

**IN THE HIGH COURT OF ZANZIBAR
AT TUNGUU
MISC. CIVIL APPLICATION NO. 96 OF 2022**
(Arising from civil case no. 40 of 2019 of the Land Tribunal, Mwanakwerekwe)

ALI OMAR ALI	1ST APPLICANT
TAHIR OMAR ALI	2ND APPLICANT
JADID OMAR ALI	3RD APPLICANT

VERSUS

EXECUTIVE SECRETARY

WAKF & TRUST COMMISSION RESPONDENT

RULING OF THE COURT

28/03/2023 & 30/05/2023

KAZI, J.:

This ruling is on the preliminary objection on the point of law that this Court lacks jurisdiction to entertain the instant application.

The preliminary objection relates to the applicants' application, preferred under section 3 (1) (a) (b) of **the High Court Act**, 1985 and section 129 of **the Civil Procedure Decree**, Cap 8 of the Laws of Zanzibar, seeking for an order to order the respondent to bequeath the estate located at Fuoni Kibondeni, Shehia of Uwandani, Zanzibar which is bounded as follows; North – Ali Machano; South – Gharib Mwalim; East – Othman Ahmada; West – Issa Mataka.

In a nutshell, the nature of the applicants' application is inheritance. According to the founding affidavit, the applicant claimed the inheritance

rights of their late father's estate, (the land (shamba)) situated at Fuoni, in which the respondent, the sole administrator of the estate of the deceased Muslim, refused to bequeath the said land to them. The applicant, therefore, seeks an order of this Court to compel the respondent to bestow the said land to them.

The applicants herein enjoyed the service of Mr. Hassan Kijogoo, learned advocate, whereas Mr. Hassan Nassor, learned State Attorney, represented the respondent. By the directives of the Court, the preliminary objection was disposed of by way of written submission.

It was Mr. Nassor's submission that according to **Kadhis Court Act** No. 9 of 2017, all Muslim matters relating to wills and inheritance are dealt with by the Kadhi's Court, which has exclusive jurisdiction over those matters. Therefore, he contended that, as the parties in this application are Muslim, and since this matter relates to bequeath, the applicant was required to file their application to the Kadhi's Court. To support his point, Mr. Nassor referred to section 5 (1) of **the Kadhi's Court Act, Hussein Abdalla Machano & Five Others v Abdalla Othman Haji & Six Others**, Civil Case No. 07 of 2021, HCZ (Unreported), and **Amina Karim Jetha v Wakf & Trust Commission** (Civil Appeal No. 86 of 2019) [2019] TZCA 511. Therefore, he concluded that this application was wrongly filed in this Court and urged the Court to strike out the same.

Mr. Kijogoo, on his part, maintained that this Court has adequate jurisdiction to adjudicate this application. He contended that the

applicant craves for a compellation order to compel the executive officer to perform his duty. He argued that, according to the jurisprudence in administrative law, the High Court has the power to compel an administrative officer to perform his duty. Regarding the authorities cited by the applicant, Mr. Kijogoo submitted that they are distinguishable with the instant matter since the authority in **Amina Karim Jetha** (supra) is about the relationship between landlord and tenant and that the authority in **Hussein Abdalla Machano** did not bind this Court.

Based on the above rival submission from the learned legal practitioner, the only issue that needs to be resolved is whether the Court have jurisdiction to determine this application.

As applicants are Muslim, the law applicable to them regarding inheritance is **Kadhi's Court Act** No. 9 of 2017. Thus, as it was rightly argued by Mr. Nassor, according to section 6 (1) of Act No. 9 of 2017, the Kadhi's Court have exclusive jurisdiction over the matters pertaining wills and inheritance of deceased Muslims. Section 6 (1) of Act No. 9 of 2017 provides as follows:

"The Kadhi's Court shall have exclusive jurisdiction over all matters and proceedings between parties who are Muslims relating to:

- (a) marriage, divorce and other related issues;*
- (b) personal status;*
- (c) maintenances and custody of children;*
- (d) wakf or religious charitable trusts and gifts inter vivo;*

*(e) **wills and inheritance;***

(f) division of matrimonial assets if there is actual contribution;

and

(g) any other matter in respect of which jurisdiction is conferred to Kadhi's Court by any written law."

[emphasis added]

It is clear from the above-quoted provision that this Court is expressly barred from entertaining any matter relating to inheritance in which the parties are Muslim. Mr. Kijogoo, in his submission, contended that this Court has the power to compel an administrative officer to perform his duty. Yes, I agree with him. But the said power of the Court is only exercised by way of judicial review and not by the way as the learned advocate preferred it by instituting this application under section 3 (1) (a) (b) of **the High Court Act**, without specifying the specific law that clothed the Court jurisdiction to hear and determine it. Therefore, it is my opinion that this Court has no jurisdiction to entertain the instant application.

In the event, this application is struck out with costs.

Dated at Tunguu, Zanzibar, this 30th day of May 2023.



G. J. KAZI
JUDGE
30/05/2023