

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 36 OF 2022

(Arising from Land Application No. 12 of 2021 at the District Land and Housing Tribunal for Karatu at Karatu,)

IDDI BOAY NIIMA (*As Administrator of the estate of the late Anna Niima Akonaay*).....**APPELLANT**

VERSUS

MERUS AMMI..... **RESPONDENT**

JUDGMENT

Date of last order 4-8-2022

Date of Judgment 19-9-2022

B.K.PHILLIP, J.

Aggrieved by the judgment of the District Land and Housing Tribunal for Karatu at Karatu (Hereinafter to be referred to as "DLHT"), the appellant herein lodged this appeal on the following grounds;

- a) That, the District land and Housing Tribunal erred in law and in fact for deciding in favour of the respondent basing on the weak and unreliable evidence adduced by the respondent and his witnesses.*
- b) That, the District Land and Housing Tribunal erred in law and in fact for pronouncing the judgment which was ambiguous and contradictory.*

- c) *That, the proceedings of the trial tribunal are a nullity for noncompliance with(sic)the mandatory requirement of the law under Order XIII rule 4 and Order XVIII rule 5 of the Civil Procedure Code, [Cap. 33 RE 2019].*
- d) *That, the District Land and Housing Tribunal erred in law and in fact for delivering the judgment that the respondent is the lawful owner of the disputed property basing on an invalid Will.*
- e) *That, the District Land and Housing Tribunal erred in Law and fact for deciding in favour of the respondent without summoning key witnesses who attested the said Will in order to prove it was made in his(sic)presence by the deceased and the witnesses therein(sic).*
- f) *That, the District Land and Housing Tribunal erred in law and in fact by failing to give sufficient consideration to the authenticity of the Will tendered by the respondent and failed(sic)to determine that the said Will was a fabricated document.*
- g) *That, the District Land and Housing Tribunal erred in law and in fact as it failed to observe that the Will tendered by the respondent is null and void for contravening paragraph 19 of GN No. 436/1963 regarding the Will.*
- h) *That,(sic)District Land and Housing Tribunal arrived at an erroneous decision as it made (sic) wrong reasoning and failed to properly scrutinize(sic) and analyse(sic) the credible evidence adduced during trial and as the result it made (sic) wrong decision.*

i) That, the District Land and Housing Tribunal erred in law and in fact for failure to give sufficient consideration and weight to the evidence adduced by the appellant and his witnesses.

The appellant prayed this appeal to be allowed with costs and declaration that the suit property forms part of the estate of the late Anna Niima Akonaay be issued.

For better understanding of the coming discussion let me give a brief background to this appeal albeit briefly. The appellant herein filed Petition No. 56 /2020 at Karatu Primary Court (Henceforth "the Primary Court") praying to be appointed as the administrator of the estate of the late Anna Niima Akonaay. Upon issuing general citation, the respondent filed a caveat in the same Primary Court objecting to the inclusion of a house (Henceforth "the suit Property") , in the list of the properties forming part of the deceased estate on the ground that he has a WILL made by the deceased in which she bequeathed the suit property to him.

After hearing the caveat on merit, the Primary Court ruled out that it has no jurisdiction to determine the dispute over the ownership of the suit property and ordered the appellant herein to institute a case at the DLHT so that the dispute over the ownership of the suit property can be determined. Consequently, the appellant herein filed a case at the DLHT whose judgment is the subject of this ruling.

The DLHT heard the matter on merit and at the end of the day, relying on the alleged WILL of the late Anna Niima Akonaay which was tendered before the DLHT by the respondent declared the respondent

as the lawful owner of the suit property. Hence, this appeal was filed by the appellant to challenge the judgment and decree of the DLHT.

With leave of the Court, this appeal was argued by way of written submission. Mr. Nixon John Tenges, learned advocate appeared for the appellant whereas Mr. Samwel S. Welwel, learned advocate was engaged for drawing the respondent's written submission.

Mr. Tenges argued the 1st, 8th and 9th grounds of appeal together. Similarly, he submitted for the 4th, 5th, 6th and 7th conjointly. In his submissions for the above mentioned grounds of appeal among other arguments, he raised an issue of jurisdiction of the DLHT. His argument was to the effect that DLHT wrongly admitted the WILL since the same was invalid. Its maker was unknown and the DLHT had no jurisdiction to determine the validity of that WILL. He insisted the decision of the DLHT is totally hinged on the WILL, thus improper. In addition, citing the case of **Malietha Gabo Vs Adamu Mtengu, Misc Land Appeal No.21 of 2020** (unreported), Mr. Tenges submitted that DLHT had no jurisdiction to try the dispute on the ownership of the suit property since it was connected with issues pertaining to inheritance. The same was supposed to be determined by a probate Court, that is a Court vested with powers to deal with matters concerning with the administration of deceased estates.

In rebuttal, Mr. Welwel's arguments were to the effect that Mr. Tenges wrongly raised the issue of jurisdiction at this stage. The DLHT admitted the WILL rightly and cannot be faulted for basing its decision on the WILL which showed that the deceased bequeathed the suit property to the respondent. The respondent tendered before the

DLHT the original sale agreement in respect of the suit property. In addition, Mr. Welwel submitted that the appellant testified before the DLHT that he was ordered by the Primary Court of Karatu to institute the case at the DLHT so that the issue on the ownership of the suit property can be determined.

In rejoinder, Mr. Tenges reiterated his submission in chief and averred that the issue of jurisdiction can be raised at any stage. He maintained that pursuant to the provisions of section 3(1) of the Land Disputes Courts Act, Cap 216 R.E 2019, the DLHT had no jurisdiction to determine the case because the suit property formed party of the estate of the deceased, thus the dispute between the parties is centred on inheritance of the deceased properties, thus it is not a land matter.

Before going to the determination of the arguments raised by the learned advocates, let me point out here that I have opted to start with the issue of jurisdiction because it is of paramount importance. I do not need to overemphasise the legal position that before dealing with any matter any Court of law or judicial body must ascertain if it is vested with jurisdiction to entertain the same. So, the arguments on jurisdiction takes precedence over others.

First and foremost, it has to be noted that the issue of jurisdiction can be raised at any stage including the appellate stage. There is a plethora of decisions of our Courts to that effect. For instance, in the case of **R.S.A Limited versus Hanspaul Automechs Limited and Another**, Civil Appeal No. 179 of 2016, CAT at Dar es salaam, the court observed that:

*"It is settled law that, an objection on a point of law challenging the jurisdiction of the court can be raised at any stage, it cannot be gainsaid that it has to be determined first before proceeding to determine the substantive matter - See - **SHAHIDA ABDUL HASSANAL KASSAM VS MAHEDI MOHAMED GULAMALI KANJI**, Civil Application No. 42 of 1999 (unreported). Thus, since the jurisdiction to adjudicate any matter is a creature of statute, an objection in that regard is a point of law and it can be raised at any stage. In our considered opinion, it was not offensive on the part of the respondents to raise it in the final submissions which was after the close of the hearing."*

*[Also, see the case of **Tanzania Revenue Authority Vs Tango Transport Company Ltd** , Civil Appeal No.84 of 2009 and **Mwananachi Communications Ltd and 2 others Vs Joshua K. Kajula and 2 other**, Civil Appeal No.126 /01 of 2016 (both unreported)]*

Upon perusing the Court's records I noted that the decision of the DLHT is totally hinged on the WILL that was tendered by the respondent before the DLHT. In fact the gist of the dispute between the parties herein is the validity of the WILL allegedly to be made by the deceased which indicates that the suit property was bequeathed to the respondent. Thus, I am in agreement with Mr. Tenges that the dispute between the parties in this matter is not a land matter because the respondent did not allege that he bought the suit property or acquired it through his own personal efforts/ capacity but alleged that he acquired it through inheritance by the WILL made by the deceased. So,

there is no doubt that the dispute between the parties involves issues of inheritance.

It is the position of the law that the issue of validity of a WILL always is determined through probate Court. The mandate to determine on the validity of a WILL is exclusively given to the probate Court and not DLHT. This is in accordance with rule 8 of GN. No.49 of 1971, the Primary Courts (Administration of Estate) Rules regulating matters and conduct of probate and administration of deceased estates in Primary Courts. The said rule provides as follows;

"Subject to the provisions of any other law for the time being applicable the court may, in the exercise of the jurisdiction conferred on it by the provision of Fifth Schedule to the Act, but not in derogation thereof, hear and decide any of the following matters, namely-

- (a) whether a person died testate or intestate*
- (b) whether any document alleged to be a will was or was not a valid or subsisting will;***
- (c) any question as to identity of persons named as heirs, executors or beneficiaries in the will;*
- (d) any question as to the property, assets or liabilities which vested in or lay on the deceased person at the time of his death;*
- (e) any question relating to the payment of debts of the deceased person out of his estate;*

- (f) *any question relating to the sale, partition, division or other disposal of the property and other assets comprised in the estate of the deceased person for the purpose of paying off the creditors or distributing the property and assets among the heirs or beneficiaries;*
- (g) *any question relating to investment of money forming part of the estate; or*
- (h) *any question relating to expenses to be incurred on the administration of the estate."*

(Emphasis added)

Reading the provision of the law quoted herein above, it is apparent that the determination of validity of a Will is vested into the Primary Court.

From the foregoing it is the finding of this Court that the DLHT was not vested with jurisdiction to determine the dispute between the parties herein. However, as correctly submitted by Mr. Welwel, upon perusing the Court's records, I have taken judicial notice of the order made by the Primary Court of Karatu in which it directed the appellant herein to file a case at the DLHT. The Primary Court stayed the proceedings in petition No.56 of 2020 pending the determination of the issue of ownership of the suit property at the DLHT. Under the circumstances, I find it imperative to point out that the aforesaid order of the Primary Court of Karatu is erroneous. The determination of the issue on the validity of the WILL which will automatically sort out the issue of ownership of the suit property was supposed to be determined Primary

Court of Karatu in the aforesaid said petition No. 56 of 2020. Pursuant to the inherent powers of this Court provided in section 95 of the Civil Procedure Code, I hereby set aside the said order of the Primary Court of Karatu and order that the Primary Court of Karatu should proceed with the hearing of the said Petition No. 56 of 2020, and make the determination of the validity of the WILL allegedly made by the deceased.

My findings herein above suffice to dispose of this appeal. Thus, I will not proceed with the determination of the remaining grounds of appeal since doing so will be an academic exercise since it will not change my findings aforesaid.

From the foregoing, I hereby nullify the proceedings of the DLHT and set aside the judgment, and decree thereof. Since this case was filed in compliance to the erroneous order made by the Primary Court of Karatu, each party will bear his own costs.

Dated this 19th day of September 2022.



A handwritten signature in black ink, appearing to read "B.K. Phillip", is written over the printed name.

B.K.PHILLIP

JUDGE