

TANZANIA / JUDGMENT

20191001 TZHC Dodoma

COURT
TZHCDECIDED
1 October 2019

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t. IN THE HIGH COURT 01 TANZANIA (DOE DMA DXSRI CT REGISTRY) AT tODOMA PC
PROBATE APPEAL NO. 4 CF 2018 (Arising from Decision of District Court of Dodoma in
Probate Appeal No. 2 of 2018 OrigInal decision of Chamwino Urban Primary court in Probate
Case No. 65 of 2017) FIAfdIID ABDULR_ASOULI.....O....U.....APPELL..I1?'11
VERSUS ABDULRAHMAN A. MAJID MUSSA KASIMILI SHABANII1
RESPONDENTS: 301912019 & 1/1012019

JUDGMENT

MASAJU,J. The Appellant, Hamid Abdulrasoul, unsuccessfully petitioned for letters of
Administration Of the estate of the late Asha Haji Ahmed before Chamwino Urban.Primary Court
in Probate cause No. 65 of 2017. itation was issued leading to application for objection lodged by
the first Resppndent,Abdulrahrnan A. MajicL The trial Court allowed the objection and appointed
the second RespOndent, Mussa Kasimili Shaban as an independent administrator (Court Clerk).
The Appellant unsuccessfully -- - -1----- --- 7 --- '-4 appealed to the District Court of Dodoma,
Probate Appeal No. 2 of Cistisfied with 'both dedsiions he preferred further appeal to this Court in
brief, this case is Uned up with a number of cases before different Courts. The late Asha Haji
Ah:med passed away on the 7th day of July,

1997. in the year 2005 1 her son Mohamed Abdulkadir PetlUoned for Letters of Administradon
before Dodorna Urban Primary Court. He then died in 2011 without fnalizing the case. In
2012 Hamid Abdulrasoul .(Appeflaot) pplIfpr letters of Admintration vide Probate Cause No.
91 of 2012 since the estate was yet to be administered. He encountered objection by . the 1
st Respondent (Abdulrahman). The objection was overruled after hearing and the Appeflant
was appointed the Administrator of Asha's estate. The 1 Respondent was dissatisfied and
appealed to the District COUrt of Dodoma vide Probate Appeal No. 3 of 2013, the appeal-
was dismissed for lack of merit, and the Appellant therein' was advised to go back to the
trial Court and Object. To make .the long story short, proceedings in cases; Probate CaUse
No 203oL20Q5_aiid No 91 of 2012 before Dodoma Urban Primary Court together with
Probate Appeal No. 3 of 2013 in Dodoma District Court were nullified by Hon.
J.MKarayemaha in Probate Appeal.NO. 7 of 2015, for the original Probate causes being filed
without, proof of' death (Death• Certificate). It is due to that order, that the Appellant
approached Chamwino Urban Primary Court to Petition for Letters of Administration in

Probate Cause' No. 65 of 2017 leading to this appeal. ' The Appellant raised nine (9) grounds of appeal one of them, ' being . 2 "That, the P Appellate court erred in law and facts in deciding thaL, it is correct for the tni Court to revoke appointment of the Appellant as Admin/strater of the estate of the deceased As/ia I-/aft for his id/hire to administer the said estate." The Respondents ffiled a joint Reply. In hearing the appeal both parties were represented. The learned Counsel Elias Machibya was for the Appellant, the learned counsel Paul Nyangarika appeared for the two Respondents. In her submission the Appellant's counsel argued among other things that the trial Court erred in revoking the appointment of the Appellant whilst the Appellant had not yet been appointed as an administrator but he had just applied to be appointed as an administrator of the estate of the late Asha Haji. Before going into merit of this appeal, the court was interested to peruse the records of the trial Court on the raised issue. There is no doubt that the Appellant was revoked, going through the trial Court's judgment December 2017 Mataba cited Rule 2 (c) of the Fifth Schedule, Magistrates' Courts Acci 11] in revoking the Appellant. The Rule reads as follows:- "2. A Primaly court upon which jurisdiction in the Administration 6f decease's estates has been conferred may.'-

- (c) Revoke any appointment of an administrator for a good and sufficient cause and require the surrender, of any document evidencing his appointment;" The trial Magistrate misdirected himself by citing and using. the Ru. while the Appeflant had not yet been appointed as an administrator, but rather petitioned for the same. The statement from the judgment that "..... inarntengua HA MiD 4SDULRA50UL kuwa ms/mainIzi wa N/rat/il ya mare/iemu ASHA .HAJIAHMED leo/i/i tarehe 14/12/2017." is contradicting since he was not yet an administrator of the estate. The Court while perusing the trial Court's records came to notice that there were some irregiJ.rits in objection proceedings. The trial Magistrate when hearing the objection, heard the Respondent's side first and the Applicant in the objection came last which is not the right procedure. The trial Court ought to have started hearing the Applicant's side then the Respondent's after which it was to give Ruling on whether the Applicant's objection had succeeded or not, and give directions on whether the Petitioner should go ahead with the Application/Petition for Letters of Administration or any other interested person to Petition for, the same. The trial Magistrate went on revoking the Petitioner (as if he was already an Administrator), and appointed the 2nd Respondent without hearing the Petition. . In other words he consolidated the two rulings, ruling for the objection and ruling for Letters of Administration of the estate. That being said; there is no cause of going into merits of the other grounds of appeal. The Court therefore nullifies the Objection Proceedings in Probate Cause No. 65 of 2017 before. Chamwino Urban Primary Court. The decision and orders thereof are shereby quashed and set aside. The t-roceedings of the 1 s' appellate Court, Probate Appeal No. ;2 of 2018 are herety nullified; its decision is quashed and set aside accordingly as well.. The above nullification affects the 2n d Respondent's apçointrnent as an administrator of the estate of Asha Haji by the trial Court. The Court Orders for Retrial of objection Proceedings by the trial Court in the same Court file, before another Magistrate. The Parties shall bear their own costs. GEORGE M. MASAJU

JUDGE 1/ 10/20 19

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