

TANZANIA / JUDGMENT

20111216 TZHC Dar es Salaam

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM. PROBATE AND ADMINISTRATION CAUSE NO.65 OF 1991. IN THE MATTER OF THE ESTATE OF THE LATE-DAVID VICENT MGANGA - AND IN THE MATTER OF APPLICATION BY THE ADMINISTRATOR GENERAL FOR DIRECTIONS. Date of last order 25/10/2011. Date of Ruling 16/12/2011. RULING. ' . / ' ' (A.F. Shangwa, J. On 29 th July, 1992, this court granted letters of Administration of the property and credits of the late David Vincent Mganga to the Administrator General. The late_ David Vincent Mganga hereinafter to be referred to as the deceased died at Muhimbili Hospital Dar es Salaam on, 3 rd 1 July, 1985. He died intestate. He was survived with the following children:- [1]. Catherine David Mganga@ Change. [2]. Angela David Mganga@ Kigenda. [3]. Blandina David Mganga@ Mariam. · [4]. Davis David Mganga@ Kipao. [5]. Andrew David Mganga@ Mdoe. [6]. Thomas David Mganga @ Samweli. [7]. Manley David @ Shehiza Mganga. [8].. Maryline David Mganga. [9]. Maud David Mganga. [10].Robert David Mganga. [11]. Bahati David Mganga. 2 The above mentioned Children belong to different mothers namely Theresia Mganga, Joyce Beatrice Ruhui, Tekero Mwashunda, Mary_M_b~, M~ Hiza and Tatu Chogelo. The Children who belong to Theresia Mganga are as follows:-

- ----- _(-L) - _M_ary lip.~_ IY!g~g~

(2) · Maud Mganga (3.)-: Robert Mganga

(4) Bahati Mganga The children who belong to Joyce Beatrice Ruhui are as follows:- (1) David Mganga

(2) Antj.rew Mganga

(3) Kigenda Mganga 3 The rest of the Children belong to different mothers as herein below:- Blandina Mganga's mother is Tekero Mwashunda.

- - - Catherine Mganga's mother is Mary Mbai. . Samweii . Thomas's mother is Mary Hiza. Manley Shehiza's mother is Tatu Chongela. ~~~_p_art from those Children, the deceased left behind one house at plot No. 152 Block "R" Magomeni , Minaki Street , Kinondoni District , Dar es Salaam. This house is presently being rented by one Rogers Sezinga at a sum of Tshs 150,000/= per month. The rent from this house is paid to the Administrator General for purposes of administration to the deceased's beneficiaries /heirs. The prevailing facts in this probate and administration cause are as follows:- 4 Theresia Mganga and Joyce Beatrice

Ruhui Mganga were the wives of the deceased. At the time of his death, the deceased had divorced them many years ago. - He was living with one Tatu Mary Mpembwa with whom he had no . children. Theresia Mganga was his ·first._ wife. He contracted a Christian Marriage with her on 31 st __ ~uly, 1966 at Vuga Lutheran church. After living with her -- - - - for several years, he divorced her .and contracted a Civil marriage with Joyce Beatrice Ruhui at Ilala Barna. He also lived with her for several years, went with her to the United States of America for further studies and when they came back to Tanzania, he divorced her. After divorcing her, he contracted a customary marriage with Tatu Mary Mpembwa with whom he lived until his death. The deceased had several other women as earlier demonstrated. At present, Theresia Mganga, Joyce Beatrice Ruhui, their children and the children who were brought forth by 5 different mothers are .fighting for .inheritance of the house at plot. No. 152 Block 'R' Minaki Street, Magomeni area, Kinondoni District, Dar es Salaam. They are also fighting

- · - for. the rentals of .the -said house. -Eilch child· is demanding for a share. All of them are quarreling over the inheritance of the . said house. They are at 'logger-heads and are threatening to bewitch and kill each other I tell you! . - On 4 th May, 2007, the Ad!linistrator general who was appointed as administrator of the deceased's estate filed a Chamber application for directions on how the· house in ,issue should be dealt with· . and to direct him as to who are ~ .. _ the legal heirs/beneficiaries to the deceased's estate. The application was brought under S. 30 of the Administrator General's Act [Cap. 27 R.E. 2002]. During the hearing of this application, the learned State Attorney, Mr. Muhozya told this Court that there is a big dispute among the deceased's children and two X- 6 widows of the deceased namely Theresia David Mganga and Joyce Beatrice Ruhui over the inheritance of the house at plot No. 152 Block 'R' Magomeni, Minaki Street, Kinondoni

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- - - _ District , J?ar es Salaam Region. He said · that Theresia - Mganga is contending that as her marriage was a Christian Monoganous marriage, the only children who_ are legally supposed to inherit the said house are her children alone Ruhui's children and other children who were born out of wedlock are not supposed to inherit it on ground of illegitimacy. It appears to me that Theresia Mganga is being opposed by Joyce Beatrice Ruhui who is contending that her children are also supposed to inherit the deceased's property as she contracted a Civil marriage with him and that like Theresia Mganga's children her children were also born within wedlock and are legally entitled to inherit the deceased's property. It appears to me also that Theresia 7 Mganga is also being opposed by Joyce Ruhui's children and other children who were fathered by the deceased with other women. These children are contending that being the deceased's children, they are legally-entitled to inherit his - property namely the ~.ouse.at Magomeni. They are saying that they will create havoc if they will be denied a share in "_ . that house.

Under these circumstances, it is quite obvious that the Administrator General who is administering the deceased's state was quite justified in seeking for directions of this court on: how the house at Magomeni should be dealt with and to direct him as to who are the legal beneficiaries or heirs to the deceased's estate. In my view, the deceased was a great lover of women and children. In his life time, he dealt with several women. These were seven in number. As a result, he got eleven children. All of these children used to call him 'Baba'. The Administrator General's request is to direct him as to who ... are the legal heirs to the deceased's estate. In my opinion, the legal heirs to the deceased's estate are those children who used to call him 'Baba'. They all deserve a share in the deceased's property at Magomeni without exception. The argument by Theresia Mganga that as she contracted a monogamous marriage with the deceased, the children who are supposed to inherit his property are her children alone as they are the only ones who were born within wedlock is an abuse of her own customs and African traditional cultures in which the question of illegitimacy of children is of no moment and has no place. Also, her argument that her children are the only ones who are supposed to inherit the house at Magomeni because she contributed some of her salaries in purchasing it from National Housing Corporation is not valid. Similarly, Joyce Beatrice Ruhui's argument that her children deserve a share in the house at Magomeni because she contributed her marriage gratuity for payment of the loan in respect of the said house is not valid. I say their argument is not valid because their contributions were intended to assist their late husband (deceased) in acquiring it. That is why when he divorced them, none of them petitioned for its division between him and her. The Administrator General requested this Court also to direct him on how the deceased's estate namely the house in issue should be dealt with. In my considered opinion, as the children of the deceased's widows and the rest of the children who were fathered by the deceased with other women are threatening to bewitch and kill each other and are quarreling over the inheritance of the house in issue, I direct that it should be sold and the proceeds of sale should be distributed equally among the deceased's children without exception. 10 For the sake of fairness, the deceased's widows namely Theresia Mganga and Joyce Beatrice Ruhui who made contributions to the deceased for payment of the

- Loan to National Housing Corporation in acquiring it should as well get equal shares with the deceased's children after selling it. I strongly direct that the Administrator General should sell it at the market value and the proceeds of sale should accordingly be distributed as directed herein. This task of selling it should be accomplished within a period of three months from today. . . . If there is any rent which has so far been collected, it should be distributed by the Administrator General to the deceased's children only within a period of one month from A.F. Shangwa, JUDGE 16/12/2011. 11 I delivered in open Court this 16 th day of December, 2011 in the presence of Mr. Mhozya for the Administrator General and all interested parties. JUDGE 16/12/2011. 12

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