IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 317 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 10 of 2017)

ELIMBORA ASHENDUMI NKYA------------------------------ APPELLANT

VERSUS

MARIAM AMIR MASAKI (The Administratrix of the Estate of the Late) FRIBACK ONASIA SHOO---------- RESPONDENT

JUDGMENT

11th October & 5th December 2023

K. D. MHINA, J.

This is the appeal against the decision of the District Land and Housing Tribunal for Kinondoni, herein referred to as DLHT. The brief facts which ignited this appeal were a result of the administration of the estate of the Late Friback Onasia Shoo.

In 2024, the respondent was appointed as an administrator of the Estate of the Deceased Friback Onasia Shoo. In the administration process, the appellant refused to give vacant possession to a house that was listed as the property of the deceased estate. Seeking legal remedies, the respondent, who is the administrator of the estate of the deceased,

approached the DLHT for Kinondoni and filed Land Application No. 10 of 2017. The matter was determined and decided in favour of the deceased's estate, and the appellant was equally ordered to give a vacant possession with costs. Aggrieved, the appellant filed this appeal with two grounds of appeal: -

i. *That, the trial Tribunal erred both in law and in fact by not considering that the letters of administration of the deceased's estate were not strictly complied with, for lack of consent from the co-administrator.*

ii. *That, since there was ample evidence to establish that the deceased had divorced the Respondent since 2003 and that thereafter the Appellant lived as husband and wife in the disputed house for many years after had built the said house and sired two children with the deceased during his lifetime, the trial tribunal erred in law in ordering the Appellant to vacate therefrom.*

The appeal was disposed of by way of written submissions, whereas the appellant engaged the service of Kario Mulembe Karilo, learned advocate, while on the part of the respondent, he engaged the service of Ngole & Associate Law Chambers.

Submitting in support of the appeal that the tribunal erred for not considering that the letters of administration of the deceased's estate

were not strictly complied with, for lack of consent from the co-administrator, the learned counsel submitted that, no doubt that in the Probate and Administration cause No. 3/2014 appointed the respondent and another one Evans Onasia Shao as co-administrator whose consent was not obtained. He insisted that it was improper for a single administrator to file a Land Application without involving the other administrator. Supporting his argument, he referred to the case of ***Anna Focus Mlay vs Stanbic Bank Tanzania Limited*** Land Case No. 201 of 2020.

On the second ground of appeal, the learned counsel insisted that the trial tribunal erred in law in ordering the Appellant to vacate the house while there was ample evidence to establish that the deceased had divorced the Respondent since 2003 and, thereafter, the Appellant lived as husband and wife in the disputed house for many years. He argued that the trial tribunal erred in treating the marriage certificate active while the divorce took place in 2003, and the division of matrimonial properties was done.

He insisted that there was evidence by DW4 that the appellant was a wife to the deceased. He also refers to sections 111 and 112 of the Evidence Act, claiming that the respondent has a burden of proof to

establish her whereabouts for 15 years when the appellant was living with the deceased as husband and wife.

He, therefore, insisted that it was wrong for the appellant to be ordered to vacate the house she was living in with the deceased while the appellant was the beneficiary. He, therefore, maintains that the trial tribunal erred for failure to join the co-administrator and pressed this court to allow the appeal with costs.

Replying to the appellant's learned counsel submissions, the learned counsel refuted the appellant's claims. On the first ground, he responded that the application before the DLHT required no consent from the co-administrator. He went on to say that the respondent was protecting the interest of the beneficiaries of the estate of the deceased, and the non-cooperation of the co-administrator could not render the application unlawful. The learned counsel cited section 104 of the Probate and Administration of the Estate Act, Cap 352 and insisted that the administrator, in the absence of any direction to the contrary in the grant of letter of administration, can exercise the administration on behalf of others.

He insisted that the action taken by the single administrator suffices to be taken as an action of the co-administrators. He, therefore,

emphasized that since the respondent was dully granted administration and there were no conditions set that an action in the protection of the estate must be instituted by both administrators or with consent, the action of the respondent in Land Application No. 10 of 2017 by the respondent was legal and justifiable.

On the 2nd ground of appeal, the trial tribunal erred in law, ordering the Appellant to vacate the house while there was evidence establishing that the deceased had divorced the Respondent since 2003 and thereafter, the Appellant lived with the deceased as husband and wife. He avers that the assertion is unfounded on the records. He claims the assertion that the respondent was divorced in 2003 was unfounded. He enlightened that no exhibits were tendered to prove the assertions, including the petition of divorce or decree of divorce. What was presented was a Marriage certificate, and in the absence of evidence to rebut its validity, therefore, the trial tribunal was right to accord weight to exhibit P2. (Marriage Certificate)

The learned counsel maintained that the trial tribunal held that the house in dispute was the property of the deceased and, therefore, forms part of the estate of the deceased estate. In that regard, it was proper for the trial tribunal to order the appellant to give a vacant possession.

Rejoining, Mr. Karilo learned counsel maintained that the appellant required consent from the Co-administrator in the institution of the land case. He claims that since the letters of administration were issued to co-administrators, the Land Application was to be preferred by both the administrators and the respondent's action of filling the application in isolation of the co-administrator was improper. He referred to the decision of this court in the case of **Philip Mlay (As the Administrator of the Estate of the Late) Anna Focus Mlay** Land Case No. 201 of 2020, where it was held that in the presence of two administrators, an administrator can do nothing on the deceased estate without the consent of the other administrator. He insisted that the first ground has merit.

On the 2nd ground, the appellant learned counsel insisted that the issue of ownership does not arise for the reasons that the appellant lived with the deceased as wife and husband, who had divorced the respondent a way back in 2003. He contended that the respondent was not justified in evicting the appellant from the house. The learned counsel maintained that the appeal has merit and, therefore, is to be allowed with costs.

Having perused the court records and gone through the parties' submissions, I am now in the position to determine whether the appeal has merit.

On the first ground of appeal, the appellant learned counsel claimed that the respondent had to acquire consent from the co-administrator for her to sue for the interest of the deceased's estate.

On the part of the respondent's learned counsel, he objected, maintaining that the law does not require consent.

As I go to the records and parties' pleadings and submissions, there is no doubt that the respondent is the administrator of the estate of the deceased Friback Onasia Shao, appointed to administer the estate together with Evans Onasia Shao. Again, as I perused the records, I did not find any proof to show that there is a caveat or any form of objection initiated by the Co-Administrator that what was done by the respondent in instituting Land Application No. 10 of 2017 was unlawful to any extent including that it was done not for the interest of the Estate of the deceased and the beneficiaries. I hold so because the law clearly states that an administrator can perform the duty of administration on behalf of other co-administrators. The law under section 104 of the Probate and Administration of Estate Act Cap 352 provides that: -

> *"When there are executors or Administrators, the power of all may, in the execution and in the absence of any direction to the contrary in the will or grant of letter of administration, be*

exercised by any one of them who has proved the will or administration".

The appellant's learned counsel claim could be tenable only where the Co-administrator complained or filed a caveat objecting to the act of the co-administrator on the ground that an act was not in the best interest of the administration of the estate of the deceased.

The appellant's learned counsel did not show how the Co-accused was prejudiced for not being a part of Land Case No. 10 od 2017 or how the act undermined the estate of the deceased Estate. What is required by the administrator is to act according to the law. The provision of Section 108 of the Probate and Administration of Estate Act Cap. 352 requires the administrator to act with reasonable diligence and collect the deceased's properties. This is what was done by the respondent. In the event, I find that the administrator was justified in instituting Land Application No. 10 of 2017, which is subject to this appeal; therefore, this ground lacks merit.

On the second ground of appeal, the appellant's learned counsel claims that the trial tribunal erred in law by ordering the Appellant to vacate the house while there was evidence to establish that the deceased had divorced the Respondent since 2003. On the part of the respondent's

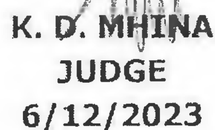
learned counsel, he maintained that no exhibits tendered to prove the assertions, including the petition of divorce or decree of divorce.

In determining this ground, as it appears on the records, the respondent was the administrator of the Estate of the Deceased Friback Onasia Shao. On the part of the appellant, there was no evidence that she was the owner of the house, the legal wife or the heir to the estate of the deceased.

Having been appointed as administrator, the respondent was justified to collect the properties and distribute the estate to the heirs as required by the law. In so doing, the respondent is not justified to hold the property of the deceased's estate while she is neither an heir nor owner of the property. It is my finding that the trial tribunal was justified to hold the appellant as a trespasser for her failure to establish her interest in the deceased's estate.

For the foregoing reasons, I find that the appeal lacks merit. Consequently, I proceed to dismiss it with costs.

It is so ordered.



K. D. MHINA
JUDGE
6/12/2023