

TANZANIA / JUDGMENT

eva richard vs mary richard and another 2024 tzhc 855 30 january 2024

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TZHCDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF SHINYANGA AT SHINYANGA PC. PROBATE APPEAL NO. 03 OF 2022 EVA RICHARD II II APPELLANT VERSUS MARY RICHARD 1 st RESPONDENT SOPHIA RICHARD 2nd RESPONDENT [Appeal from the decision of the District Court of Bariadi at Bariadi.] CHon. M.M. Nyangusi RM.l dated the 8th day of August, 2021 in Probate Appeal No. 04 of 2021

JUDGMENT

J9h Ju/~ 202J & J(fh January, 2024. S.M. KULITA, l. This is a second appeal. The story behind this appeal in a nut shell is that, the appellant herein petitioned to be appointed the administrator for the estates of her late husband one, Richard Lema Nyimbega at Mkula Primary Court, through the Probate and Administration Cause No. 10 of 1

2020. As there was no objection, the matter was heard and finally the appellant was appointed the administrator for the estates of the deceased. Among other things, the trial court ordered the appellant to hold clan meetings, discuss and fulfil her administration duty within 6 months. Following her reluctance to do the same, the respondents herein, made an application to the trial court, whereby they prayed for the court to order the appellant give them their shares as heirs. The trial court granted the said application and went on allotting the deceased's estates to the heirs. That decision aggrieved the appellant, hence appealed to the District Court of Bariadi. Luck was not on her side, as the District Court confirmed the decision of the trial court, hence this second appeal with three grounds as follows; one, the trial court erred to grant and distribute the deceased's estate without considering the other heirs, two, the trial court erred to do the administrator's duty of distributing the deceased's estates and three, the trial magistrate erred to evaluate the fabricated evidence adduced before it. On the 9th day of May, 2023 the matter was scheduled for hearing. Mr. Martine Sabini, Advocate appeared for the appellant whereas the respondents appeared themselves, unrepresented. 2 Submitting in support of the appeal Mr. Sabini stated that, the trial court, instead of providing directives to the administrator, it engaged itself into distributing the deceased's properties. He said that that was wrong. He added that, worse enough, in the said distribution the trial court did not

consider the number of beneficiaries and other properties left by the deceased. He went ahead contending that, the pt appellate court, while confirming what the trial court had done in distributing the deceased's estates, reference was made on the 5th schedule of the Magistrates' Courts Act [Cap. 11 RE 2019] and Rule 9(1)(e) of the Primary Court (GN. No. 49 of 1971). He contended that, even that law, does not allow the trial court to distribute the deceased's estates, but to provide directives to the administrator. Mr. Sabini added that, the act of the trial court of closing the case was also not proper. He said that such act, was supposed to be done after the administrator had completed her duty. On those submissions, Mr. Sabini prayed for the nullification of what had been ordered by the trial court and allow the administrator to finish her duty. In the reply thereof, the 1st respondent stated that, beneflclaries to the deceased's estates were not involved in selecting who was to be the 3 administrator for their late father's estates, but the appellant did it alone. She added that, there was no any clan meeting that had proposed the appellant be the administrator for the deceased's estates. She went on stating that, the remaining children of the deceased are the respondents only, but fraudulently the appellant herein added another one who is her own daughter as a beneflciary too. The 1st respondent went ahead contending that, the administrator expelled them from the deceased's house and rented it all and she, herself lives in another house. They had nowhere to live when they visit their home, thus they had to apply to the trial court for it to give them rooms in their father's house. She said that the said court granted their prayer. However, she added that, the said rooms have not been given to them to date. In rejoinder Mr. Martine Sabini, Advocate just reiterated what he had stated in his submission in chief. I have earnestly gone through both parties' submissions and the available records. The issue is whether the appellant's appeal is meritorious. Before I venture into determining the grounds of appeal, I find it prudent to shortly provide some of what had happened in lower courts pertaining to this case. 4 ", The appellant had instituted a Probate Cause No. 10 of 2020 at the Mkula Primary Court on 9th November, 2020. She was granted the said administration on 26th November, 2020. Upon being granted, she was ordered to convene a clan meeting and make division for the deceased's estates after which, within 6 months, she should have completed her duty. Before doing that, on 23rd April, 2021 the respondents herein applied to the court for it to order distribution on the deceased's two houses, contending that, the administrator had rejected to distribute the same. In the reply to the said application, the appellant stated that, the houses should not be divided as they help her in life. She said that, there is no person to help her. She added that the respondents herein live with their husbands somewhere else. In rejoinder, the respondents agreed that they live somewhere else but they wanted each of them to be given one room and sitting room for them to reside when they visit their father's home. In its decision the trial court ordered that, the respondents be given one room and seating room each and the appellant be given one whole living house, and 3 rooms with a seating room from that other house which is used for the business purposes. 5 Rule 5 to the Fifth schedule of the Magistrates' Courts Act [Cap. 11 RE 2019] provides for the duties of the administrator upon been appointed. The same provides; I~n administrator appointed by a primary court sha/~ with reasonable diligence,

collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court" Contrary to what the cited law requires, the records reveal that, the appellant neglected the directives by the trial court of convening the clan meeting and decide on the division the deceased's estates. Further, the records as shown above, reveal that, the appellant as an administrator had no intention of distributing the deceased's houses to the heirs by contending that, they help her in life. This is contrary to the afore cited Rule 5 above to the primary duties of the administrator of collecting the deceased's properties, paying debts if any and distribution of the deceased's estates to the beneficiaries. 6 Noting the intention of the appellant, the respondents were right to apply to the trial court on division of the deceased's estates. And this was done under Rule S(t) of the Probate Rules which is about other matters to be decided by the court. The said Rule states; "Subject to the provisions of any other law for the time being applicable/ the court may; in the exercise of the jurisdiction conferred on it by the provisions of the Fifth Schedule to the Act; but not in derogation thereof; hear and decide any of the following matters, namely-

- (a) .
- (b) .
- (c) .
- (d) .
- (e) .
- (f) any question relating to the sale/ partition/ division or other disposal of the property and other assets comprised in the estate of the deceased person for the purpose of paying off the creditors or distributing the property and assets among the heirs or beneficiaries" With the presence of the above quoted Rule, the trial court did not rob the duty of the administrator, but it blessed the application by the 7 beneficiaries after the appellant had rejected to perform her duties as an administrator. The Respondents' alleged that the Appellant has been granted the administrator fraudulently, the contention that the clan meeting had never been convened to propose the appellant to go to court for her appointment as the administrator, they also alleged that the appellant did the whole process of administration secretly and that the minutes of the alleged clan meeting was forged, and that someone else was added as the heir while she is actually not. As for those allegations, it is not the proper forum to raise the same. Had the respondents been in need to raise them, they had to do it before the trial court under Rule 9 of the Probate Rules, seeking for the revocation or annulment of the grant of the letters of administration to the Appellant herein. The said provision states; "A creditor of the deceased person's estate or any heir or beneficiary thereof; may apply to court which granted the administration to revoke or annul the grant on any of the following grounds-

- (a) that the administration had been obtained fraudulent/~' 8
- (b) that the grant had been made in ignorance of facts the existence of which rendered the grant invalid in law;
- (c) that the proceedings to obtain the grant were defective in substance so as to have influenced the decision of the court;
- (d) that the grant has become useless or inoperative;
- (e) that the administrator has been acting in contravention of the terms of the grant or wilfully or negligently against the interests of creators; herein or beneficiaries of the estate. All in all, with this disposition, I find no chance to fault the two lower courts in their decisions. On that account, I find it that, this appeal is unmeritorious and I proceed to dismiss the same. This being a family matter I grant no order as to costs. S.M. KULITA JUDGE 30/01/2024 DATED at SHINYANGA this 30th day of January, 2024. S.M. KULITA JUDGE 30/01/2024 9 ----_..-- ~:~:~

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