

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

LAND CASE APPEAL NO. 2 OF 2010

(From the decision of the Iringa District Land and Housing

Tribunal in Application No. 47 of 2008)

BINUS M. MWANI.....APPELLANT

VERSUS

STELA LUVANDA.....RESPONDENT

JUDGMENT

UZIA, J.,

This is a second appeal. On 22/09/2008 the appellant had filed an appeal in the district land and housing tribunal for Iringa after having been aggrieved by the judgment of Makungu Ward Tribunal however, the said appeal was dismissed by the District Tribunal. He filed an application in the same tribunal for setting aside the dismissal order and restoring the said appeal nevertheless, the application struck out hence this appeal. In his memorandum of appeal filed to this court under the services of Mr. Mbogoro, learned advocate, there is one ground of appeal which reads as hereunder;

1. That the District Land Housing Tribunal erred in Law in holding that the application was filed under the wrong provisions of law.

Before determining the merit of this matter I think it is proper and reasonable to ascertain the competence of this appeal as well as to check whether this Court and the tribunals below would have jurisdiction over this matter.

Going through records, I found that the disputed land was a property of the late husband of the respondent, before his death he prepared a will which among other things vested the said piece of land into the respondent and her children. Further, after the death of her husband, relatives of the deceased held a family meeting and proposed the name of person who would administer the estate of the deceased. Fortunately, the respondent was appointed and granted letters of administration of the deceased's estate with a Probate Court.

In the circumstance, all matters relating to this estate were determined in the said probate court which granted the letters of administration to the respondent. The appellant did not object the list of properties of the deceased including undoubtedly, the disputed land. In the event disputes would arise after such a grant, parties were/ are entitled to settle the same in the probate court. At this juncture, I dare to hold that the lower tribunals lacked jurisdiction to entertain this dispute. The proper forum for settling the matter was

the primary Court which granted the administration of the estate to the respondent.


In the recent case of **Mawazo Said Binga V. Abdallah Said Binga**, Land Case Appeal No.47 of 2008, High Court of Tanzania at Iringa (unreported), Nchimbi.,J *inter alia* stated that;

"The respondent is said to have been appointed as an administrator of the deceased's estate sometime in 2007. The family members blessed the appointment. One of the properties listed in the estate of the late Nunu was the disputed house. The appellant did not dispute this fact. He did not raise any objection before the Court which determined the probate cause. It is true that this court has jurisdiction to entertain land matters and any matters relating to land. However, where a matter is within the province of another competent court, this court has no jurisdiction over it."

On the strength of the foregoing authority I am of the same view that this court also has no jurisdiction to entertain this appeal. I also of a firm considered holding that even the trial before the lower tribunals was a nullity *ab initio*.

Consequently, I dismiss this appeal. I also order the respondent to continue carrying on the agricultural activities if any over the said land. No order as to costs because there was an oversight on the

question of jurisdiction on the part of all parties in the lower tribunals and this Court has raised this question *suo motu*.



L.M.K. UZIA

JUDGE

2nd December, 2010

Order: Right of Appeal explained.




L.M.K. UZIA

JUDGE

2nd December, 2010