

**IN THE HIGH COURT UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 13 OF 2021

ELIZABETH NDOKEJI MATABA.....PLAINTIFF

VERSUS

JOEL SAMWEL MATABA1ST DEFENDANT
GRACE SAMWEL MATABA2ND DEFENDANT

Date of last Order: 18/08/2021

Date of Ruling: 04/10/2021

R U L I N G

MANGO, J:

The Plaintiff instituted Land Case No.13 of 2021 against the Defendants seeking for the following reliefs: -

- i. Declaration that Plot No. 566 and 567 Block 40 located at Hananasif Area, Kinondoni Municipality forms part of the Estate of the Late Samwel Mataba;
- ii. Vacant Possession of the suit premises;
- iii. Permanent injunction against the 1st and 2nd Defendants or their agents from interfering the suit premises;
- iv. Costs of the suit and any other reliefs.

In their joint written statement of defence, the defendants raised a preliminary objection on points of law containing following points: -

- i. That the suit is bad in Law as the Honorable Court has no Jurisdiction;
- ii. That the suit is res judicata;
- iii. That this Honorable Court is functus officio;
- iv. That the suit is an abuse of Court process.

On 24th June 2021 this Court ordered the preliminary objection be argued by way of written submissions. The Plaintiff was represented by Mr. Emmanuel Richard Machibya, learned advocate while the Defendants were represented by Mr. Castor A. Rweikiza, learned advocate.

Submitting in support of the first point of objection, counsel for the Defendants argued that, the contents of the Plaint indicate that the Plaintiff's cause of action against the Defendants is based on administration of the estate of the Late Samwel Mataba. He mentioned the contents of para 4, 5, 6, 7, 8, 11 and 12 of the Plaint to be indicating clearly that, the Plaintiff's claims are solely on distribution of the Estate of the late Samwel Mataba.

The Learned Counsel is of the view that, this Court does not have jurisdiction to entertain this matter as it concerns Probate and Administration issues and not ordinary land dispute. He cited Section 167(1) of the Land Act, [Cap. 113 R. E. 2019] and Section 37 of the Land Disputes Courts Act, [Cap. 216 R. E. 2019] and argued that, according to the cited provisions, this Court has jurisdiction to deal with matters concerning Land disputes thus, it does not have jurisdiction to deal with probate and administration matters as what constitutes the cause of action in the case at hand.

He also cited the case of **Mahamud Mohamed Babu and 2 others**, Land Case No. 299 of 2007 in which my brother, Mutungi, J. held that, this court is vested with exclusive jurisdiction on land matters but not with matters subject of probate intricacies.

On the second point, he submitted that, this suit is Res Judicata to Mirathi No. 278 of 2007 Kinondoni Primary Court in which issues pertaining to the administration of the Estate of Samwel Mataba were conclusively determined. The learned counsel is of the view that the case at hand has all elements of res judicata contained in section 9 of the Civil Procedure Code, [Cap. 33 R.E 2019]. He reproduced the contents of section 9 of the Civil Procedure Code, which provides for elements of Res Judicata and the case of **Registered Trustees of Chama cha Mapinduzi Versus Mohamed Ibrahim and sons and another**, Civil Appeal No. 16 of 2009 which the Court discussed extensively the elements of res judicata under section 9 of the Civil Procedure Code to back up his arguments. In his efforts to establish that the suit is re judicata to Mirathi No. 278 of 2007, he submitted that, the Plaintiff was party to Mirathi No. 278 of 2007 as one of the beneficiaries of the estate of the late Samwel Mataba. And that, proceedings of the Mirathi cause were finalized as reflected in para 12 of the Plaint in which the Plaintiff expressed her satisfactions with the distribution of the deceased estate contained in the inventory filed by the 1st Defendant at Kinondoni Primary court.

He submitted further that, conclusiveness of Mirathi Cause No. 278 of 2007 was upheld by this Court in Misc. Land Application No. 764 of 2018. Thus, this case that tend to dispute the distribution of the late Samwel Mataba is Res Judicata to Mirathi No. 278 if 2007.

He also submitted that, this Court is functus officio to determine this case as it has already determined the same as Misc. Civil Application No. 764 of 2018. The learned counsel is of the view that, the case at hand is an abuse of Court process as this matter has already been conclusively determined by this Court.

In his reply submission, Mr. Machibya argued that, this Case is not Res judicata to Mirathi No. 278 of 2007 as it has its own independent cause of action which has never been adjudicated by any competent authority.

He argued further that, the suit is distinguishable from Misc. Civil Application No. 764 of 2018 which concerned distribution of the deceased estate. The case at hand concerns declaration that Plot No. 566 and 567 Block 40 forms part of the estate of the Late Samwel Shagu Mataba and not the individual properties of the 1st and 2nd Defendants.

The learned counsel for the Plaintiff submitted that, Mirathi No. 278 of 2007 was withdrawn on 14th April 2021 and has been transferred to the District Court of Kinondoni as Probate and Administration Cause No. 46 of 2021. He prayed that the objections be overruled with costs because this case is not res judicata to the probate cause nor is it an abuse of court process.

In his brief rejoinder, the Defendants council reiterated his submission in chief and highlighted the fact that the Plaintiff's counsel did not submit on the other points of objection. He submitted on only the issue of the suit being Res judicata to Mirathi No. 278 of 2007.

I have considered submissions by both parties and Court record, that is, pleadings filed by parties to this case. According to the Plaintiff, the Plaintiff prays for a declaratory order that plot No. 566 and 567 Block 40 Kinondoni

Dar es Salaam forms part of the estate of the late Samwel Mataba. Pleadings indicate that the estate of Samwel Mataba has already been distributed via Mirathi No. 278 of 2007. The Plaintiff expressed her satisfaction with the distribution of the estate under paragraph 12 of the Plaint. I have noted that there is a court order allowing the Plaintiff to transfer the probate cause to Kinondoni District Court. However, the order of Kinondoni Primary Court in Mirathi 278 of 2007 dated 14th April 2021 indicates that the case was at execution stage when the Plaintiff prayed to transfer the same. The court held that;

*"Mahakama hii ndio yenye mamlaka ya kuendelea na shauri hili kwa hatua ambayo shauri limefikia, lakini hata hivyo kwa kuwa mrithi ambaye ni mjane wa marehemu ameomba kuwa anataka **utekelezaji wa shauri** hili ufanywe na Mahakama ya Wilaya ili aweze kuwakilishwa na wakili wake, na kwa kuwa msimamizi wa mirathi hii hajapinga, mahakama pia haina pingamizi..."*

From the Court order, the probate case was at execution stage when prayer to transfer the same to a superior court for execution purpose was made. In addition, the inventory which has been annexed to the pleadings indicates that the Plots in dispute was part of the deceased estate prior to the distribution of the estate to the heirs. According to the inventory filed by the Administrator of the Estate of the late Samwel Shagu Mataba dated 13th March, 2017, House No. 566/567 Block 40 Kinondoni Dar es Salaam was given to Grace S. Mataba and Stanley S. Mataba. Sumari Somoro Mataba, the mother of the late Samwel Mataba, was given some rights over the collections from the disputed premises.

For that reason, I agree with the counsel for the Defendants that, declaring the suit premises to be forming part of the estate of the late Sawel Shagu Mataba, will be interfering with the distribution of the deceased estate. Matters of this nature are what have been considered by my brother Mutungi, J in **Mahamud Mohamed Babu's** case as probate intricacies which do not fall within the jurisdiction of this Court.

For that reason, I find this Court to have no jurisdiction to entertain this matter which concerns distribution of the estate of the late Samwel Shagu Mataba. The Plaintiff ought to have raised her dissatisfaction on distribution of her late husband's estate in Mirathi No. 278 of 2007 and its subsequent proceedings, if any.

As this Court have no jurisdiction to determine this case, I also do not have jurisdiction to determine other issue in this case.

In up shot, the objection is hereby sustained, Land Case No. 13 of 2021 is hereby struck out. Given the fact that litigants are blood related, I award no costs.




Z. D. MANGO
JUDGE
04/10/2021