

TANZANIA / JUDGMENT

Jdg Land Appeal No

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TANZLIIDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB REGISTRY OF
MANYARA AT BABATI LAND APPEAL NO. 19100 OF 2024 (Arising from Land Application No.01 of
2023 in the District Land and Housing Tribunal of Hanang' at Katesh) ABDILLAH GIDA DAREMA
(Suing as an Administrator of the estate of the late Boniface Hamisi Siimay)1st
APPELLANT DINA ALLY HAMIS2nd APPELLANT VERSUS
HELLEN JOHN KAYANZA (Administratrix of estate of the late Ally Shauri
Hamis)..... 1ST RESPONDENT ADOLF BERNAD
MAMAYADA.....2ND RESPONDENT

RULING

10th October & 20th December, 2024 Kahyoza, J.: This is a battle between beneficiaries of the estate of the late Ally Shauri Hamis. Ally Shauri Hamis died intestate on 27.12.1999. A wife Hellen John Kayanza and five children who are Airen Awaki Ally, Albert Bahati Ally, Herieti Qwari Ally, Dinna Ashura Ally, and Paskali Ally, survived him. It is on record that Albert Bahati Ally, Dinna Ashura Ally and Paskali Ally are Hellen John Kayanza's step children. The late Ally Shauri Hamis's estate included landed property in Mwanza and one in Katesh (Plot No.15 1 Block "C" Gonana Katesh) (suit property) which is the subject of the dispute. Indisputably, the issue before the tribunal ought to have been whether Dina Ally Hamis (Dinna Ashura Ally) is the beneficiary of Plot No.15 Block "C" Gonana Katesh or whether the administrator(s) of the estate of the late Ally Shauri Hamis distributed or allocated of Plot No.15 Block "C" Gonana Katesh to Dina Ally Hamis. The dispute was instituted for determination before the district land and housing tribunal (the tribunal). It is evident from facts on record that, there are competing claims between Dina Ally Hamis and Hellen John Kayanza over one of the property forming part of the estate of the Ally Shauri Hamis. Dina Ally Hamis claims that the administrator(s) of her deceased father's estate, Boniface Hamis and/ or Hellen John Kayanza allocated the landed property in Katesh to her. On her part, Hellen John Kayanza being the surviving administratrix or the administratrix contends that the landed property in Katesh is part of the estate of the late Ally Hamis, which all heirs are entitled to inherit. It is from the above demonstrated competing interest, Dina Ally Hamis and Abdullah Gida Darema (the administrator of the estate of the 2 late Boniface Hamis), who was one of administrators the estate of the late Ally Shauri Hamis, went to the tribunal seeking a declaration that Dina Ally Hamis was the lawful owner of the suit land. The applicants claimed that the suit land was allocated to Dina Ally Hamis vide Probate and Administration No. 1/2017

before Karatu primary court. It is further on record that Probate and Administration No. 1/2017 before Karatu primary court was instituted to administer the estate of the late Boniface Hamis Simay. The first to petition for letters of administration of the estate of the late Boniface Hamis was Anna Adolf. Later, Abdullah Gida Darema took over the administration of the estate of the late Boniface Hamis. The record does not provide how the changes happened. The suit was filed against Hellen John Kayanza (the administratrix of the estate of the late Ally Shauri Hamis) and Adolf Bernad Mamayada. The tribunal found, among other things, that the disputed house was part of late Ally Shauri Hamis' estate and that all children and the surviving wife, Hellen John Kayanza were entitled to inherit. Aggrieved Abdullah Gida Darema, the administrator the estate of the late Boniface Hamis Simay and Dina Ally Hamis appealed to this Court to challenge the decision of the tribunal. Before hearing the appeal, I 3 entertained doubts whether the tribunal had jurisdiction to adjudicate the dispute, which seemingly lingered on inheritance, I invited the parties' advocates to address me on that issue. Fortunately, both the parties were represented. Mr. Raymond Kim, learned advocate for the Respondents, submitted that the tribunal had no jurisdiction as the cause of action revolved around issues of probate. He submitted that the applicant [Dina Ally Hamis] pleaded that she was rightful owner of the suit land as she inherited it from her late father's estate. She claimed further that the disputed land was allocated to her by Anna Adolf, who was the administratrix of the estate of the late Boniface Hamis Simay. He concluded that parties are bound by their pleadings. To support his contention, Mr Raymond cited the case of Thomas Tabu Masawe v. Groth Collins, Pc Civil Appeal No. 6/2023 tanzlii [2023] TZHC 181336. Mr. Festo, learned advocate for the appellants, contended that the tribunal had jurisdiction to entertain the dispute. He referred the Court to section 33 of the Land Disputes Courts Act, [Cap. 216 R.E. 2019]. He submitted that the second appellant (Dina Ally Hamis) was claiming ownership of the disputed land against the first respondent who was the administratrix of the estate of the late Ally Shauri Hamis. Dina Ally Hamis 4 was biological daughter of the late Ally Shauri Hamis. He added that second appellant had acquired the disputed land by inheritance from the administrator of the late Ally Shauri Hamis, who were Boniface Hamiss and Hellen Kayanza. Did the tribunal have jurisdiction to entertain a dispute revolving around inheritance? A brief background will serve to demonstrate the nexus of the dispute and answer the issue whether the tribunal had jurisdiction. It is undisputed that the suit property was part and parcel of the estate of the Ally Shauri Hamis. The late Ally Shauri Hamis died intestate living behind a wife and five children. He died while in Mwanza where he was living and working. He had property and members of his family in Mwanza and Katesh. Following Ally Shauri Hamis' death, family members proposed Boniface Boniface Hamis and Hellen Kayanza administer the deceased's estate. A first family meeting was held on 2. 1. 2000. On 19. 3. 2005, Boniface Hamiss who was referred to as the first administrator convened a meeting to which Hellen Kayanza attended too. The agenda of the meeting was how to fairly distribute the estate of the late Ally Shauri Hamis. Although an administrator is not bound to involve the beneficiaries, it is advisable, for the sake of avoiding conflicts, to involve the beneficiaries in the distribution of the estate. The resolution was reached 5 on how to distribute the estate of the deceased. They gave Hellen Kayanza and her children the property in Mwanza and allocated the deceased property in Katesh to late Ally Shauri Hamis' children residing in Katesh at that time. It is not clear whether after the

meeting, the late Ally Shauri Hamis' administrator(s) filed Form No. V and VI to the court which had appointed them to administer the estate, if it was the primary court which had appointed them. Though, Hellen Kayanza was sued as the administratrix of the estate of the late Ally Shauri Hamis, it is not clear whether she is still the administrator of the deceased and the date of her appointment was nowhere stated. It should be noted, here, that, there is no endless administration or a life time administrator or administratrix of deceased's estate. This Court took that position in the case of Beatrice Brighton Kamanga and Another vs Ziada William Kamanga (Civil Revision 13 of 2020) [2020] TZHC 1428 (10 July 2020) that- "There is no endless administration or a Life administrator in our laws. My interpretation of rule 10 of GN 149 of 1971 is that if the administrator does not submit to the court a true and complete statement in form V within 4 months, containing all the assets and liabilities of the deceased persons' estate and does not submit a periodical account of the estate in form VI showing therein all the moneys received (if any), payments made(if any) and 6 property or other assets sold or otherwise dealt by him within such period as directed by the court, his existence is rendered illegal and his activities after the expiration of 4 months becomes null and void. This Court further held in Beatrice Brighton Kamanga & Amanda Brighton Kamanga v. Ziada William Kamanga (supra) that "And if the matter remains pending for a longer period, let's say 3 years, without such a report or extension from the court, the appointment cease to exist by operation of the law for as I have pointed above, there is no life administrators in our schemes." It is also a paradox whether Hellen Kayanza who may have been appointed to administer the deceased's estate in 2000 had or had not filed Form V and VI, and whether she is still an administratrix. The undisputed facts further depicted that Boniface Hamis died intestate in 2016. The administrator of the estate of Boniface Hamis was appointed. The administrator of the late Boniface Hamis' estate in course of discharging his duties, he distributed the suit property to Dina Ally Hamis, the second appellant. There are several questions unanswered and which cannot be provided with answers by land court which are whether the administrator of the late Boniface Hamis' estate had mandate to distribute the estate of the late Ally shauri Hamis? Was the estate of 7 the late Ally shauri Hamis not closed until Boniface Hamis met his demise in 2016? Was the late Boniface Hamis the administrator of the late Ally shauri Hamis' estate when he met his demise? Is it permissible to inherit duties and responsibilities of the administrator of the deceased's estate who died before he discharged his duties and responsibilities? What is obvious from the settled and the disputed facts is that the administration of the estate of Ally Shauri Hamis is the nexus of the dispute. Dina Ally Hamis, the second appellant, and Hellen Kayanza, her step mother, have competing interest as to who is the rightful beneficiaries of the deceased's suit land in Katesh. They are not making any reference to the landed property in Mwanza or money which were distributed at the family meeting held on 19.3.2005. The facts, settled and disputed further illustrate that there are undetermined issues central to the wrangle which are; one, how was the estate of the late Ally Shauri Hamis, both in Mwanza and Katesh divided out to beneficiaries or heirs? two, how did the estate of the late Ally Shauri Hamis pass to Dina Ally Hamis? and lastly, how the administration of the estate of the late Ally Shauri Hamis changed hands? It is on record that Boniface Hamis and possibly Hellen Kayanza were administrators of the estate of the late Ally Shauri Hamis but to everyone's dismay, the 8 administrator of the estate of the late Boniface Hamis administered part

estate of the late Ally Shauri Hamis. The administrator of the estate of the late Boniface Hamis allocated the disputed suit property to Dina Ally Hamis. Was the distribution justifiable and lawful? The issues pointed out above are not matters of dispute over land ownership but inheritance. It is the probate court seized with the administration of estate of late Ally Shauri Hamis and/or estate of late Boniface Hamis which has mandate and task to determine the riddles. It is well settled that the district land and housing tribunal cannot deal with the matters concerning of inheritance or say probate and administration of the deceased's estate. This Court and the Court of Appeal have pronounced themselves times without number, that land disputes emanating from the probate and administration of the deceased's estate are not within the reign of the district land and housing tribunals. The Court of Appeal in *Mgeni Seif V. Mohamed Yahaya Khalfani* (Civil Application No. 01 of 2009) [2017] TZCA258 (29 June 2017) pg 8, the Court provided- "it seems to us that there are competing claims between the applicant and the respondent over 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 or 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". I have pointed out that Dina Ally Hamis, the second appellant, and Hellen Kayanza, the first respondent, (Dina Ally Hamis' step mother), have competing interest as to who is the rightful beneficiary or heir of the deceased's property in Katesh. The dispute is pure and simple a probate matter. In *Kagozi Amani Kagozi* (Administrator of the state of the late Juma Selemani) vs Ibrahim Selemani & 6 others, Land Appeal No.2 of 2019, HC-Kigoma Sub-registry held that; "Its only the probate court which vested with powers to determine whether a disputed property belongs to the deceased person or not through probate cause by way of petition for letters of administration and objection thereof if any" There is yet another case of *Deogratus Mayuya vs Sumuni Mayuya and Faida Mayuya* Land Appeal No. 24 of 2022 HC Kigoma sub-registry that cited which referred to the case of *Mgeni Seif V. Mohamed Yahaya Khalfani* (supra) to hold that- "Where there is a dispute over the estate of the deceased only the probate and administration court seized of the matter can determine on the ownership." 10 The tribunal decided who should inherit the estate of the late Ally Shauri Hamis ordering that all children of the late Ally Shauri Hamis are entitled to inherit the deceased's property in Katesh, the subject of this dispute. It stated, "Sio jukumu la baraza hili kutenganisha Watoto wa marehemu Ally Hamisi na kueleza nani arithi nini na nani asirith nini." Literaly meaning "the tribunal has no duty to discriminate children by deciding who should inherit the late Ally Hamis' estate". Obviously, the tribunal had no mandate to decide who should inherit but its mandate is to determine who is the rightful owner of the land in dispute before it. The Court of Appeal in *Chacha Juma Magoko vs Mwita Juma Magoko* and another, Civil Appeal No. 32 of 2022, tanzlii

[2024] TZCA, [21 August 2024] page 8, held that- "It is our take that issue no. 2 and 3 are not land matters and do not fall under the jurisdiction of the DLHT, but the Chairman of the DLHT in his judgment on page 40 determined the issue of will and concluded that the will was not a valid will. Regarding, the issue of paternity the Chairman on the same page

concluded that the respondents were not biological sons of the late Gabriel Magoko @ Juma. It is our firm view that the DLHT stepped overboard and determined issues not in its jurisdiction. This is a fatal irregularity which rendered the whole proceedings a nullity” I am of the view that I have demonstrated that the tribunal swam with in the wind the parties blew without jurisdiction. It is trite law that 11 the jurisdiction of any court [or tribunal] is basic, it goes to the very root of the authority of the court [or tribunal] to adjudicate upon cases of different nature. The question of jurisdiction is fundamental that courts must 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 the case. See Fanuel Mantiri Ngunda Vs Herman N Ngunda Civil Appeal [1994] TLR , 155. The above said and done, I am of the firm view that the tribunal had no mandate to entertain this matter, the nexus of the dispute being inheritance of the deceased’s estate. The tribunal’s mandate is the dispute over ownership of land and not inheritance or issues of probate and administration cause. I wish to sound a test to apply when the tribunal faces a similar dispute in future. The tribunal ought to ask itself a question whether the dispute before it would have been filed if the deceased was still alive. If the answer is in affirmative, the tribunal may proceed to entertain the matter. But, if the answer to the above question is negative, then it will imply that the dispute is part and parcel of the administration of the deceased’s estate, for that reason, the tribunal should hold that it has no jurisdiction. 12 In the end, I hold that the tribunal had no jurisdiction to entertain the dispute between the parties. Trying a suit or any matter without jurisdiction is fatal irregularity which vitiates not only the proceedings but also the judgment and proceedings. Consequently, I declare the proceedings nullity and proceed to quash the proceedings and set aside the judgment. Given the fact that the dispute stemmed from family squabbles, I make no orders as to costs. I order accordingly. Dated at Babati this 20th day of December, 2024. John R. Kahyoza, JUDGE Court: Judgment delivered in the presence of Mr. Festo advocate for the appellants and the absence of the respondents with leave and their advocate. Mr. Odar (RMA) present. John R. Kahyoza, JUDGE 20/12/2024 13

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