

TANZANIA / JUDGMENT

20160909 TZHC Arusha2

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TZHCDECIDED
9 September 2016

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA [IN THE DISTRICT REGISTRY]
AT ARUSHA PC CIVIL APPEAL NO. 17 OF 2016 (Based on Civil Appeal No. 1 of 2016 of Probate and
Administration Cause at Monduli District Court, Original from Mto wa Mbu Primary Court,
_Probate and Administration Cause No. 2 of 2016) AGNESS KI BO RONI
NDOSSI APPELLANT VERSUS ROSALINA MVUNGI.
RESPONDENT Date of last order: 18/07/2016 Date of Judgment: 09/09/2016

JUDGMENT

MASSENGI,J Appellant Agness Koboroni Ndosi aggrieved by the decision of the Monduli District Court on its appellate jurisdiction in Probate and Administration Cause Appeal No. 1/2016 original Probate and Administration Cause No. 2/2016 before Mto wa Mbu Primary Court is now appealing to this Court. Appellant is unrepresented while respondent Rosalina Mvungi is represented by the learned Counsel Mr. Karata. The appeal before this Court lies on the following grounds:

1. The District Magistrate erred both in law and in fact by considering the illegal document used to collect certificate of 1 death with registration No. 0052330 while the original document has registration No. 0179679
2. The District Magistrate erred in law and in fact by considering two bundles of minutes which were not intended to appoint the Administrator of the estates of Ndelekwa Kenasi Pallangyo
3. The District Magistrate erred both in law and fact by giving a respondent to administer the estate of the deceased unprocedural Appellant prayed the Court for the following orders:
 - (a) The decision reached by the lower Courts on Probate and Administration Appeal No. 1/2016 delivered on 13/04/2016 be quashed and set aside
 - (b) The respondent's appointment be revoked and a neutral person be appointed to execute the deceased estate

(c) Any other orders this Court may deem fit and equitable to grant The appeal was scheduled to be heard and determined by Honourable Judge Mwaimu who ordered the appeal to be disposed off by way of written submission on the following schedule.

1. Appellant was to file her written submission in chief by 01/08/2016
2. Respondent was to file her reply submission by 15/08/2016
3. Rejoinder submission if any was to be filed by 22/08/2016
4. Judgment was to be delivered on 09/09/2016 2 I ' - Honourable Mwaimu could not deliver Judgment on ground that ' ' he was due to retirement and this appeal was reassigned to me. Before 09/09/2016 I went through the record that was two days before and I found that the appellant have not filed her submission in chief as scheduled that was the submissions were to be filed by 01/08/2016. On 12/08/2016 respondent's advocate Mr. Julius Karata wrote a letter to this Court with Ref. No. JK/ADV/RM/L.02/2016 notifying the Court that he could not file reply submissions as appellant has not filed her submission in chief as ordered. Failure of appellant to file her submission in chief supporting her appeal equates to failure to prosecute and consequence is to dismiss the appeal for want of prosecution. For the sake of justice after gning through the trial Courts record and record of appeal I sensed some illegalities committed by both Courts and therefore dismissing the appeal was upholding the illegalities. By revisional powers vested to this Court by Section 31 of Magistrates' Court Act, I have decided to reverse the proceedings as by closing my eyes on the illegalities which I will soon demonstrate means to sit on justice which is not the goal of the Courts of law. Before demonstrating the illegalities I reproduce shortly the background of this matter. Both appellant and respondent claims to be wives of the deceased Ndelekwa Pallangyo. They are living in different places. Appellant is living in Meru area where they are deceased's properties 3 and respondent is living in Mto wa Mbu. After the deceased has ' ' passed away respondent file a probate cause at Mto wa Mbu Primary Court asking to be appointed as the administrator of the deceased's estate. Appellant objected respondent to be appointed as the administrator of the deceased estate but at the end of the day, the Primary appointed respondent as the administrator but limited to administer the estate of Mto wa Mbu only. Appellant appealed to the Monduli District Court and the decision of the Primary Court was upheld. Hence this appeal. What strike me is the appointment of the respondent to administrator only part of the estate of the estate of the deceased. Section 5 of the fifth Schedule of the Magistrate Court Act provides for general duties of the Administrator, it provides: 'J1n Administrator appointed by a Primary Court shall with reason able diligence/ collect the property of the deceased and debts that were due to him/ pay the debts of the deceased and debts and costs of the administration and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out this duties/ shall give effects to the directions of the primary Court" From the above provision of law it is obvious that the appointment of administrator as according to Section 2 of the same schedule the Primary Court can appoint more than one administrator in regard to administration the same estate, but the Court cannot 4 appoint an administrator to only part

of the ,deceased's estate as the Mto wa Mbu Primary Court did in appointing respondent to administer deceased's estate only that was at Mto wa Mbu. Section 5 of the 5th schedule of the Magistrates Court Act does not allow the administrator to collect part of the deceased's estate but requires the administrator to collect all of the deceased's estate and distribute it accordingly. Therefore the Primary Court erred · in appointing the respondent to administer deceased's property specifically situated at Mto wa Mbu while deceased had other properties situated at Meru and many other places. This era was illegal as it offends the requirement of Section 5 to the 5th schedule of the Magistrates Court Act. I could revise the order of Primary Court. and order the respondent to administer the whole deceased's estate, but going through the record I find that Plaintiff and respondent are not in good terms and allowing respondent to be the administrator of the deceased's estate will cause more harm to the family. I therefore find it not prudent the administrator to administer the whole deceased's estate. I therefore revoke respondent's appointment and let another independent person be appointed as the administrator of the late Ndelekwa Pallangyo. Appellant as well does not qualify to be appointed as the administrator. 5 As appellant didn't file her written ~ubmjssions as ordered by this Court she is condemned for today's costs. · JUDGE 09/09/2016 Delivered in Court this 9th September, 2016 in presence of Appellant and Mr. Karata, Advocate for the Respondent. Right of appeal fully explained after subject to leave granted by this Court. F.H. MASSENGI JUDGE 09/09/2016 Words 1,142 6

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/agness-koboroni-ndosi-v-rosalina-mvungi-appointmentofadministrator-tzhc-2016

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