

TANZANIA / JUDGMENT

20200518 TZHC Dar es Salaam

COURT
TZHCDECIDED
18 May 2020

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
PC CIVIL APPEAL NO. 60 OF 2017 {Appeal from the ruling of Ilala District Court
Inspection Cause No. 13 of 2015 original Probate and Administration Cause No. 102 of 2005 by
Buguruni Primary Court at Dar Es Salaam} VERSUS NARGIS ALLY -; YUSUFU ■■■u.....
i~ . ~. . ■ a ■■ u ■ l ST. RESPONDENT

- ' .~ IBRAHIM ALL Y YUSSUPHa :~::~: , ,~ , ; , , 2No .. RESPONDENT . . Date of last Order: 20/06/2019 .'. . Date of Judgment: 15/05/2020 . . . ' . . MGONYA, J. . ': ' : Aggrieved;; by the decision . of Ilala District. ';;Court':C:,in Application No.13/2014: the;;; Appellant (holding power of Attorney) in this matter appeal~d before this ~onorable Court em~rged~ with;;_ one ground ,of appeal against tl_e d. ~~ision,;, as herein below: 1
- 1. "That, the District Court erred in law and fact in proceeding to hold that it had jurisdiction over the matter while the 1 st Respondent never had faithfulness within the jurisdiction. " When the matter was for hearing, the Court ordered the same be disposed of by written submissions. The order was adhered to, hence this Judgment. The Appellant in his submission narrated the historical background of the matter as it appears in pages one and two of the submission. And after such history, the Appellant submitted that, the problem at hand is that the court misdirected itself by the false evidence of the 1st Respondent at page 6 at paragraph. 4 of the typed ruling, that he was deprived conspicuously inter alia on the sale of plot No. 133 and 135 at Boko to Msechu at 360 Million without including legal beneficiaries and without distributing the shares accordingly. Further, the Appellant states the holding by the District Court tends to suggest that the 1st Respondent Nargis Ally decided to be;; unfaithful to settle out of Court by the said purported settlement on plot No. 133 and 135 Block G Boko Dovy area in Kinondini Municipality DC Dar es Salaam while her complaint in Inspection Cause No. 13 of 2015 of Ilala District Court 2. \, ' . , ' . . . , : . . , : , . ' _ . . . ' . st! erred in law to appoint of the 1 Respondent as Administrator of the . . . ; . . . f' . . . the Estate of late deceased Arly Yusuf Mpore. 1 The Appellant went further in citing Section 49 (1) (b) of The Probate Administration of Estates Act [Cap., 352 R.E 200] and added that oral evidence must contain fact and must be true, as this 1 st Respondent statement contained lies in the proceedings. The case of LA~\$Q COTTON GINNERIES ..&--e - - - - - . - - - - - ~ - - - - , _ - - - - ~ - - - - . -

- . - . "'#'. , OTHERS VS. THE LOAN...ANOADVANCES·REAL..IZATION· TRUST {LARiT) Civil Application No. BO of 2002 , the Court 2nd of . Appeal. ·de,cisi_on .in UGANDA VS. COMMISSIONER. FOR· PRISONS ;EJf., PARTE MATOVIJ,. Vias cited too. It is the Appellant assertion that the 1st Respondent ignored the .Principle of natural justice to~ the right_ by the said Ruling_ in' Inspection Cause No. 13 of 2015, at Ilala District Court. and acts contained therein are full: of .false information _by_ the 1st Respondent statements. In the event therefore., this . Hon.ourable Court be, pleased to quash appointment of :the 1st , Respondent as Administrator of the·Estate of the::deceased .Ally Ysuf Mpore., and prayed that th~ appeal be allowed; , In. the· Reply the 1st- Respondent never filed her reply but the 2nd Respondent filed. his reply and· stated that· he concurs- that the of {·. District Court had no jurisdiction to entertain the ·matter and I relied in the case of SCOLASTICA BENEDICT VS MARTIN BENEDICT T/R N0.1 OF 1993 and ISMAIL MOHAMED VS. MWAHIJA GULAM MUHAMED in Civil Appeal No. 181 of 2002 to support his argument. .. He further argued and reiterated that the Court from the above decision erred in law and in fact by adjudicating the matter · which had first': already been determined before it and that the Magistrate lacked jurisdiction as matter of Administration of Estates are dealt with by the Primary Court. The provisions of Section 2 {a} ~h Schedule of the Magistrates :Court Act [Cap. 11 R.E(1002)] was cited to support his_ assertion. . - - . . Moreover~ the 2nd Respondent submitted that the parties had not presented their compliant for: misappropriation of the estate and /or application for additional administrator before the Court of original jurisdiction -and failed filing the same to the District Court is superfluous (isory power. .1 In conclusion, it was the 2nd Respondent's submission that the· Magistrate· 'in his ruling at page 7 paragraph 2 illustrated that such appointment; and of a third Administrator· of the deceased was ·for' the interest of justice but there was no application filed to do such an appointment. Further. the court was never moved to do what it did ~ence what transpired was contrary to law. Further that, the appointment of the two Administrators was improper and this Court should not bless such error. The 2nd Respondent also prayed that the appeal be allowed. Having carefully and thoroughly gone through the parties' submissions as filed before this Honorable Court, I find that the attack against the decision of the Ilala District Court is upon Jurisdiction where the Appellant and 2nd Respondent are of the opinion that from such illegality this appeal be allowed .. The Appellant in his ground of appeal burdened this Court in capturing and· knowing what is· required out of his ground of. appeal. It is upon his submission that the context is: somehow grasped. The Appellant states of unfaithfulness of the 1st Respondent who happened to have settled a matter out of court of a sale of plot No: 133 and 135. This submission by the Appellant is strange in accordance to the ground of the appeal. He does not show as to how these averments relate to lack of jurisdiction. The Appellant's contention; that the provisions of Section 49
- (1) of the Probate Act (Supra) provides that Administrator can be revoked when there is fraud or false statement, and these were the averments made by the 1st Respondent and that the 1st Respondent ignored the principle of natural justice; and for the reason of

uttering false statements and fraudulent acts the 1st Respondent's appointment be revoked. This concern was also supported by the 2nd Respondent. Having gone through the records, I have noted that the existence of the Inspection Cause originated from Probate Cause No. 102 of 2005 before Buguruni Primary Court. The 1st Respondent being aggrieved by how the administration went about. The 1st Respondent wrote a complaint letter dated 19/06/2015.. and filed it before the District Court where there was pending- the Inspection Cause complaining of how the property was administered. The complaint was later withdrawn but the District Court suo motto invoked its provisional powers and appointed the 1st Respondent and two others to be Administrators of the deceased estate. I am of the firm observation that the District Court's appointment of new Administrators was a misdirection, and therefore making the appointment illegal since there was no application seeking for such appointment. It is trite law that when a Primary Court has appointed Administrator and complaints arise, the proper Court with jurisdiction is the Court which appointed the Administrator. Therefore, I am of the firm view that the appointment of the 1st Respondent and two others was a misconception and subject to revocation where the same has already been revoked under

- PC Civil Appeal No. 52 of 2017, where the 1st Respondent and the two other Administrators were revoked and this Court found from the records of this matter that Ibrahim Ally Yusuph the Administrator was legally appointed. From the above, I allow this appeal with reasons set forth. Since this is a probate matter each party to bear their own costs. It is so ordered Right of appeal allowed. I/L. E. M. O'71! WA JUDGE 18/05.(2020, 7.. I Court: Ruling delivered before I-Lon. R. B. Massam, Deputy Registrar in chambers in the presence of Mr. Uforo Mangesho, Advocate for the 2nd Respondent, the Appellant in person and Ms. Janet RMA, this 18th day of May, 2020.

- L.-E. MGONYA _ JUDGE 18/05i2020 e

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