

TANZANIA / JUDGMENT

20051020 TZHC Dar es Salaam

COURT
TZHCDECIDED
20 October 2005

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

„, ... - 1 IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM P.C. CIVIL APPEAL NO. 72 OF 2004 (From the Decision of the District Court of Kinondoni, Civil Appeal No. 72 of 2003)
CHRISTOPHER KILIBAHA APPELLANT VERSUS MWANAIDI JUMA
MWINTENDE..... RESPONDENT

JUDGMENT

A. Shangwa, J. The Appellant Christopher Kilibaha is appealing against the decision of the District Court of Kinondoni in Civil Appeal No.72 of 2003 which originated from Probate and Administration cause No. 82 of 2003 of Kinondoni Primary Court. 2 The history of this case is as follows: On 14th April, 2003 , the Respondent Mwanaidi Juma Mwintende filed an application in the Primary Court of Kinondoni for being appointed as administratrix of the estate of the late Mwanahamisi Juma Mwintende who died intestate on 8/3/2003 and left behind two children namely Kelvin aged 15 years and Mariam aged 10 years. She also left behind one house at Magomeni Kagera which is identified as house No. 356 and some personal effects. Before filing the said application, a team of twenty relatives met on 16/3/2003 and appointed her as guardian of the deceased's two children and administratrix of the deceased's estate. On 30th June, 2003, the Primary Court of Kinondoni officially appointed her as administratrix of the deceased's estate. Prior to her appointment, the Appellant did 3 object in the Primary Court of Kinondoni against her appointment but the said Court dismissed his objection. The Primary Court's record shows that the Appellant objected to the Respondent's appointment as administratrix of the deceased's estate not because she does not deserve to be so appointed but because he wanted the Court to appoint him instead of her. After dismissing his objection and appointing the Respondent as administratrix of the deceased's estate, the Appellant went to the District Court of Kinondoni on 17th October, 2003 and filed Civil Appeal No. 72 of 2003. In that appeal, he asked the Court to reverse the Primary Court's decision and order the Respondent to give vacant possession of house No.356 which was left behind by the deceased and in which she is currently 4 staying and guarding the deceased's children Kelvin and Mariam. The District Court of Kinondoni refused to reverse the decision of the Primary Court of Kinondoni and to order the Respondent to vacate from house No.356 and proceeded to dismiss the Appellant's appeal for lack of merits. The District Court held that the Respondent was properly appointed by the Primary Court as administratrix of the deceased's estate. The Appellant was not satisfied with the District Court's decision, and on 13/2/2004, he filed this appeal. In his memorandum of appeal, he raised three

grounds of appeal. In order to dispose of this appeal, I will only deal with ground two which is sufficient enough to dispose of it. This ground reads as follows: 5 " 2. That the District Court erred in law and facts by appointing the sister of the deceased instead of appointing the husband who has the right and is the guardian / father of the children~ In my considered opinion, the Primary Court of Kinondoni was not wrong in appointing the Respondent as administratrix of the deceased's estate, and in actual fact, the District Court of Kinondoni was not wrong in upholding the Primary Court's decision to appoint her for that function. The record shows that her appointment as administratrix of the deceased's estate was backed by twenty family members who considered her to be a very suitable person to be so appointed. • 6 It must be understood that even though the Appellant was the deceased's husband, it does not mean that there is nobody else who can be appointed to administer the deceased's estate except him alone. Generally speaking, the Court has power to appoint any one whom it considers fit to administer the deceased's estate for the sole interest and benefit of the deceased's beneficiaries. This means that, in the exercise of its powers, the Court is not legally bound to appoint any person as, administrator or administratrix of the deceased's estate even if he is a son or daughter of the deceased, or is the husband or wife of the deceased. As the Primary Court which appointed the Respondent as administratrix of the deceased's estate found her to be a fit person to administer the deceased's estate for the benefit of the deceased's beneficiaries, I hold that the District Court did not err in its refusal to reverse the Primary Court's 7 decision and in not ordering the Respondent to vacate house No. 356. As the Respondent is giving motherly love to the deceased's two children who are young and caring for them, it would have been very ridiculous for the District Court to order her to vacate house No. 356 at Magomeni Kagera which is the property of those children who are its beneficiaries and where she is living with them. As this case is not a matrimonial case between the Appellant and the Respondent, it was wrong for the Appellant to apply the doctrine of division of matrimonial assets in a matter of probate and administration cause such as this one. In fact, I find that it was a total misconception of law for him to do so. For the reasons I have given in this judgment, I hereby dismiss this appeal with costs. 1 8 ~ A. Shangwa JUDGE 20/10/2005 ,. Delivered in open Court in the presence of the parties this 20 th day of October, 2005. ~ A. Shangwa JUDGE 20/10/2005.

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/341629/source_file/aa2ccc3e46fa27ad/20051020_TZHC_Dar_es_Salaam.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/christopher-kilibaha-v-mwanaidi-juma-mwintende-appointmentofadministratrix-tzhc-2005>

Prepared on 14 October 2026 · Esheria