

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL CASE NO. 127 OF 2020

ABUBAKAR ABDILLAH SHENEDA PLANTAN.....APPELLANT

VERSUS

ADAM ABDILLAH SHENEDA PLANTAN.....RESPONDENT

*(Administrator of the Estate of the deceased Abdillah
Sheneda Plantan)*

JUDGMENT

23/11/2021 & 02/12/2021

Masoud, J.

The appellant herein challenged the decision the district land and housing tribunal of Ilala in Application No. 89 of 2019. It was challenged on the allegation that the tribunal erred by holding that:

"a property mentioned by an applicant of letters of administration of estate in a Probate and Administration proceedings as being the property of the deceased cannot be subject for litigation on ownership for the same is barred by the doctrine of res judicata."

The parties were all represented by learned counsel. While the appellant was represented by Mr. B. Bagile, Advocate, the respondent was represented by Mr Mashaka Mfale, Advocate.

The hearing was confined on the above ground of appeal quoted herein above. The counsel for the appellant expounded on the ground. He insisted that the doctrine of res judicata could not apply to bar the appellant from instituting land ownership dispute as is in the present instances just because the property in dispute was mentioned in a probate case. He underlined that in probate proceeding is about appointment of an administrator of the estate of a deceased as opposed to adjudicating on land ownership dispute. He added that the administrator is appointed with a view to collecting the properties of the deceased. As far as the appellant was concerned, the learned counsel argued that he is the owner of the disputed property since 1964. He brought his submission to rest by showing how the conditions pertaining to res judicata were not met relying on **Badugu Ginning Co. Ltd v CRDB PLC and Others**, Civil Appeal No. 265 of 2019 which restated the conditions for doctrine of res judicata to apply.

The respondent's counsel opposed the submission by the appellant's counsel. He was of the view that the appellant's counsel did not address himself to the source of the dispute. He thereafter told the court that the appellant was the administrator of the estate of his deceased father, one Abdillah in Probate No. 12 of 1982 and turned the properties in the

estate into his property and sold others. He went further to tell the court how the appellant appointment was revoked and ordered to return the properties constituting the estate. He also informed the court how the respondent was as a result appointed as an administrator of the said estate. In addition, the court was told that the appellant was aggrieved and appealed in vain. It was then, it was argued, that the appellant raised the issue of ownership which he lost as the same was res judicata.

I looked at the lower tribunal's record. it was clear that the matters in relation to which the Application No. 89 of 2019 was held to be res judicata were in the nature of probate proceedings. These were Kariakoo Primary Court Probate Cause No. 12 of 1982 and Civil Appeal No. 9 of 2017 of Illala District Court, and Misc Civil Application No. 296 of 2018 of the High Court. As argued by the appellant, the proceedings were in respect of appointment of administrator of the estate of the deceased and revocation of the appointment of the appellant as the administrator of the said estate.

In my finding therefore, the proceedings mentioned above were not essentially in relation to an issue of ownership of any property of the

estate involving the appellant. The determination of such an issue is one that must be pursued by a competent court vested with such jurisdiction.

The record has it that the proceedings originated from a probate cause at the Kariakoo Primary Court which subsequently led to the appeal in the District Court of Ilala. None of the two courts is in law competent to determine a dispute over land ownership. In relation to this position, it has to be noted that the property in dispute is in Plot No. 66 Block 'K' House No. 2 Mzizima Street, Kariakoo, Ilala, Dar es Salaam. Apart from the fact that the proceedings were not on ownership of the disputed property, they were not in a court or tribunal having competence to adjudicate matters of land ownership.

There were preliminary issues raised to the effect that the appeal was not properly brought by the administrator of the estate of the appellant and that it was not filed within requisite time. The record is clear that this court had already determined on the issue of time limitation in the favour of the appellant. The issue as to time limit cannot be properly raised and argued once again in this court. The same is according resolved in the favour of the applicant.

On the other issue, I took note that when the present appeal was filed on 10/07/2020, the administrator of the estate of the appellant had already been duly appointed on 30/04/2020. For the interest of substantive justice and avoiding unnecessary technicalities, I find that the appeal was necessarily filed under the instruction of the administrator as by then the deceased had already passed away. I thus buy the submission of the counsel for the appellant in this respect. Accordingly, I would as I hereby do so order amendment of the record with a view to adding Nafisa Abubakari Plantan, the administratrix of the estate of the said deceased appellant, as the representative of the said deceased without the appellant having to amend the memorandum of appeal.

When all is said and done, I find that the ground of appeal raised is meritorious.

In the end, the appeal is hereby allowed. Considering the circumstances of the matter which relate to probate proceedings, I will not make any order as to costs. It is so ordered.

Dated and Delivered at Dar es Salaam this 2nd day of December 2021


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B. S. Masoud
Judge

