

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 221 OF 2021

HILAL Z. MAFTAH.....1ST PLAINTIFF

ABDULMAJID Z. MAFTAH2ND PLAINTIFF

UWESU Z. MAFTAH3RD PLAINTIFF

YAHYA Z. MAFTAH4TH PLAINTIFF

VERSUS

IBRAHIM ZAKARIA MAFTAH (as administrator of the estate of the late

AISHA BILAL HAMIS1ST DEFENDANT

ZAKARIA MAFTAH.....2ND DEFENDANT

SALAMA ALLI ULIZA.....3RD DEFENDANT

KURINGE REAL ESTATE COMPANY LIMITED.....4TH DEFENDANT

Date of last order: 19/5/2022

Date of ruling: 7/6/2022

RULING

A. MSAFIRI, J.

On 22nd day of November 2021, the above named plaintiffs instituted the present suit against the defendants jointly and severally for reliefs *inter alia* for declaration that intention to sale or sale of the property situated at Plot No. 29 Mikocheni Medium Density, Kinondoni Municipality, Dar es

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Salaam, Tanzania is illegal, null and void for the reason that the whole procedure of sale of the said property were not legally followed.

On lodging their respective written statements defence, the 4th defendant raised a total three points of preliminary objection to the effect that;

- i. The plaintiffs have no locus standi to sue against the estates of the late AISHA ZAKARIA MAFTAH.*
- ii. The Honourable court has no jurisdiction to entertain and determine probate disputes.*
- iii. The suit and the prayers sought by the plaintiffs have already overtaken by an event.*

This Court ordered the said preliminary objections to be disposed of by written submissions, the order was duly complied with by learned advocates for both parties, hence this ruling.

In arguing the preliminary objections the 4th defendant abandoned the 3rd preliminary objection hence he only argued the 1st and 2nd preliminary points. *Alle*

I would begin with the 2nd preliminary objection as it touches the jurisdiction of the court. Submitting on the said preliminary objection, the 4th defendant contended that this court does not have jurisdiction to entertain the present matter because the plaintiff's claims are based on allegations of illegal administration of the deceased's estate of the late Aisha Bilal Hamis. This is as per paragraphs 8, 12, 14 and 16 of the amended plaint.

According to the learned advocate for the 4th defendant, the present matter arises from Probate Cause No. 473 of 2013 of Kinondoni Primary Court whereby the 1st defendant was appointed as administrator of the deceased's estate and to date, the probate matter has not been finalized before the said court.

To fortify his point, the learned counsel for the 4th defendant has referred the decision of the Court of Appeal in **Mgeni Seif Mohamed v Mohamed Yahaya Khalfani** Civil Application No. 1 of 2009 also the decision of this Court in the case of **Philip Mlay (as administrator of the estates of the late Anna Focus Mlay v Stanbic Bank Tanzania Limited & 2 others** Land Case No. 201 of 2020. *Atls.*

On reply, the plaintiffs' advocate contended that this court has jurisdiction to entertain the matter because section 167 (1) (b) of the Land Act CAP 113 R.E 2019 gives powers to this court to determine all manner of disputes actions and proceedings concerning land. The learned advocate submitted further that the right procedure is for this court to first determine whether there was illegal disposition of the suit premises.

On rejoinder, the 4th defendant essentially reiterated the submission in chief.

Having gone through the submissions of the parties with respect of the 2nd preliminary objection, I have closely gone through the plaint in which on paragraph 6 of the said plaint, the plaintiffs claims to be the beneficiaries of the estate of the late Aisha Bilal Hamis. On paragraph 8 of the plaint, the plaintiffs stated that family members agree to nominate the 1st defendant to be the sole administrator of the deceased's estate which was subsequently granted by Kinondoni Primary Court vide probate cause No. 473 of 2013.

On paragraphs 12, 13, 14 and 15 of the plaint, the plaintiffs claim that the 1st defendant abdicated his duties as administrator of the

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deceased's estate by giving power of attorney to the 2nd defendant and later disposed the suit premises to the 4th defendant. The 4th defendant contended that the probate matter is yet to be finalized at Kinondoni Primary Court.

I am of the settled opinion the probate court is placed at the better position to address the matter before resorting to the jurisdiction of this court. This is because the plaintiffs' major complaint is failure of the 1st defendant to administer properly the deceased's estate by transferring powers to the 2nd defendant by power of attorney and later there is an intention to dispose the suit premises. Ordinarily an administrator of the deceased's estate once appointed, is given time to collect, settle the debts and distribute the deceased's estate to the heirs.

An account to the effect is usually filed with the Probate Court and if the heirs are dissatisfied with such distribution or in any manner in which the administrator performs his duties in relation to the deceased's estate they can file complaint before the probate court.

Where there are any misappropriation of the deceased's property like in the present matter and taking into account that the probate matter has

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not been finalized, with inventory yet to be filed before the probate court, then it is the probate court which is seized with powers to cure the mischief at first instance before coming to this court.

In the case of **Mgeni Seif v Mohamed Yahaya Khalfani**, Civil Application No. 1 of 2009, Court of Appeal of Tanzania at Dar es Salaam (unreported) it was held that;

"As I have said earlier, 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"

The rationale behind that holding is at page 8 of the judgment where the Court of Appeal had this to say;

"It seems to us that there are competing claims between the applicant and the respondent over the deceased person's estate. In the circumstances, only a probate and administration court can explain how the deceased person's estate passed on to a beneficiary or a bona-fide purchaser of the estate for value. In other words, a

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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 interstate or probate, where the deceased passed away testate”.

It follows therefore that, this suit has been filed in this Court prematurely as still the probate court is yet to finalize the matter the plaintiffs can seek recourse before the said court.

Consequently I sustain the second preliminary objection. There is no need for determining the other points of preliminary objection. This suit is therefore struck out with no order as to costs.



**A. MSAFIRI,
JUDGE
07/6/2022**