

TANZANIA / JUDGMENT

19710107 TZHC Mwanza2

COURT
TZHCDECIDED
7 January 1971

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-- Li f i IN THE HIGH COURT OF TINZINIP (IN THE DISTRICT RhGISTHY.) T 14,4I1NZL. (pc)
CIVIL iPPEcL NO. Tj OF 1970. ~ (From the decision of the District Court of Bukoba District at
Bukba in Civil Jppea No.33 of 1970. Original Civil Case lTo,79 of 1969 of the Buhenangab Primary
Court.) El. YOHLN11, MARIP CLL?IIDNCE?O Ir LPPh;LLLNT(Orig,Dcfendant.) DI,
ETE:RIL: FOR IL&RT. •• VC

- ciDENTOrig.Plaintiff.) L TAN
- 0 c.- 32 JUD IMENT S, DAR the prscent Ctr.U4 QLna in the Buhn.i i clangabo priimary conrt
claiming, (on behalf of her son. J1lbcr) a siamia 11i Kyato area. From the evidence it is clear
that the respondent and the appellant icre married to one Clemonce. Clamonoc died some
years ago leaving aras of lend to be dividod to his heirs. There is no dispute M that Bi.Escria
is The first wife of the, deceased. Pier is there any dispute tht Llbcrt is the first son of the
deceased by Bi E?stria, his first wife!. Bi,Lste:ia argued in the primary court that by virtue of
Hay Customay Law her son 1b.'!rt was entitled to ba tjic principal hair and inherit the
shamba in which his' father was buried. /B. Yoh.ana on the other hand argued that the Kyato
shamba was given to bL is son Constantine by virtue of the deceased's will. -he 'primary
court magistrate in his judgraent held the alleged will to b invalid and would have given
judgment in favour of Bi.Estoria but for ta fact that his was a minority opinion and as such
he had to comply with the o;inion of the assessors who found in favour of Bi.Yohaie. On
apeal to the district court the decision of the primary court set aside and judgment was
entered in favohr of Bi.Estoria. I 'Dissat- isfiord with the district court ju';mcnt Bi.Yohana has
now coma to this court. Questions of inheritance -ihora Customary Law is mv olvd dvk by
Laws of Inheritance G0N.1 7 0.436/63. Section 19 of this Coy rnmcnt Piotico is to the effect
that - Tic principal heir of the deceased is his first son from the senior'houso, - If th d:ceas,d
1ut no 'son of t1v. sonin' house, his eldest bOrn -son of any house will be his :n'irlc)4:'a1
hc,.ir." Ls ther is no argument in this case that Elbort is the first son of the decease from his
senior house, Libert is, unless reason to the contrary is sho the principal heir of his father's
property. Bi,Ychana produced tc the rimary court a d.ocuiment wnich she purported to be
the last will of the accasod. The will tends to show that the deceased excluded lbort . the
rincipal heir. The primary court magistrate as well as the disrict 1 1, -

- --.-;:-_•;_-----.-.-.-- I 5fJ N) 'L6t O1tt3f jo .&ep tnL stun. 03 SSOO tDtT DAtJ O. St qUopuOdJoI CTJJ °T-TJ DtOJOIO. [?OCIC2 Z)T 'pDqdn iqoto n pus pirnos St UOWPfl s T tw otstp oqu •jciocioid sotq. sti jo O)tSfl1 cYq. it)I Ut S 'T odoiI S c1fl.SJ Sttj j ot TouTlc otj. si DH .pousToLm I sutwox aTDTI TedTOUlaict. se I.qTJ Jo uotsod DqT 7011 C SQ Pue PTTUT se 'udcT uosrd otq! ~ l owe tl ol ta q pooipod toumoop DILL 0 StflX Jo Ott t U3 DT. IOJ S'TOSeOt nvololsjns Utt .ttOtfltM t.IOtIUt O. pDfltUD tIOSIDCT 1ot(UTSTp OUtSO - SM .t OT1SSI Ut soi, DT1STp J[tWtS S UOtT1M Ut 1 10 TOOT ° aSqO 3rna 'Zfl TSE ZJ)L.!4)I 1 9 Oit JO MSr[Oq 30 UOtODS .q pOlTflbDX SO OS OS .tOSOJdXO OtX soop Dt osn000q MOI .S JtOt TOdIOUteT Stt oqT tt UTSTpo PDPUDUT otJ. l3DO qe .ou si t ioumOOp Y:. Wo 1ttM po3rJottqtM soAnt s 1 pos0000p Dqq. JO ouo TTT-N 30 U3'] ctq 30 6t uotq.00s Vq poxtthci s pos0000 ot. jo uouiswpi us Jq pDSSOt !. .OU hIM O YfLO O 50t ItDJIT O o uioxJ utro;no St qt qeifl. pOt3StqOS We i pus quOJflooP pDtr!U15X0
- jlocw DA S VL I 'PTTUT t pUTLOJ puo JTTm oq. pottTW9O OOSeW --

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