

TANZANIA / JUDGMENT

OC TANZLII ANTHONY HAJI

COURT
TANZLIIDECIDED
1 January 2021

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE HIGH COURT SUB -
REGISTRY (ONE STOP JUDICIAL CENTRE) AT TEMEKE PROBATE AND ADMINISTRATION CAUSE
NO. 33 OF 2021 In the matter of the estate of late ABDUL HAJI
LADHA..... DECEASED BETWEEN In the matter of application for
letters of administration by ANTONY AMIN HAJI.....
EXECUTOR AND In the matter of objection by YASMINE
HAJI..... BENEFICIARY

RULING

28/11/2024 & 27/03/2025 M.MNYUKWA, J, The Executor in this matter through his advocate Mr. Norbert Mlwale assisted by Benedict Ishabakaki (Adv) and Kassim Kiti (Adv) sought the following prayers;

1. That this Honourable court be pleased to grant an order to allow the executor to amend the Inventory filed in this court on 14/6/2024
2. That this honourable court to allow executor to collect all the monies left by the deceased in the bank accounts and remit in court pending distribution.
3. That this Honourable court grant an order specifically to Yasmine Haji to remit the funds mentioned in the Codicil to the executor or court pending distribution to the beneficiaries in accordance to the Will and Codicil. The orders sought by the executor was strongly objected by the beneficiary through her advocate, Mr. Simon Barlow Lyimo (Adv) who argued that this Honorable court seized to have jurisdiction to entertain any further proceedings in respect of this matter until the determination of Civil Appeal No. 450 of 2024 pending before the Court of Appeal as a beneficiary was aggrieved by the Judgment and decree of this court issued on 15/5/2024. He further submitted that the beneficiary (the then caveator) had successfully lodged before the Court of Appeal the Record and the Memorandum of Appeal on 15/7/2024 and the same was received by the executor on 25/7/2024. He insisted that, since the appeal is pending before the Court of Appeal, this court lacked jurisdiction to proceed with the matter. He cited the decision of the Court of Appeal in Serenity on the Lake Limited V. Dorcas Martin Nyanda, Civil Revision No. 1 of 2019 CAT at Mwanza at where his lordship Justice Mziray quoted with authority the case of Tanzania Electric Supply Company Limited

V. Dowans Holding S.A (Costarica) and Dowans Tanzania Limited (Tanzania), Civil Application No. 142 of 2012. He said that the law is settled law in our jurisprudence that lodging of the notice appeal to the Court of Appeal commences the proceedings in Court. He thus prayed this court to halt the proceedings and pave way for the appeal process to proceed in Court. Mr. Simon Lyimo's submissions was strongly opposed by Mr. Mlwale on behalf of the executor. His line of argument being that, the beneficiary, filed an application for stay of execution before the Court of Appeal and the same was strike out since the kind of the decree issued by this court does not inhibit the executor to fulfil his duties as executor. Mr. Mlwale was of the view that, since the Court of Appeal struck out the application for stay of execution, this court had the jurisdiction to grant the prayers sought. He added that, the beneficiary prayer to halt the proceedings of this court is baseless since stay of execution and halt of the proceedings are synonym words which all meant the same. It was Mr. Mlwale submissions that the case cited by Mr. Simon Lymo for stay of execution are distinguishable in our case at hand since the nature of the decree is not the one which can be stayed as it was held by the Court of Appeal in Yasmine Haji v Antony Amin Haji, Civil Application No 416/01 of 2024. After hearing the parties' submissions, the issue for determination is whether this court has the power to grant the prayers sought by the executor. To begin with, it is important at this juncture to appreciate the fact that, after this court delivered its decision in Probate and Administration Cause No 33 of 2021 which appointed Mr. Antony Haji as the executor of the estate of the late Abdul Haji Ladha, it proceeded with issuing an order for an executor to file the Inventory as per section 107 (1) of the Probate and Administration Act, Cap 352 R. E 20C2. Indeed, the executor filed the Inventory as ordered. Further to that, it is undisputed that when this court ordered the executor to file the Inventory, the beneficiary through her advocate, Mr. Simon Lyimo filed an application for stay of execution in the Court of Appeal. Among others, the application for stay of execution aimed to stop the executor to perform his duty of collecting the assets and the liabilities of the deceased since the Inventory which is presented in Form No 80 includes the assets and the liabilities of the deceased. For sure, through parties submissions in this court, it is undenied fact that the application ••• { for stay of execution was struck out by the Court of Appeal. Now, in determining as to whether this court can grant the prayers sought or not, I don't think if this issue need to detain me much. As it was rightly stated by the Court of Appeal in Yasmine Haji v Antony Amin Haji, (supra) that filing of the Inventory aimed at ensuring the executor is fulfilling his duties bestowed under the Will. Therefore, considering the circumstances prevailing in our case at hand, an executor can still collect the assets and liabilities of the deceased as one among his duties in the administration of estate. That is to say, the prayer by the counsel of the beneficiary to halt the proceedings by stopping the executor to file the Inventory is baseless. Additionally, the argument that this court is supposed to halt the proceedings since there is pending appeal is misconceived since the application for staying execution which is similar to halt the proceedings was struck out since the nature of the decree is the one which allow the executor to fulfil his duty in the administration of the deceased's estate. In Yasmine Haji v Antony Amin Haji (supra), the Court of Appeal had this to say when determining an application for stay of execution:

"..... In my considered view, filing of the Inventory cannot serve as the signaling of the respondent's intention to execute the decree. Rather, this is the fulfilment of the respondent's duties as the executor: It is also a testimony that what the applicant intends to stop put a halt through the instant application has been executed and it is unstoppable." Guided by the above decision and having now considered the prayers sought by executor to amend the inventory filed in this court on 14/06/2024, I allow the prayer to amend the inventory and the executor shall file the same as the law requires under section 107(1) Of the Probate and Administration of Estate Act, Cap 352 R.E 2002 which gives power to the executor or administrator within six months to exhibit to court inventory containing a full and true estimate of all the property of the deceased and the debts that were due to him. The executor also prayed this court to allow him to collect all the monies left by the deceased in the bank accounts and remit in court pending distribution. In this prayer, I allow the executor to collect all monies left by the deceased in bank accounts for purpose of knowing how much is left by the deceased in the bank accounts for him to include the same in the Inventory that will be filed. However, at the moment, the prayer to transfer the same into the Judiciary's designated account known as Mirathi account pending distribution is not granted since some of the deceased's monies are in foreign currencies. Owing to the fact that Mirathi account is a Tanzania shillings account, it is not in the best interest of the beneficiaries for the same to be deposited in this account as the monies will be affected by the exchange rate. Also I order Yasmine Haji to give the full balance on the monies mentioned in the Codicil to the executor for him to include in the Inventory. Again, an order for transfer those monies in Mirathi account pending distribution is not granted as the same will be also affected by the exchange rate. Consequently, the prayers sought by the executor are allowed to the extent explained therein. No orders as to costs since the parties are siblings. It is so ordered. M.MN JUDGE 27/03/2025 Court: Ruling delivered in the presence of the parties. M.MNYUKWA JUDGE 27/03/2025

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/349831/source_file/c711e6ef686bddbf/OC_TANZLII_ANTHONY_HAJI.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/Inventoryamendment-tanzlii-2021--6a3ea5243b1caa912981a6f5>

Prepared on 25 October 2026 · Esheria