stanley John Lugwisha & Another** (Civil Appeal 226 of 2017), Court of Appeal at Mwanza [2020] TZCA 72 stated;

*It is settled position of law that, all appeals originating from Primary Court to the Court must be scrutinized by the High Court to ascertain the point of law involved. Otherwise, the Court will have no mandate to entertain them.*

The court will thus ascertain the merit of the application before it. The applicants, in their affidavit under paragraphs 16 (a-f), have listed eighth grounds to be certified as points of law for determination by the Court of Appeal. These can be reduced into the following issues:



- i) Whether the primary court had jurisdiction to try the probate matter, considering that the deceased confessed Christianity.
- ii) Whether inventories were legally filed after they were filed out of time and without an order of extension of time.
- iii) Whether the high court erred in law by failing to properly analyze the evidence presented regarding the competence of the accounts and inventory filed for court inspection before issuing an order of closure.
- iv) Whether the first respondent was supposed to be joined in the Revision No. 29 of 2022 filed by the applicants.
- v) Whether the high court erred by holding that the administrator of the estate was not fraudulently granted administration without proper legal justification.
- vi) Whether the high court erred in law by concluding that the administrator disposed of the property in a lawful manner.
- vii) Whether the high court failed to address all the issues raised in revision No. 9 of 2022.
- viii) Whether the first respondent was a *bona-fide* purchaser for value.



The respondents disputed these issues in their counter affidavit, contending that they pertain to matters of fact. No compelling reasons have been provided to oppose the granting of a certificate on points of law. However, it is crucial to recognize that points raised above revolve around the issues of law pertains interpretation of legal principles or statutes.

At this stage I am refraining from delving into the merits of the grounds presented, facilitating the applicant's access to the Court of Appeal for determination.

Therefore, all eight points of law are certified to be submitted to the Court of Appeal for determination. Given the nature of this matter and the relationship between the parties, no order as to costs is made.

It is so ordered.

**Dated at Dar es Salaam** this 8<sup>th</sup> day of May, 2024.



  
**G. N. BARTHY**

**JUDGE**

Delivered in the presence of Ms. Lizzy Minja Learned Advocate for 1<sup>st</sup> & 2<sup>nd</sup> Applicant and Mr. Baraka Masse for the 2<sup>nd</sup> Respondent holding brief for John Ignas Laswai for the 1<sup>st</sup> Respondent.