

TANZANIA / JUDGMENT

adrian mongo vs willy mongo

2020 tzhc 3354 15 september 2020

COURT
TZHCDECIDED
15 September 2020

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IN THE HIGH COURT OF TANZANIA (IRINGA DISTRICT REGISTRY) AT IRINGA PROBATE AND
ADMINISTRATION APPEAL NO 8 OF 2015 (Originating from District Court of Iringa, in Probate
and Administration Cause No. 27 of 1990) ADRIAN MONGO..... APPELLANT
VERSUS WILLY MONGO..... RESPONDENT

JUDGMENT

KENTE. J The parties herein namely Adrian Mongo and Willy Mongo who are respectively the appellant and respondent are the sons and therefore among the heirs of the late Edifonce Mongo. The said Edifonce Mongo died intestate on 15th May 1986. Following death of their father, the respondent successfully filed a petition for letters of administration in the Iringa District Court (vide Probate and Administration Cause No. 27 of 1990). Apparently dissatisfied with the respondent's mode of administration of their deceased father's estate particularly a registered landed property known and described as Plot No. 84, Block "V" Ilala Area within the Municipality of Iringa which seems to be the most important property that caused controversy, the appellant vainly sought to have the appointment of the respondent revoked. Apart from dismissing the appellant's (the applicant) application which was based on the respondent's alleged non-compliance with the laws relating to the administration of the deceased's estate, the District Court (Kayombo RM) went on dealing with the case as if it was based on the ownership of the said landed property. Accordingly the trial District Court found the respondent to be the owner of the said property and proceeded holding inter alia thus:- "the house was bought by the respondent who is having certificate of occupancy with title No. 2203 MBY LR as filed herein the file." With due respect to the trial Resident Magistrate, I am of the opinion that deciding the ownership of the house on Plot No. 34 Block "V" Ilala Area in Iringa Municipality which as it turned out was changed into Plot No. 2203 MBY LR, in an application which was specifically for revocation of the letters of appointment was not within the province of the trial Magistrate. For it is neither within the court's mandate to distribute the deceased's property to his heirs nor is it the court's jurisdiction to determine matters which were not pleaded by the parties as the trial Magistrate purportedly did in the instant case. The crucial question which the trial court was asked by the parties to decide in the present case was whether the grant of the letters to the respondent had become useless and inoperative or the respondent had willfully and without

reasonable cause omitted to exhibit an inventory or he had exhibited an inventory or given an account which was untrue in a material respect as alleged by the appellant. According to the lower court's record, the respondent was appointed administrator of the estate of his deceased father on 21st November 1990. Going by the inventory dated 16th April 1991 which the respondent filed in court, the house in dispute was allegedly sold to him in January 1991 at Tshs. 150,000/=. What is startling however, is the conceded fact that there was no written sale agreement to that effect and the appellant is emphatic that the house in question has never been sold to anybody including the respondent. It is not insignificant to point out that the respondent is accused of fraud in transferring ownership of the disputed house to 3 himself. It should be noted here and I must make myself very clear that in any way, I am not condemning the respondent to be fraudulent without first and foremost, according him a hearing. Rather it appears to me that he was not a fit person to be appointed to administer the estate of his deceased father as he seems to have fallen into disputes with his co-heirs immediately after his appointment. In other words, the appellant had lost the advantage of enjoying the trust and confidence of other beneficiaries of the estate of his deceased father. His appointment as administrator of the deceased's estate should have been revoked much earlier. In the event and for the above reasons, this appeal is allowed. The decision of the trial District Court is quashed and the orders therein are set aside. The appointment of the respondent as administrator of the estate of the late Edifonce Mongo is revoked. Anyone who wants to step into the shoes of the respondent is at liberty to petition the court to be appointed as the respondent's substitute. In view of the nature of the present dispute and in order to reunite the family members of the late Edifonce Mongo, I hereby order for each party to bear his own costs both in this court and the court below. It is so ordered. Dated at Iringa 15th day of September, 2020. JUDGE

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Prepared on 13 October 2026 · Esheria