

TANZANIA / JUDGMENT

doris rose makene vs jonia kengeli makene 2005 tzhc 194 19 september 2005

COURT
TZHCDECIDED
19 September 2005

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1 IN THE HIGH COURT OF TANZANIA DAR ES SALAAM DISTRICT REGISTRY AT PAR ES SALAAM CIVIL CASE NO. 340 OF 1999 DORIS ROSE MAKENE..... APPLICANT VERSUS JONIA KENGELI MAKENE RESPONDENT R U L I N G A. Shangwa, J. In this case, Doris Rose Makene is applying for the revocation of the Letters of Administration granted to the Respondent Jonia Kengeli Makene who was appointed by this Court on 18.3.2003 as Administratrix of the estate of the late Professor William Josbert Makene who died intestate on 31.12.1998. There are two grounds which have been raised by the Applicant for her prayer to revoke the grant of Letters of Administration and appointment of the Respondent as Administratrix. The first ground is that the Respondent failed to file the inventory within six months from the date of the grant of the said Letters contrary to her own oath and that this inventory which is dated 29.6.2004 is false and fraudulent in that it tells lies to her own advantage and to the detriment of the Applicant and her sister Noela Makene. The Applicant's learned counsel Mr. Kilule gave examples of lies in the inventory which he pointed out to be as follows: First, that whereas it is indicated in the inventory that the house on plot No. 394 with title deed No. 186168/94 Upanga area, Dar es salaam is still under mortgage to NBC with a loan liability of Shs. 5,000,000/=, this mortgage was discharged on 5.5.2003 and the house was handed over to her. Second, that whereas it is indicated in the inventory that Farm No. 360 at Mwanambaya, Kisarawe District with title No. 15731. L.O. No. 1000201 is still under mortgage to Tanzania postal Bank as at 29th June, 2004 with a loan liability of Shs.2,500,000/=, this mortgage was discharged by her and the original title for the Farm was handed over to her. Third, that whereas it is indicated in the inventory that the house on Plot 24 at Mikocheni B is still under mortgage to THB (which is under liquidation by Tanzania Investment Bank) and that it has a loan liability of Shs. 6,000,000/=, this loan was paid by her in February, 2002. The second ground for the Applicant's prayer in this case is that the value of the deceased's landed properties which was indicated by the Respondent in the inventory is lesser than the real market value of those properties and that it was so indicated in order to defraud the Applicant and her biological sister Noela William Makene. Mr. Kilule for the Applicant cited the figures of undervaluation of those properties from the inventory as follows:

1. House on plot No.394 Longido ST-Tshs. 35,000,000/=.
2. Plot No. 24 Mikocheni B - Tshs. 7,000,000/=.

3. Farm No. 360 Mwanambaya - Tshs. 6,000,000/=. It was contended by Mr. Kilule on behalf of the Applicant that unless the Court revokes the Letters of Administration granted to the Respondent and appoints the Administrator General in her place, the deceased's estate will not be administered faithfully and that some of 5 the deceased's heirs will be denied of their entitlements to it. On the other side, although the Respondent (Administratrix) admits to have filed the said inventory out of time, she does not accept to have committed any fraud or misrepresentation in the inventory of the deceased's properties filed in this Court on 29.6.2004. It was contended on her behalf by learned Counsel Mr. Mkate that filing the inventory out of time is not fraud and cannot be in furtherance of fraud. He said that the delay in filing it was due to the fact that the Respondent was busy redeeming the properties which were in danger of being sold by the creditor Banks. He also said that the item of liability which appears in the inventory is there to show that the Respondent spent money to redeem the deceased's properties which were under mortgage. He submitted that the Respondent deserves thanks for discharging those properties from mortgage instead of being blamed. He argued that had she not done so, the debts would have escalated by way of compound interest. He pointed out that the aim of the Respondent is not to sell the deceased's properties but is to maintain them for the use of the beneficiaries. He suggested on behalf of his client that instead of appointing the Administrator General, it is better that one of his client's children and one from the Applicant's Camp should jointly be appointed to administer the deceased's estate. In my view, although the Respondent failed to file the inventory within the statutory period of six months from the date of her appointment as Administratrix of the deceased's estate, she has a good reason for the delay. The period expired while she was busy trying to get money for the redemption of the deceased's properties which were under mortgage for the loans which were obtained by the deceased from local Banks. This is a good reason for her delay. Also, I am of the view that she did not tell any lie in the inventory. The amount of money which is exhibited in the inventory is the amount she paid to redeem the landed properties which had been mortgaged by the deceased to the National Bank of Commerce (NBC), Tanzania Postal Bank and Tanzania Housing Bank (THB) which is under liquidation by Tanzania investment Bank. In fact, she did well to redeem the said properties which were under the said Banks' mortgage. I agree with Mr. Mkate for the Respondent that had she not done so, Bank interest would have gone up and turned worse to the detriment of the deceased's beneficiaries. I think that the value of the deceased's landed properties which is listed by the Respondent on the inventory is just a mere estimate. The Respondent could stand to be blamed for being fraudulent had she sold those properties at a hire price and declared a lower price in the inventory. As those properties have not at all been sold by her for purposes of distributing the proceeds of sale thereof, and as the value of those properties shown in the inventory is a mere estimate, charging her with fraud or misrepresentation would extremely be unfair to her. In my opinion, the Respondent is blameless in so far as the administration of the deceased's estate is concerned. However, due to the fact that the deceased left many children some borne of the Respondent whose children's names appear on the inventory, and some borne of other women whose children's names do not appear on the inventory i.e Simon Makene, Pius

Makene, Silas Likwara Makene, Farida Makene, Mesiya Makene and Victoria Makene together with the fact that the Respondent, her children and her step children who include the Applicant and her sister Noela Makene are living in disharmony and in opposing camps, and as her step children are afraid of being denied their share in the deceased's estate if she continues to administer the same, I think it is prudent to revoke her appointment as Administratrix of the deceased's estate which I hereby do; and to appoint the Administrator General as Administrator of the deceased's estate which I hereby do with effect from today under S. 49 (2) of the Probate and Administration of Estates Act, Chapter 352 of the 10 Revised Edition, 2002. In the circumstances of this case, I order that each party should bear its own costs. A.Shangwa JUDGE 19.9.2005 Delivered in Court this 19th day of September, 2005. A.Shangwa. JUDGE 19.9.2005 ADVOCATES

1. Mr. Kilule & Company, Advocate for the Applicant
2. Mr. Mkatte & Company, Advocates for the Respondent. 10 incriminated them and also rendered the defence of being hijacked in a pick up improbable. Under the circumstances the prosecution evidence established the guilt of the appellants beyond any speck of doubt. We find no merit in this appeal. We accordingly dismiss the appeal. DATED at DAR ES SALAAM this 25th day of September, 2003. A.S.L. RAMADHANI JUSTICE OF APPEAL E. N. MUNUO JUSTICE OF APPEAL H. R. NSEKELA JUSTICE OF APPEAL I certify that this is a true copy of the original. (F.L.K. WAMBALI) DEPUTY REGISTRAR

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