

TANZANIA / JUDGMENT

20111212 TZHC Dar es Salaam1

COURT
TZHCDECIDED
12 December 2011

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IN THE IDGH COURT OF TANZANIA
"AT DAR ES SALAAM
PROBATE AND ADMINISTRATION CAUSE NO. 16 OF 2011
IN THE MAITER OF THE ESTATE OF THE LATE SAID
SULTANI MWAGO
AND

IN THE MAITER OF AN
APPLICATION FOR
PROBATE BY :

SELEMANI SULTANI MWAGO
Date of last order: 13/11/2011
Date of ruling: 12/12/2011

RULING

KARUA, J. Saidi Sultan Mwago, who had a fixed place of abode at Msasani Kinondoni District in Dar es salaam, passed away on the 28 th October, 2009. He has left behind gross assets 1 i ' worth, probably, it is said, the sum of Shs. 250,000,000 /=. Fortunately, the deceased left behind a will. In the will he appointed Seleman Sultan Mwago, the executor of his estates. Under Section 55 and Rule 33 (1) of the Probate and Administration Act., Seleman seeks to be declared the executor of the deceased estates. The deceased is survived by his wife, Makata Ramadhani and five children, Athuman, Hadija, Saada, Mwanahamisi and Baraka. In his will, the deceased has distributed all his properties; he left behind, to his children. Makata, the deceased wife, felt aggrieved. Under Section 65 of the probate · and Administration Act, she has lodged in court her exception. Basically, she does not contest the grant. However, she wishes the court to give the executor special directions to the effect that though the will of the deceased does not provide for a share of inheritance to her, she requests this court to direct the executor to provide her with a 'kithumni', 1n accordance with the Islamic law of inheritance. In other words, to that extent only, the wife of deceased, believes that the deceased will, is defective because it did not provide for a share of inheritance to the deceased wife. The objector cited verse, (aya) 12, of Chapter (Surat) 4 i.e. al Nisaa of the Holy Quran. 2 Consequently, the wife of the deceased invited the court to order the executor to evaluate the entire estates of the deceased and hand over one eighth (1 / 8) of the value of the estates of the deceased to the deceased wife. On the other hand the executor refuted

the assertion that the deceased will was defective because it did not provide for the objector's benefits. According to the executor the will has accommodated the objector's "kithumni" in the following manner:-

- a) She was bequeathed with the interest and the right to live in one of the house left behind by the deceased for the rest of her life, as well as, collecting rent from another house built in the same plot.
 - b) She inherited the deceased motor vehicle Reg. No. T 513 AWC Toyota Corolla.
 - c) She was given the right to use with her children all the household properties including kitchen utensils, sofa sets, television, computer, freezer and refrigerator. These provisions, according to the executor, constitute the objector's "kithumni" under the Islamic Law of Inheritance, to which the deceased professed. 3 i' The issue, in my considered view, is whether the above arrangements yields or rather constitute "kithumni" as provided under the Holy Quran. Both the applicant and the objector were defended. The application was preferred and argued before me by Mr. Deogratias J. Lyimo, learned advocate, while the objection was taken by Prof. Safari, learned counsel. I thank both !_earned counsels for their profound exposition of the law. Both counsels were unanimous that Islamic principles of succession apply in this case. The reason is not far to seek. The deceased professed Islamic religion. He was a Sunni of Shafei School. The general rule is that a Muslim cannot, by will, dispose of more than one third of his estate after payment of funeral expenses and debts. Disposition of the two third of the deceased estates must follow Islamic principles of intestate. Indeed, as rightly pointed out by Prof. Safari, the share of the objector is provided by verse 12 of chapter 4 of the Holy Quran. The verse is subscribed in these words:- "In that which your wives leave, your share is half if they have no child; but if they leave a child, you get a 4
- -- · r---,---,-- - fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you .- have bequeathed or debts " Prof. Safari elaborates by stating:- This section of the verse has been aptly summarized by Sheikh Pera Ridhiwani in his book Fupisho la mirathi at page 6 where he says:- "Fungu la mke ambaye amefiwa na mumewe ni (¼) robo. Mwanamke hupewa robo endapo mume aliyekufa hakuacha mtoto wala mjukuu. Iwapo mume ameacha mmoja au zaidi katika hao niliowasema fungu lake atapewa thumni (1/8)" 5 The executor concedes in this case that the deceased is survived by five children hence the objector is entitled to inherit "kithumni" (1 / 8) of the estates of the deceased. However the executor contends that what the deceased bequeathed on his wife is equivalent to "kithumni" (1/8) of the deceased estates. Therefore she is not entitled to more properties. Prof. Safari strongly submit that what the deceased dished to her wife is bizarre, as in the first place, the objector is merely given accommodation to stay, in what used to be her matrimonial home as a favour. It is the deceased children Saada and Mwanahamisi who are bequeathed with the two matrimonial houses built on plot 164 Block F Msasani Dar es

Salaam. The deceased had five houses in all. Apart from the two on plot number 164 Block F at Msasani, which Saada and Mwanahamisi have inherited, a house on plot 71 Block M which the deceased bequeathed it to Athuman; a house of Plot 115 Block B, Mikocheni, which the deceased bequeathed to Hadija, and a small house at Mkuranga and a farm which the deceased bequeathed to Baraka. The objector was only given a motor vehicle Reg. No. T 513 AWC Toyota Corolla. 6 • I have fallowed and considered the counsels arguments. I would, agree with Prof. Safari that the arrangements were quite unfair and left the objector insufficiently provided for. God provided the deceased with a lot of wealth for which the deceased has distributed to his children and left his wife with emptiness, which does not carter for the one eighth, as provided by the Holy Quran. In the circumstance, I will accept the invitation offered by Prof. Safari and consequently order that the executor of the deceased estates should evaluate the entire estate of the deceased and pay the objector one eighth of the value of all the estates of the deceased. The executor is at liberty to evaluate one of the landed properties left by the deceased and hand it over to the deceased wife, provided it is equivalent to the one eighth shares to which the deceased's wife is entitled. It ,is so ordered and directed.(/ ~- (j fl ' \:::1 JUDGE 12/12/2011 7 DATED AT DAR ES SALAAM
Appearances:- For the Objector: Present in person For the Executor: Ms. Urassa/lyimo 8

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/distributionofestate-tzhc-2011>

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