

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF MOSHI
AT MOSHI**

LAND CASE NO. 1372 OF 2024

**ANASTASIA ABEL NKINI.....1ST PLAINTIFF
HELLEN ABEL NKINI.....2ND PLAINTIFF
HAROLD THOBIAS NKINI.....3RD PLAINTIFF
VERA ABEL NKINI.....4TH PLAINTIFF
DANIEL ABEL NKINI.....5TH PLAINTIFF**

VERSUS.

EMMANUEL VEHAELI NKINI.....DEFENDANT

RULING

12th June & 3rd July, 2024.

A.P. KILIMI, J.:

The Plaintiffs mentioned hereinabove have lodged in this court this suit against the defendant mentioned above praying for judgment and decree on the followings, first; Declaration that the suit properties listed in paragraph 4 of their plaint forms part and parcel of the estate of the late Dr. Abel Emmanuel Nkini and second; the Defendant be condemned to pay General Damages due to lack of access and loss of economic opportunity for the 1st,2nd,3rd,4th plaintiffs; Loss of rent from 10th June 2020 to the date of judgment; Interest at bank rate for the decretal sum; Perpetual injunction to the defendant and or his agents/assignees from interfering and or

meddling with the estate of Dr. Abel Emmanuel Nkini and Costs of this matter.

In reply to above claims through his written statement of defence, the defendant vehemently refuted the above claims and therein added a notice of preliminary objections on point of law as follows;

- (i) The suit has been instituted in contravention of section 33(2) (a) of the Land Disputes Courts Act [Cap 216 R.E 2019].
- (ii) That this suit has been instituted in contravention of section 13 of the Civil Procedure Code [Cap 33 R.E 2019].
- (iii) That, the 1st Plaintiff herein while discharged her duties of administratrix illegally bequeathed the landed properties to none citizens (foreigners) to wit 4th and 5th defendants which is in contravention of section 20(1) of the Land Act Cap.113 RE 2019, Written Laws (Miscellaneous Amendments) (No.8) Act 2019.
- (iv) That, this suit is illegally defective for containing defective verification clause

Before embarking into the merit of these objections raised, I deem obliged to narrate, albeit briefly, the background of this matter. It was on 21/09/2019 Dr. Emmanuel Abel Nkini died intestate at Dar-es-Salaam. The first plaintiff was then appointed by the Ilala Primary Court as an administratrix of the estate of the late Dr. Emmanuel Nkini. She then proceeded to administer the estates accordingly and among the forms she filed at the Ilala Primary Court was Form number VI where she listed to have

bequeathed beneficiaries' part of the deceased estate located at Sanya Juu Siha District within Kilimanjaro region.

After filing the above distribution to a probate court, in 2021 the defendant refused to cooperate and obstructed the first Plaintiff in performing her duties as an administrator by denying to hand over the suit properties to the lawful beneficiaries. The first plaintiff attempted to file an application No. 55 of 2023 against the defendant to the District Land and Housing Tribunal of Moshi at Moshi where her application was succumbed into preliminary objections, consequently dismissed.

The plaintiffs in their respective capacity knocked the door of this court praying for the judgment and decree against the defendant on the above listed prayers and stated that the disputed suit property amounted to Tshs. Two hundred million hence this court was coated with jurisdiction to try it.

During hearing of the Preliminary Objections which were argued by way of written submissions, Mr. Gideon Mushi appeared for the defendant whereas Ms. Elizabeth Maro Minde learned advocate represented the plaintiffs.

Submitting in support of the raised Preliminary Objections (herein 'PO'), Mr. Gideon prayed to abandon the 3rd and 4th PO's and argued only on the 1st and 2nd. Arguing in regard to the first PO that the plaintiff's complaint was in contravention with the mandatory provision of section 33(2) of the Land Dispute Courts Act, the learned advocate submitted that as per the provision the plaintiffs ought to file their suit at the District Land and Housing Tribunal 'hereinafter DLHT' of Moshi since their complaint indicated that the suit property amounted to Tsh. 200 million thus this court lacked jurisdiction to try it. To buttress his point the learned counsel cited the decision of **M/s Tanzania - China Friendship vs. Our Lady of The Usambara Sisters** (Civil Appeal 84 of 2002) [2005] TZCA 104 (TANZLII).

In reply to the above first Preliminary Objection, Ms. Elizabeth learned advocate for the plaintiffs stated that the DLHT lacked jurisdiction to try probate matters and since the High Court has unlimited jurisdiction on probate matters, it has jurisdiction despite the value of the disputed land being below the required pecuniary jurisdiction. She contended that the raised issues on the plaintiff's complaint is for the High Court to declare that the listed properties were of the late Dr. Abel Emmanuel Nkini hence since it was

a probate matter, therefore the High Court had jurisdiction to try it as it had unlimited jurisdiction over probate matter.

As for the second PO, Mr. Gideon submitted that the plaintiff's plaint further contravened the provision of section 13 of the Civil Procedure Code Cap 33 R.E 2019 which requires every suit to be instituted in the court of the lowest grade competent to try it. In reply to the same, Ms. Elizabeth reiterated and stated that the DLHT lacked jurisdiction in determining matters on probate as the High court had unlimited jurisdiction over probate matters, so it was coated with jurisdiction.

In determining the raised preliminary objections, the issue of jurisdiction is of the utmost importance before any court proceeds to determine the suit as it goes to the gist of rights of the parties and the power of the court to try the case before it. Since the issue of jurisdiction of this court was raised and argued by both learned advocate as shown above, I find apposite to commence with it, this is because the issue of jurisdiction must be ascertained before any trial commence before the court of law. In the case of **Fanuel Mantiri Ng'unda vs. Herman Mantiri Ng'unda & 20 others** [1995] TLR 159, the Court held that;

"The jurisdiction of any court is basic; it goes to very root of authority of the court to adjudicate upon cases of different nature. The question of jurisdiction is so fundamental that courts as a matter of practice on the face of it, be certain and assured of their jurisdictional position at the commencement of the trial. It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon cases."

See also the decision of **Sospeter Kahindi vs. Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT at Mwanza as well the decision of **Assanand and Sons (Uganda) Limited vs. East African Records Limited**, Civil Appeal No. 10/1959 where it was held that;

"The facts showing that the court has jurisdiction is a matter of great importance because if the court proceed without assurance that it has jurisdiction, and it is later proved that it had not, any judgment which it gives is a nullity".

Now; I will proceed to determine on whether the raised preliminary objections are meritorious and ought to be sustained. In reply to the objection

the counsel for plaintiff have raised an issue that this court has unlimited powers to determine probate matters.

I'm in agreement with the learned counsel for the plaintiffs, that the High court has unlimited jurisdiction in determining probate matters but with exception to be said later. I also agree with the learned counsel for the defendant that the pecuniary jurisdiction of the DLHT in proceedings for recovery of possession of immovable property is for the value which does not exceed three hundred million shillings.

Normally the DLHT are not vested with jurisdiction to try probate matters, but in respect to dispute over the estate it is only the probate court which have been seized with jurisdiction to decide in respect to property subject to inheritance from the deceased estate. (See **Mgeni Seif vs. Mohamed Yahaya Khalfani** [2017] TZCA 258 (TANZLII) and **Kagozi Amani Kagozi vs. Ibrahim Seleman and Others** [2020] TZHC 235 (TANZLII). In **Mgeni Seif** (supra) the Court of Appeal of Tanzania at page 8 stated that:-

"It seems to us that there are competing claims between the applicant and the respondent, over the deceased person's estate. In the circumstance, only probate and administration court can explain how the deceased person's

estate passed on to a beneficiary or a bonafide purchaser of the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of administration, where the deceased died intestate or probate, where the deceased passed away testate."

Moreover, at page 14 the Court of Appeal concluded that:

"Where there is a dispute over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership."

Therefore, from the above authority, although this court has unlimited jurisdiction as depicted by the counsel for plaintiffs, but when there is a dispute in respect to the properties of the deceased, the only court which is seized with jurisdiction to decide on the ownership of that property is probate and administration court.

Now, the next point for determination is whether this court is seized with that jurisdiction.

In his submission, the counsel for Plaintiffs merely said this court has unlimited powers to entertain probate matters, with respect, I think this reason is flimsy in relation to the authority above. This has caused me to

scan the plaintiffs' pleadings to know the cause of action. As said in the background above, at paragraph 3 and 5 plaintiffs aver the source and crux of dispute gave rise to this matter, and for purpose of reference I reproduce these paragraphs hereunder;

*"3. That the **First Plaintiff was appointed as Administrator of the estate on 20/11/2019. The Administrator duly collected, distributed the estate and filled Form No.VI at Ilala Primary Court Dar Es Salaam.** Copies of Death Certificate, Letters of Administration, and probate Form No VI are collectively annexed and marked Exhibit P1. The Plaintiffs shall crave leave to refer to.*

*5. That the Defendant on divers' dates in 2021 purportedly **refused to cooperate and obstructed the Administrator from handing over the said suit properties to the lawful beneficiaries as shown in form No.VI.** The Defendant made false claims regarding all the suit properties listed in Paragraph 4 herein."*

[Emphasis is mine]

From the above paragraphs, the facts above reveal that, the first plaintiff in performing her duty as administrator has been obstructed by the defendant to accomplish the mission entrusted to her by the law. According to paragraph 6 of the written statement of defence, the defendant also averred that he and his relatives are the lawful owner of suit land in this matter. From the above rival facts, I am settled that parties' disputes emanates from administration of the estate of the late Dr. Abel Emmanuel Mkini. Therefore, it is only in my opinion the probate and administration court seized with jurisdiction which can explain how the said properties in dispute belong to the deceased.

According to the record filed (paragraph 3 of the plaint), the first applicant avers to be appointed by Ilala Primary Court, the above obstruction seems to appear on her duty, the record reveal that the probate matter she administer, already she has filed form. VI, as provided in the schedule of the Primary Courts (Administration of Estates) Rules G.N. No. 49 of 1971. But according to the above stated cause of action apparently as alluded earlier she was obstructed to perform her legal duty as administrator of estate. Therefore, in such circumstances, in my considered opinion I hesitate to believe that by then being a legal personal representative acquired or

possessed those estate as she depicted in form no. VI for distribution to heirs. Thus, I am of the view she cannot say that she completed her administration of estate as per requirement of the law in that premises.

Be that as it may, according to the fifth schedule of the Magistrate Court Act Cap. 11 R.E.2019 'MCA' part II provides for powers and duties of the Administrators appointed by Primary Courts, and for purpose of reference I reproduce the same as provided under item 5 and 6 hereunder;

"5. General duties of administrator

*An administrator appointed by a primary court shall, with reasonable diligence, **collect the property** of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration and shall thereafter **distribute the estate** of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court.*

6. Proceedings

An administrator may bring and defend proceedings on behalf of the estate."

[Emphasis added]

In this matter according to titles of plaintiffs, seems they have sued the defendant in their person capacity and not as administrators of the estate, but in the circumstances alluded above, the dispute emanated in the course of administration of estate that is why counsel for plaintiff is arguing that this is probate matters ought to be tried by this court which has unlimited power and not District Land and Housing Tribunal. Therefore, in that regard I am of considered view the probate court seized with jurisdiction to try and ascertain the said properties belong to the deceased or was bequeathed or gifted to the defendant is Ilala Primary Court and not this court as counsel for Plaintiffs tried to depicts.

In conclusion thereof and the foregoing reasons, I am settled this court has no jurisdiction to entertain this matter under above circumstances unless it is changed, I also find that the determination of this issue in respect to jurisdiction is sufficient to dispose of this matter and find no need to consider and determine the other objections. Consequently, I find this suit is misplaced filed in this court, thus hereby struck out. Having considered the nature of this case, I order no costs to either party.

It is so ordered.

DATED at **MOSHI** this 3rd day of July, 2024.



A. P. KILIMI
JUDGE

Court: Ruling delivered today on 3rd day of July, 2024 in the presence Ms. Elizabeth Maro Minde, learned advocate for all plaintiff. Respondent and his advocate absent.

Sgd: A. P. KILIMI
JUDGE
3/07/2024

Court: Right of Appeal duly explained.

Sgd: A. P. KILIMI
JUDGE
3/07/2024