IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB - REGISTRY)

AT MOROGORO

LAND APPEAL NO. 44 0F 2023

(Arising from Misc Land Application No. 124 of 2015; in the District Land and Housing Tribunal for Morogoro, at Morogoro)

PAULINA JOHN SUPILA (Suing as an Administratrix

of the Estate of the Late John Amos Supila) .....APPELLANT

VERSUS

SIMON YONATHANI MGUHI ..... RESPONDENT

JUDGEMENT

4th October, 2023

CHABA. J.

Before the District Land and Housing Tribunal for Morogoro, at Morogoro (the DLHT/Tribunal) the appellant sued the respondent via Land Application No. 124 of 2015 in respect of a Plot No. 41, Block "B.3", located at Kiwanja cha Ndege area within Morogoro Municipality claiming that the respondent invaded the suit premise and started living in the premises together with his family.

Based on the above claims, the applicant prayed the trial DLHT to declare her as the lawful owner of the suit premises, respondent be declared as a trespasser and consequently order vacant possession against her.

After hearing evidence from both sides, the trial Tribunal adjudicated the matter in favour of the respondent and dismissed the appellant / applicant's claims on merits. Discontented, the appellant on 13th day of March, 2023 she lodged this appeal seeking to challenge the decision of the DLHT delivered on 25th day of January, 2023 based on the following two grounds of appeal: -

1. That, the DLHT erred in law for not considering the will of her father, and
2. That, the DLHT failed to consider the fact that the summary / minutes of the family clan was forged.

At the hearing of the appeal which was conducted orally, the appellant appeared in person, and unrepresented, whereas the respondent enjoyed the legal service of Mr. Richard Giray, the learned advocate.

Arguing in support of the appeal, the appellant submitted that, the will of their deceased's father, who passed away in the year 2000, which stated that the overseers of the deceased's estates could be the deceased's wife one Vaileth Mussa, Augusta John Supira and Amos John Supira was not considered. She said, according to the said will which was submitted at the Urban Primary Court of Morogoro in the year 2013, the deceased said through his will that his house should not be sold.

She averred that, the one who sold the deceased's property was not an administrator of the deceased's estate but the so called "mwangalizi wa mali za marehemu" namely, Amos John Supila, a brother to the appellant. She

submitted further that, one Amosi John Supila forged the minutes purported to be the family/Clan meeting to show that he involved the family members of the late John Amos Lupira, something which is not true.

In reply, Mr. Richard Giray, the learned advocate for the respondent gave a brief background of the matter at hand to the effect that, through Probate Cause No. 199 of 2005, Amosi Raphael Supila was appointed as an administrator of the estates of the late John Amosi Supila and that on 29/7/2012 the said administrator sold the house to the respondent herein under the umbrella of administratorship of the deceased's estates. He averred that, through Civil Appeal No. 89 of 2015, the District Court of Morogoro, at Morogoro nullified the appointment of Amosi Raphael Supila, but at the time of the revocation, he had already sold the house in dispute to the respondent herein.

As regards to the second ground that, the deceased's WILL was not considered, Mr. Giray contended that, the issue of the said will was not an issue before the DLHT and that it has never been submitted and delt by the DLHT and thus admitted as an exhibit. He further asserted that, the DLHT could not rely on an attachment to make her decision. He said, if the appellant wished for the said WILL to be an exhibit, she was duty bound to comply with the guidance of the Court as it was expounded by the Court of Appeal of Tanzania in the case of **Japan International Cooperation Agency (JICA) Vs. Khaki Complex Limited (Civil Appeal 107 of 2004) [2006] TZCA 4 (17 July**

2006). He concluded his submission by praying and urging the Court to dismiss the present appeal with costs.

In her brief rejoinder, the appellant insisted that no family meeting was conducted in the year 2005 her family dispersed and only persons who were at home were her mother, George John Supira, Amosi John Supila and herself. The appellant averred that, even the revocation of the then Amos John Supira was done by the District Court on the ground of forgery. In conclusion, the appellant beseeched the Court to investigate this case file and decide judiciously.

Having carefully gone through the parties' submissions, the trial Tribunal's record and the grounds of appeal, the sole issue for determination and deliberation is whether or not the instant appeal has merits.

In determining this appeal, I will tackle the grounds of appeal as they were raised and argued in seriatim. Commencing with the first ground of appeal, it was the appellant's submission that, the trial Tribunal failed to consider the deceased's WILL (a legal document containing instructions for the disposition of the deceased's estates) which restricted the sale of his house. On the other hand, the Counsel for the respondent highlighted that, the question of the said WILL was not an issue before the DLHT, and that the WILL was not admitted as an exhibit before the DLHT.

In a bid to resolve this ground of appeal, I was obliged to travel through the entire records of the trial DLHT and noticed to my satisfaction that, truly

the said WILL was not admitted as an exhibit but it was admitted only for identification purposes. For ease of reference, I find it pertinent to reproduce the ruling of the Hon. Chairperson dated on 16/9/2016, after the then Counsel for the applicant / appellant tendered before the trial DLHT a photocopy of the impugned WILL for it to be admitted as an exhibit and form part of the evidence. Hereunder is what the Hon. Chairperson held after considering legal arguments put forward by both sides: -

> "..... I agree that, since the relevant last will is a photocopy, the same is hereby admitted as identification exhibit 1 because the applicant did not tell as to whether it is lost and whether it cannot be available. The Applicant therefore is at liberty to tender the original last will. It is so ordered....".

From the above excerpt, it is clear that the WILL was admitted for identification purposes and not as an exhibit parse as claimed by the appellant. However, the question that is arises in my mind is, what is the legal effect of admitting a document for identification? In as much as the binding precedents are concerning, the answer is not far-fetched. Upon being faced with akin situation the CAT in the case of **Rashid Amir Jaba and Another Vs. R,** Criminal Appeal No. 204 of 2008, (unreported), it was held that: -

"The law is settled that any physical or documentary evidence marked for identification only and not produced as an exhibit does not form part of the evidence hence does not have evidential value".

Guided by the decision of the CAT, it is clear to me that the purported WILL was neither a part to the evidence adduced at the trial DLHT nor an issue before it. In my considered opinion, that could also be a reason as to why in his judgment, the Honorable Chairperson didn't bother to consider or make determination on the same. Bringing the issue of a WILL at this appellate stage, in my view, that is an afterthought and to be frank, I am not prepared to entertain the same as it was underscored by the Apex Court in the case of **Remigious Muganga Vs. Barrick Bulyanhulu Gold Mine (Civil Appeal 47 of 2017) [2018] TZCA 219 (10 October 2018)** (Extracted from www.tanzli.org), where the Court observed *inter-alia* that:

"It is a settled principle that a matter which did not arise in the lower court cannot be entertained by this Court on appeal. In the case of Hassan Bundala @ Swaga v. Republic, Criminal Appeal No. 386 of 2015 (unreported), for example, the Court stated as follows:

"It is now settled that as a matter of general principle this Court will only **look into the matters which came up in the lower courts and were decided; and not**

new matters which were neither raised nor decided by neither the trial court nor the High Court on appeal." [Emphasis supplied].

On the basis of the above observation, I am fortified to hold that, as the issue of the contents of the WILL was not determined by the trial DLHT which was nevertheless not a proper platform to determine the same but the probate Court which was in a better position to examine the validity and contents of the said WILL, I am afraid that, the issue of the said WILL could neither be determined by the trial DLHT, nor be raised in this appellate stage. In this regard, the first ground of appeal hit the rock and it is hereby dismissed.

As to the second ground, the appellant lamented that the trial DLHT failed to consider that, the minutes of family clan meeting was forged. At the outset, I would say that, this ground need not detain me much as in my view, the DLHT was not a proper forum for determination as to whether the said minutes of the family clan meeting was forged or not. In my opinion that was within the powers of the probate Court which from the records available, there is no point in time the same declared that the minutes were forged and on the contrary according to the testimony of AW-I, the Probate Court explained to them that Amos Raphael Supila legally sold the house in dispute.

At this juncture, I find it pertinent for better understand on the side of the appellant to state that, soon upon realizing that the minutes of the family /

clan meeting was forged, as family members, were required to lodge an objection proceeding before the respective Probate Court against the appointment of the administrator. Failure of which it resulted into the appointment of the administrator who in the eyes of the law was a legal representative of the deceased from the date of his appointment up to the date of his revocation. This position of the law was underscored by the CAT in the case of **Joseph Shumbusho Vs. Mary Grace Tigerwa & Others (Civil Appeal 183 of 2016) [2020] TZCA 1803 (6 October 2020)** (Extracted from www.tanzlii.org), where the Court observed that:

> "It is on record that the appellant was appointed to be an administrator of the deceased estates as such by virtue of section 99 of the Probate and Administration Act, **from the time of his appointment till the revocation of the letters of administration, he became a personal legal representative of the deceased and stepped into the shoes of the deceased**". [Emphasis added].

Applying the above principle in the matter under consideration, it is my finding that the fact that the family / clan members of the late Amos John Amos Supila remained silent after the appointment of Raphael Supila and even upon subsequent sale of the house in dispute to the respondent, this implies that the family / clan members acceded to his appointment as an administrator of the deceased's estates but only that they were later dissatisfied with the way he

continued to administer the estates of the deceased. From my thoroughly perusal of the records of the trial Tribunal, I have noted that the issue which was before the Primary Court of Morogoro, at Morogoro in Probate Cause No. 199 of 2005 as well as Civil Appeal No. 59 of 2013 of the District Court of Morogoro was not the forgery of the family meeting but the appellant and her family members were unhappy with the acts of the respondent being an administrator of the estates of their late father, who did not distribute the proceeds of the sale of the house in dispute to other beneficiaries. For purpose of reference, I see reasonable to reproduce what was observed by the Learned District Magistrate at page 4, para 4 of the typed judgment of the District Court of Morogoro in Civil Appeal No. 59 of 2013, which read: -

> "I also heard them all during hearing and boil down all their evidence, I find out that the problem arose from the duties of the administrator that they are not satisfied with the way he performed his duties. They all directed their claims on the house he sold without distributing the proceeds to them as required".

The District Court went on further stating at page 6 of the typed judgment that:

> "thus before we rest and make necessary orders, I wish to say that, as I boiled down all grounds of appeal into one that the **appellants do not trust the administrator of**

their late father's estate and that they want him disqualified, return of their lost house and an order to appoint another administrator of their wish. I agree that the respondent as the administrator appointed by the Court failed to well administer the estate as required.....I hereby quash and set aside the decision of the trial Court, Revoke the appointment of the respondent as an administrator.....**the respondent is hereby accountable for the money he failed to administer as required so he will have to return the same to the newly appointed administrator as ordered above for him to distribute it as the law requires**..." [Emphasis added].

With the above finding of the District Court, I agree with the Hon. Chairperson that, Amos Supila was legally appointed to be the administrator of the estates of the late John Amosi Supila and that he legally sold the house belonging to the deceased in his capacity as an administrator of his estates. In my settled view, the appellant's claim cannot be directed against the respondent herein but against the administrator one Amos Supila as rightly held by the District Court of Morogoro in its decision in Civil Appeal No. 59 of 2013 which ordered Amos Supila to return the proceeds of sale of the house in dispute to the newly appointed administratrix of the deceased estate who was to distribute it to the deceased's heirs. Again, this ground has no merit.

For the reasons stated above, I do not find any cogent reasons to disturb the finding of the trial DLHT for Morogoro, at Morogoro in Land Application No. 124 of 2015. In the result, this appeal is devoid of merits and it is hereby dismissed with no order as to costs. **It is so ordered.**

DATED at **MOROGORO** this 4th day of October, 2023.

M. J. Chaba

JUDGE

04/10/2023

Court

Judgment delivered under my hand and the Seal of the Court in Chamber's this 4th day of October, 2023 in the presence of both sides.

A.W. MMBANDO

DEPUTY REGISTRAR

4/10/2023

Court:

Rights of appeal to the parties fully explained.

A.W. MMBANDO

DEPUTY REGISTRAR

4/10/2023