

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 100 OF 2023

(Originating from Land Application no. 29 of 2020 District Land Housing Tribunal

Kilosa)

HADIJA ALLY RASHIDI.....APPELLANT

VERSUS

SALEHE JUMA MSHAURI.....1ST RESPONDENT

SHOMARI HAMADI.....2ND RESPONDENT

ABDALLAH GOJAKI.....3RD RESPONDENT

JOSEPH HAMISI.....4TH RESPONDENT

MLEGA MWAKYUSA.....5TH RESPONDENT

JUMA KASIMU.....6TH RESPONDENT

SAIDI MUSTAFA.....7TH RESPONDENT

JUDGEMENT

Date of last Order: 31/10/2023

Date of Judgement: 29/02/2024

BEFORE: G. P. MALATA, J

This appeal emanates from the District Land and Housing Tribunal for Kilosa, whereby the appellant herein being the losing party decided to challenge the decision of thereof.

In nutshell, the appellant (as the administratrix of the late Amina Rashid Ally) claimed to be the lawful owner of the land in dispute, the late Amina Rashid Ally (the appellant's mother) during her lifetime owned 10 acres of land which she inherited from her parents. In her life, she allocated two acres to Mkwatani mosque for construction of mosque and two acres to Chama cha Mapinduzi and remained with six acres. She entrusted the remaining acres to the 1st and 2nd respondents as tenants. It was after the demise of Amina Rashid Ally, the 1st and 2nd respondents started to sell the leased thereto and the 2nd respondent commenced to construct a house which was contrary to the tenancy agreement.

Following the acts of the respondents Hadija Ally Rashid instituted Land Application no. 29 of 2020 at Kilosa DLHT praying for the following reliefs;

1. Declaration that, the suit land be part and parcel of deceased estate.

2. Declaration in favour of the applicant that the respondents are trespassers into the suit land.
3. Eviction order of the respondents from the suit land.
4. Permanent injunction to restrain and prohibit both respondents and his agents from trespassing into the suit land and interfering with peaceful occupation of the suit land by the applicant.
5. Respondents be ordered to pay costs of this application.
6. Any other reliefs the Honourable Tribunal deem fit and just to grant for applicant.

The appellant who testified as AW1 at the DLHT stated that the land in dispute belonged to her late mother one Amina Rashid Ally. She testified that, she knows the land in dispute that was originally used by his grandfather, later his grandfather left the area to Azizi Rehani and when they all died, the late Amina Rashid Ally remained with the land until her demise on 2014. The appellant alleged that, the respondents trespassed the suit land and sold part of it. Later they agreed that, they did wrong and they were required to compensate a total of TZS 600,000/=but in vain. Later, the respondents started construction on the premises.

AW2; Saada Rashid Ally testified that, the land in dispute was owned by the late Rashid Ally after demise the ownership passed to Amina Rashid, and finally, to Hadija Ally who was appointed administratrix.

AW3; Rashid Nassoro Hemedi testified that, he is the son of the late Amina Rashid, his mother once showed her the house and the land in dispute and that during his mother's lifetime, she had not seen anyone claiming to own that land until 2014 when the respondent's trespassed the land.

The 1st respondent testified at DLHT as RW2 that she has been in occupation of the premises way back existence of appellants grandparents when Mzee Rashid was alive. The 2nd respondent (RW3) testified that the premises were left to them by their parents who acquired the same from their parents, the late Amina Rashid Ally sold her piece of land which was neighbouring to them.

The 3rd respondent (RW3) testified that, he arrived at Mkwatani on 20/02/1989 after his brother having bought the land in dispute from one Mzee Ismail Salehe. That he was handed over the land by his mother Nuru Ally for supervision, since that time he is living in the premises.

The 4th respondent RW5 testified that, he arrived at Mkwatani in 1981 from Dodoma, in 1985 he looked for a piece of land to build a house, the 1st respondent father (Juma Mshauri) gave him a piece of land

and he erected the house, he lived there until the demise of Juma Mshauri. upon death of the owner of the land he asked the children of the deceased to sell him the land. They agreed and sold it and managed to house where is living to date.

The 5th respondent (RW6) testified that he didn't buy a plot from the first respondent. He is living at Mkwatani in the house bought by his wife one Shela Salum Maduila on 01/11/2019. She bought the house from Eisha Iddi Abdallah, Asha Iddi Abdallah and Watende Iddi Abdallah and he produced the sale agreement which was admitted as exhibit.

The 6th respondent (RW7) testified that he bought the land from Salehe Juma Mshauri on 09/07/2020. The 7th respondent RW8 testified that the land in dispute belongs to him as he obtained the same through inheritance from his late father who acquired from his late father. The 7th respondents (RW8) testified that he owns the land as he acquired it through his father.

RW1 testified that he is the chairperson of Mkwatani Hamlet and he knows the appellant, respondents and their parents. That, the parents of the appellant, 1st and 2nd respondents came to Mkwatani long time ago and that they were given land by the indigenous. He

further stated that, the appellant's parents gave their land to the mosque and sold other land to Osama Mwinyimkuu Mwarabu and the land he gave for free is the land built by Binti Rehani, Magodoro and another person sold to Magodoro. He further testified that there is a piece of land sold to the Ward Office of Mkwatani, the appellant's mother sold the land which is neighboured to the 1st respondent's father on the eastern side, on the north there is water well and a small road. On the western there is grave yards of Salehe Mshauri, Shomari Hamadi and Rehani Saidi Mustapha. That, there is unfinished house of Mwarabu and Sefu Rukemo at the north side. there is road from town to Kibaoni which goes up to the land of Salehe Mshauri. RW1 testified also stated that, in the appellant's land there is a piece of land of Hamadi Rehani who built the house which is not finished. He narrated that the appellants area belonged to Hashiri Bin Hemedi who owned 100 acres, he owned for 33 years and upon its expiry the land became free.

Having all the evidence in mind, the DLHT decided in favour of the respondents. Aggrieved thereof, the appellant appealed to this court with the following grounds of appeal;

1. That the Honourable Chairman of the DLHT having failed to properly examine, evaluate, analyse the gravity and weight of the evidence on record.
2. That the Honourable chairman of the DLHT erred in law and facts for not consider that the judgement in Probate case no. 16/ 2014 before Kilosa Urban Primary Court was never challenged by the respondents.
3. That the honourable chairman of DLHT erred in law and in fact for not take into consideration that the parents of 1st, 2nd and 7th respondents were only invited by the appellant mother in the suit land for temporary living but surprisingly after the death of respondent's parents and appellants mother the 1st respondent and 2nd respondent start to transfer such dispute land to other respondents without any locus.
4. That the honourable chairman of the DLHT erred in law and facts by entertaining the matter that was hopelessly time barred whereby Amina Ally Rashid owned the suit land since 1960 without any dispute from any competent authority and within the land in dispute there is the family graves.
5. That the honourable chairman of DLHT erred in law and fact by failing to put into consideration that the Land Appeal no. 02/ 2019

which originates from Ward Tribunal in land case no. 8/ 2018 the decision made the matter to start afresh for want of the appellant to be the administrator of the estate of the late Amina Rashid Ally due to the nature of the case.

6. That the honourable chairman of DLHT erred in law and facts for not to take into consideration that Sareh Juma Mshauri (1st respondent) without locus standi sell the dispute land to to other respondents before and after the case to be instituted in the tribunal with competent jurisdiction.
7. That the honourable chairman of the DLHT erred in law and facts for not consider that Amina Rashid Ally during his lifetime provide the piece of land for the Islamiya Mosque and for construction of Mkwatani Ward Office which nowadays such land was purchased by Osama S. Ligito from the Mkwatani Ward Councilor and remain with the land in dispute.
8. That the honourable chairman of DLHT erred in law and facts for deciding the matter based on bias and consider the respondents witness who had the contradictory evidence and statements such as the mother of Abdallah Gojaki (3rd respondent) was only invited by the appellant mother for temporary living and construct a ht but surprisingly after his death his child claim the same.

9. That the honourable chairman of DLHT erred in law and fact for issuing defective judgement.

The appeal was argued by way of written submission and that, the parties filed their submission timely according to this court's order.

Submitting on the first ground, Appellant as the Administrator of Estate of the late Amina Ally Rashid (Amina Mwarabu) and proceed with the duties of the administratrix of deceased estates as stipulated in the case of **Naftal Joseph Kalalu vs Angela Mashirima**, PC Civil Appeal Non.145 of 2001(HC Dar es salaam, unreported). The appellant argued that, the Respondents failed to prove ownership of that land, and that the had no locus standi. The appellant further stated that the respondents' testimony is based on the forged and cooked information which make the sale agreement null and void.

She submitted that the land in dispute was part of the estates of late Amina Ally Rashid. That the 1st Respondent, 2nd Respondent, 3rd Respondent and 7th Respondent failed to prove as to how they acquired the land in dispute whereby 1st Respondent illegally transferred the portion of land to 4th Respondent and 6th Respondents. In the circumstances, she submitted that the respondents failed to prove ownership of land.

On the second ground the appellant submitted that, the six (6) acres of land in dispute was among of the estates of the late Amina Rashidi Ally, she refers to Probate Case no. 16 of 2014 before Kilosa Urban Primary Court which appointed her as the administratrix of the estate. The respondents were aware of the case and failed to challenge it by informing the court that, there is a property included which is not part of the deceased's estate, thus the respondents can't claim the suit land since they failed to challenge the probate case.

Submitting on the third ground, the appellant stated that, the parents of 1st, 2nd and 7th respondents were invited by Appellant's mother in the suit land with condition that, they were not allowed to construct the permanent house for settlement but surprisingly after the death of their parents they started to transfer such dispute land to other Respondents such as 4th and 6th Respondents without any colour of light.

On the fourth ground the appellant submitted that, Amina Rashid Ally owned several Acres of land located at Mkwatani Area Kilosa since 1960's. she later decided to give portion of land to Muslims believers, Chama Cha Mapinduzi (C.C.M) and remained with land totalling six (6)

acres of land. In the suit premise there is a burial place of the Appellant family which contain graves of the family including the grave of Amina Rashid Ally (deceased) hence as a matter of time and evidence shown it is clear to say that, the Respondents are trespassers to the said land.

On the fifth ground he submitted that, the Appellant as a layman, at first she instituted the case her own name not as administrator of estates but later she included all the respondents bases on advise by the Chairman of the tribunal.

On the sixth ground the appellant submitted that, the 1st Respondent was without locus standi. While the appellant complied with the law to be Administratrix of Estate instituted the case before the Mkwatani Ward Tribunal in 2018 for pursuing for deceased's rights. The appellant referred this court to the case of **Lujuna Shubi Ballonzi, Senior v Registerd Trustee of Chama Cha Mapinduzi** (1996) TLR 203. Hence Appellant have the interest over the suit premise for reason that she is fighting for interest of the deceased heirs.

On the seventh ground it was the appellant's submission that Amina Rashidi Ally(deceased) during her life time allocated the two acres of land to the ISLAMIYA MOSQUE for construction mosque and two to Chama Cha Mapinduzi (C.C.M) and remined with six acres.

On the eighth ground the appellant submitted that the 3rd Respondent mother was invited by the Appellant's mother with conditions that she should not be allowed to construct permanent house for settlement but surprisingly after the death started selling the land without having good title.

In support of the ninth ground the appellant submitted that, Amina Mwarabu (deceased) owned un surveyed land estimated to six (6) acres located at Mkwatani in Kilosa town. She invited other people who were not allowed to sell or to construct the permanent house for settlement within six acres of land. The 4th, 5th and 6th respondents purchased the land from persons with no good title. The Chairman of the tribunal arrived to the decision without analysis, evaluation, examination and weighing the gravity and weight of evidence on record tendered by the Appellant including the graves.

The respondents filed joints written submission and jointly submitted in respect to the first ground that, it is hopeless. The respondents cited the case of, **Hemed Said vs. Mohamed Mbilu** (1984) T.L.R 113 the Court held that; the person whose evidence is heavier than that of the other is the one who must win"

To cement, they relied heavily to RW1 who explains how he knows the parties as well as the disputed land with very clear explanations which helped the chairman in ruling in favour of the respondents. As per the case of Mbilu cited above, the appellant failed to prove her case before the tribunal and all respondents gave very watertight evidence to prove their case.

In reply to the second ground, the respondents submitted that, the appellant is talking of probate case which gave her the administratrix of the estate of her late mother. They submitted that, the probate had nothing to do with it case at hand and they are not aware of it as they are not relatives or heirs, blood related or close relative to the appellant, it is very illogical for the appellant to say the respondents didn't appear to challenge her appointments on the estates she was about to administer.

Regarding the third ground, the respondents submitted that the same should be disregarded. They stated that, the tribunal's record shows that the appellant's mother sold some of the areas and confessed that she was bordered by the 1st, 2nd, and 7th Respondents' parents. Further that, the respondents sold the land in dispute while the appellant's mother who claim to be the lawful owner was alive, but she didn't object or institute the case against the respondents. That the respondents' evidence fall

squarely with the RW1 evidence the leader he knew well the respondents' parents, the appellant's mother, the respondents as well as appellant herself and also all the disputed land.

Submitting in support of the fourth ground, it is important, its hopeless and need to be disregarded. The respondents insist that the all areas are owned by the respondents as per the law thus not trespassers.

In support of the fifth ground, the respondents submitted that the referred cases have nothing to do with the present case, thus it be disregarded.

Regarding the sixth ground, the respondents submitted that, the ground is hopeless, they insisted that the 1st respondent sold the land to other respondents of which he had good title based on the evidence alluded before the trial tribunal.

On the seventh ground, the respondents submitted that the ground is well answered by the evidence by RW1 who explained on how the appellant's mother sold and gave the parcel of land to the Muslim believers. That, the case of Osama Kagito had nothing to with case at hand. If the appellant has the cause of action against the said OSAMA KAGITO, she should institute the case to that effect. This ground also need to be disregarded.

Submitting in support of the eighth and ninth ground, the respondents stated that the judgment was not defective at all. They referred to Regulation 22 of the Land Disputes courts Act (District Land and Housing Tribunal) Regulations 2002 G.N 174/2003 which provides for on how the judgment should be composed in order to be valid in the eyes of law. The judgment of the trial tribunal followed all the legal requirements hence good judgment under the eyes of the law. That the Chairperson was very clear on his reasoning as to why he arrived to such decision. Further, there is no contradiction in terms of evidence on the part of the respondents', thus deserved to win the case at the end.

Having summarised the rival submission by the parties, and having carefully examined the records of the DLHT in line with the fronted grounds of appeal, I have managed to gather the following issues

1. Who is the lawful owner of the land in dispute.
2. Whether the DLHT wrongly arrived to the impugned decision in Land Application no. 29 of 2020.
3. Whether the trial Chairman issued a defective judgement.
4. What is the fate of this appeal

In determining the above issues, I will be guided by the principle that, this being the first appellate court, its duty is to re-evaluate the evidence

of the trial tribunal and satisfy itself if it correctly evaluated and arrived to the correct decision according to law. The above legal position is gathered from the case of Hassan **Mzee Mfaume v. Republic** [1981] T.L.R. 167 where the Court held that,

"Judge on first appeal should re-appraise the evidence because an appeal is in effect a rehearing the case; Where the first appellate court fails to re-evaluate the evidence and consider material issues involved. In a subsequent appeal, the court may re-evaluate the evidence in order to avoid delays or may remit the case back to the first appellate court"

Additionally, this court will be governed by principles of law as to who bears the burden of proving facts before the court in civil litigation. Legally, the burden lies to he who alleges, in this case, the plaintiff/appellant. This legal requirement is echoed by sections 110, 112 and 115 of the Evidence Act, Cap.6 R.E.2022. The sections read that;

Section 110 provides;

"(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

(2) When a person is bound to prove the existence of any fact.

It is said that the burden of proof lies on that person."

Section 112 provides that;

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person."

Section 115 provides;

"In civil proceedings when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

The burden of proof does not shift unless stated by the law to that effect.

In the case of **Paulina Samson Ndawavya vs. Theresla Thomas Madaha**, Civil Appeal no. 45 of 2017, unreported the court of appeal held that;

"The burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for negative is usually incapable of proof. It is an ancient rule founded on consideration of good sense and should not be

departed from without strong reason.... until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge is burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.'

This position was repeated in the case of **Lamshore Limited & another vs. Bazanje K.U.D K, [1999] T.L.R 330**, the court held:

"The duty to prove the alleged facts is on the party alleging its existence"

This court has in a number of cases held that, proof of ownership of land must be strict. The rationale behind has been stated in numerous cases including,

1. **Ramadhani Rashidi Kuhuka Vs Jela Maiko Meja And 44**

Others Land Case No.25/2022 and,

2. **Hadija Adam Said Maliwata Vs Asiga Abas and 4 others,**

Land Appeal No. 101 Of 2022

In the case of **Hadija Adam Said Maliwata Vs Asiga Abas and 4 others**, Land Appeal No. 101 Of 2022, this court had these to say;

"Land as an utmost object to the eyes of God. Spiritually God's first fundamental work of creation started with "Heaven and Earth". This is gathered from the Holy Bible in the Book of Genesis, verse 1:1-3 and 1:9-10 state what God created first, I quote;

*1. In the beginning God created Heaven and **Earth**.*

Based on the above reference, one can agree without hesitation that, God valued land (Earth) as the first and most important item as without it, there could be no place for living and non-living organism, human being inclusive. As the Earth was empty and unoccupied, God continued placing on the Earth all what he created from time to time. The confirmation comes from the Holy Bible in the Book of Genesis 1:2,3, 9 and 10 which provide that;

*2. But the Earth was **empty and unoccupied** and darkness were over the face of the abyss; and so, the spirit of God was brought over the waters*

3. And God said, "let there be light" And light became.

Further, in Genesis 1:9-10 it is stated that;

9. Truly God said "let the waters that are under heaven be gathered together into one place; and let the land appear" And so it became.

10. And God called the dry land, '**Earth**,' and he called the gathering of the waters, '**Seas**', And God saw that it was good."

The above cited verses from the Book of Genesis proves how God proceeded after creation of Earth and what he placed thereon. In other words, who we are, what we see and use is reflection of God's accomplishment of mission towards creation.

This makes land as first and most important item, God created for the holy work on the Earth as without it, there could be no place to lay the God's work of creation. Therefore, Land is a sensitive and valuable item even in the God's eyes.

In that regard, since the issue of land touches all living and non-living organisms, human being inclusive regardless of their wealth, status or impoverishment and that, no development can be effected without land,

thus, land has become nothing but the first and most important thing to any living and non-living creature and human development. In other words, no Earth no living and non-living organism, and therefore no life.

Given the afore stated position from the Bible, Tanzania as country has taken such sensitivity and put land as special thing in which its ownership, use, management and conservation are Constitutionally and legally regulated."

It is on that basis, courts have also taken similar stand of ensuring that, all issues pertaining to land dispute have to be given special attention or considerations. This is due to its sensitivity and unbecoming behaviour of persons who are pampering into fraud, forgery, trespassing and encroaching one's land or reserved lands without any colour of right.

Thence, this court has in plethora of authorities held that disputes on ownership of land must be proved strictly. The above position is intended to satisfy the court beyond sane of doubt as to who is really owner of land in dispute. Placing such proof to the balance of probability alike any other normal civil suit leaves unscrupulous people to win cases through weak evidence.

In the absence of such standards, the inferior one's or poorer will be whipped out and left landless by haves and dishonest men. The sensitivity of land led to this court's legal position that, proof of ownership shares similar legal position with cases involving special damages.

In the case of **Bamprass Star Service Station Limited vs. Mrs Fatuma Mwale**, [2000] T.L.R 390 **Hon. Rutakangwa J**, as he then was a High Court Judge, had these to say.

*"It is trite law that special damages being "exceptional in their character" and which may consist of "off-pocket expenses and loss of earnings incurred down to the date of trial" **must not only be claimed specifically but also "strictly proved"**.*

The afore stated legal position sounds similar with that of the England law propounded by via the case of **British Transport Commission v. Courley** [1956] AC 185 at 206 where it was held that:

*"In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as **special damages, which has to be specifically pleaded and proved. This consists of out-of-pocket expenses and loss of earnings***

incurred down to the date of the trial and is generally capable of substantially exact calculation. Secondly there is general damages which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such that as to lead continuing or permanent disability, compensation for loss of earning power in the future."

Echoing therefrom, this court has established seven formal and informal ways through which one can prove ownership of land. These are; **one**, by purchase, **two**, gift, **three**, allocation by Government authority, **four**, inheritance, **five**, clearing of unowned bush, **six**, adverse possession and **seven**, proceeds from division of matrimonial property.

In this case, the onus of proof was on the appellant who alleged to be the owner of the suit land.

Her responsibility so to say is to establish strictly with credible evidence on the ownership of the disputed land. The question here is whether the appellant effectively discharged her duty. I am aware that, this being the first appeal, the court is required to re value the

evidence. That is the duty of the first appellate court which must review the evidence and consider it in line with the requirement of the law.

It was the appellant's testimony that, her late mother owned the land in dispute. In 2014 her mother passed away, and that during her life time she entrusted the 1st, 2nd, 3rd and 7th respondent with piece of her land in dispute, thus they were mere invitee to the land. As far as, I am aware no invitee can exclude his host whatever the length of time the invitation takes place and whatever the unexhausted improvements made to the land on which he was invited see the case of Samson **Mwambene vs. Edson James** [2001] TLR 1, **Nakofia Meriananga vs. Aisha Ndisia** [1969] HCD No. 204.

In the present appeal, the appellant claimed that, the 1st, 2nd, 3rd and 7th respondents were mere invitees. The appellant, therefore was duty bound prove strictly that; **one**, the respondents were invitees, **two**, that her mother allocated land to the 1st, 2nd, 3rd and 7th respondents and not otherwise, **three**, the respondents were not given right to own such land but only to for use with intention to return back, **four**, that the deceased complained about the respondents' acts of owning, building and selling part of the land

before her demise, **five**, the respondents evidence is nothing but a mere fabrication.

That AW1, AW2 and AW3 for the appellant testified that, they know the land in dispute belonged to their late mother but they testified nothing that the respondents were invitees in the said land. According to the evidence on record, it is clear that, the appellant's mother inherited from her parents, however, there is no evidence supporting that version of evidence. In other words, the appellant mother acquired good title over the land in dispute through inheritance but no evidence substantiating the same.

Further there is no evidence that, the said deceased had arrangement with the respondents for the entire period the respondents lived, owned, used and developed the said land including the agreement to return the land in dispute to the deceased.

As stated herein above, the duty to prove that the 1st, 2nd, 3rd and 7th respondents and their parents that they were invitees did fall within the hands of the appellant. This is an obligation imposed under sections 110, 112 and 115 of the Evidence Act.

In principle, this court was expecting to get evidence, that; **one**, Amina Rashid Ally owned the said land, **two**, proof that she acquired

it through inheritance, **three**, that, she allocated the land in dispute to the respondents or parents as invitees to use only and not to own it, **four**, that there was agreement to use and return the land in dispute the appellant's mother. I have critically analysed the evidence on record and gathered nothing proving anything in favour of the appellant's mother.

Further, before Amina Rashid Ally passing away in 2014, there was no claim or dispute on the land. The appellant did not state of how he got the information that the 1st, 2nd, 3rd and 7th respondents were mere invitee this were just words from the bar as they are without any proof or support let alone attempt.

On the other hand, the respondents who are said to be mere invitees demonstrated how they acquired the said land and their testimony including the testimony of by RW1, Mohamed Ally Seif who testified that he knows the appellants and 1st and 2nd respondents' parents, they came to Mkwatani and they were given the land by indigenous people of the area, and everyone owned his piece of land. The appellant's parents gave piece of their land to the Mosque, appellant's mother gave other piece of land for residential and sold others.

The appellant claimed that the respondents did not challenge her appointment as an administratrix of the estate and thus they have no claim on the land which she ought to administer, I think the appellant being a layperson need to understand that being appointed an administrator doesn't confer ownership of the property ought to be administered.

Ownership of land should be proved with evidence, and in this case, there is no evidence on record that the primary court had determined any dispute between the parties. Further, as a matter of law and practice, a primary court exercising jurisdiction on a probate and administration cause has no jurisdiction to determine a dispute on title of any property forming part of the estate. The powers of such courts are limited to appointing the administrator, approving the rightful heirs and supervising the administrator to account for his/her administration.

In case of a dispute on whether the estate or part thereof forms part of the deceased estates, that dispute ought to be determined first by normal civil or land case, as the case may be.

In view thereof, the appellant has factually, evidentially and legally failed to discharge her duty of proving the case to the standard

required in proving in land cases. This marks the end of discussion in respect to issue no. 1.

The conclusion of issue number 1 takes care of the second issue, as such I am satisfied that, the DLHT correctly arrived to its decision that, the appellant failed to prove ownership of land as required by law.

Regarding the issue that, the judgement is defective, this court has gone through it and noted that it contains statement of facts, dispute, evidence, issues, analysis of evidence, ratio decidendi and declared rights of the parties. In the event as such, I entirely agree with the respondents that, the judgement of the Trial Tribunal is good judgement and in conformity with the law. This marks the end of discussion with regards to the third issue.

Having re-evaluated the evidence and impugned judgement, I am satisfied beyond sane of doubt that, the appeal lacks merits warranting reversal of the DLHT decision based on the afore stated reasons of this judgement.

All said and done, I hereby hold that, the appeal is devoid of qualities. thence stands dismissed. Cost to follow the event.

IT IS SO ORDERED.

DATED at MOROGORO this 29th February, 2024

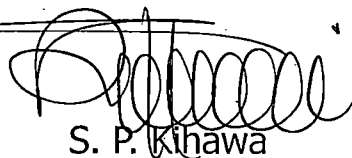
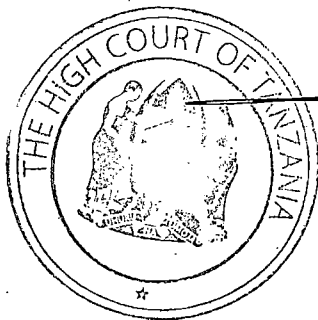


G. P. MALATA

JUDGE

29/02/2024

Judgement delivered at Morogoro this 29th February 2024 in the presence of the Appellant and Respondent who appeared through virtual conference from Kilosa District Court.



S. P. Kihawa

DEPUTY REGISTRAR

29/02/2024