

TANZANIA / JUDGMENT

Msafiri

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA TABORA SUB REGISTRY PC CIVIL APPEAL NO. 10754 OF 2024 (From the decision of the District Court of Tabora in PC Civil Appeal No. 08 of 2023, Original Probate Cause No. 32 of 2023, Tabora Urban Primary Court) MOHAMED RAMADHANI MSAFIRI..... APPELLANT VERSUS KALIMU M. MSAFIRI..... 1st RESPONDENT SALAMA MASUDI YAKUTI..... 2nd RESPONDENT Last order: 05/11/2024 Judgement date: 12/12/2024

JUDGEMENT

MANGO, J The Respondents petitioned for letters of administration of the estate of the late Asha Masudi before Tabora Urban Primary Court via Probate and Administration Cause No. 32 of 2023. The Appellant objected the appointment of the Respondents to be administrators of the deceased's estate on the reasons that, he was not involved in the process as the deceased's husband and he is not recognized by the Respondents as the deceased's husband. The Respondents recognize one Hamisi Rashidi Kindamba to be the husband of the deceased. The Appellant was of the view that by virtual of being a husband of the deceased, he deserves to administer the estate of the deceased than their son, the first Respondent. He also suspects that the second Respondent will not administer the deceased's estate properly since she is now married to Hamisi Rashidi Kindamba, the person alleged to be the deceased's husband before her death. 1 The Court found the grounds of objection raised by the Appellant to be meritless and proceeded to grant letters of administration to the Respondents. Aggrieved by the decision of the Probate Court, the Appellant unsuccessfully appealed before the District Court of Tabora via PC Civil Appeal No. 08 of 2023. He has now approached this Court for a second appeal in which he raised four grounds of appeal that read as follows:

1. That the trial Court and the Appellate Court grossly erred in law and fact to grant and uphold the appointment of the above named co administrators despite the fact that during trial, there are two different certificates which have been tendered and admitted as exhibits by the Appellant and the Respondents hence arrived into a wrong decision

2. That the trial Court and the Appellate Court grossly erred in law and fact by holding that the Appellant has divorced the late Asha Masudi while there is no proof of the petition for divorce tendered before the trial Court to that effect hence arrived into a wrong decision
3. That the trial Court and the Appellate Court grossly erred in law and fact by declaring that the names of the deceased are Asha Masudi Yakuti while exhibit Pl, a marriage certificate appears the names of Saada Yakuti and totally ignored the registered affidavit confirming names of the deceased which the same was admitted as an exhibit before the trial Court
4. That the trial Court and the Appellate Court grossly erred in law and fact by reaching out a decision contrary to weight of evidence During hearing of the Appeal, the Appellant was represented by Hassan Kilingo, learned advocate while the Respondents were represented by 2 Kashindye Lucas, learned advocate. The Appeal was argued by way of written submissions. In his submission, advocate Kilingo argued the third and fourth grounds of appeal collectively while the remaining grounds of appeal were argued separately. On the first ground of appeal, the learned advocate challenges the Probate Court for its failure to rule out which between the two death certificates tendered by the parties during trial, is a genuine death certificate. He argued that, the Appellant tendered a death certificate of the deceased and the Respondents also tendered a death certificate of the deceased. The death certificates bears different numbers. He is of the view that, the Probate Court ought to have determined which death certificate between the two is a genuine death certificate of the deceased. On the second and third grounds of appeal, the Appellants advocate argued that, the Appellant has interest in the deceased's estate since it was not disputed that, he was married to the deceased and the alleged divorce is not supported by any divorce decree or certificate. In his arguments, the learned advocate noted the difference in names of the deceased that appear in the marriage certificate issued to the Appellant and the deceased and that issued in the alleged marriage between the deceased and one Hamis Rashidi Kindamba. He submitted that, the difference in names was cured by an affidavit filed by the Appellant in which the names which were used by the deceased interchangeably, have been mentioned. On the fourth ground of appeal the Appellant's advocate submitted that, the Probate Court wrongly determined the matter against the Appellant despite the fact that, he had stronger evidence than the Respondents. He thereafter prayed to have the appeal allowed with costs. 3 In his reply submission advocate Lucas registered his opinion that, the appeal at hand has been preferred in misconception of probate proceedings in primary court and rules of evidence applicable before primary courts. Though he did not explain the said misconceptions he argued that, documentary evidence in record were properly tendered and admitted by the Court as per Regulation 11 of the Magistrates Courts (Rules of Evidence in Primary Courts) Regulations, G.N 22 of 1964 and GN 66 of 1972. He is of the view that, the first ground of appeal is meritless On the second and third ground of appeal, he argued that the issues raised therein are new. He argued further that, this being a second Appellate Court, the Appellant is precluded from raising new issues. He cited the case of Thobias Michael Katavi Versus Republic, Criminal Appeal No.31 of 2017 Court of Appeal of Tanzania at Arusha and the case of Hamis Bushiri Pazi and others versus Saul Henry Amos

and others Civil Appeal No. 166 of 2019 Court of Appeal of Tanzania at Dar es salaam to back up his argument. On the fourth ground of appeal he submitted that, the standard of proof in civil cases is on balance of probabilities and not beyond reasonable doubts. He added that, in assessing who won the case, the court weighs evidence adduced by each party and he whose evidence weigh more than the other will be considered to have successfully proved his case. To cement his argument, he cited the case of Hemed Said versus Mohamed Mbilu

[1984] TLR 113 and Regulation 6 of Magistrates Courts (Rules of Evidence in Primary Courts) Regulations. He concluded that, with evidence on record, the Respondents' evidence weighs more than that of the Appellant, thus, the two courts correctly determined the matter in favour of the Respondents. 4 I have considered submissions by both parties and Court record. The main issues in this appeal as they were deliberated before the probate Court are two. The first issue was the objection to the appointment of the Respondents to be administrators of the deceased's estate and second, recognition of the Appellant's interest in the deceased's estate by virtual of being a husband of the deceased. Court record establishes that, the Probate Court determined only the objection against appointment of the Respondents to be administrators of the deceased estate. The issue of recognition of the Appellant to be a husband of the deceased was not determined rather the Court noted the difference in the names of the Appellant's wife as they appear in the certificate of marriage produced by the Appellant and the names of the deceased as they appear in her death certificate. On the first ground of appeal the Appellant challenges the Probate Court for proceeding to appoint the Respondents as administrators of the deceased's estate while parties tendered two death certificates. I find this ground of appeal to be unmeritorious because Court record establishes that there are no two death certificates that were tendered during trial. The only death certificate that was tendered before the Probate Court was certificate No. 100000203317 which was issued in respect of the death of Aisha Masudi Yakuti a resident of Ipuli area within Tabora Municipality. According to the certificate, the deceased's death was reported by Mohamed Ramadhani on 31st March 2022. Moreover, the essence of having death certificate in probate proceedings is to have proof that the deceased is indeed dead. Since both parties did not dispute that the deceased passed on, then allegations regarding existence of two death certificate is not of crucial importance. In such circumstances, this ground of appeal is also meritless. 5 Coming to the second ground of appeal which is the heart of the caveat filed by the Appellant before the probate Court, I observed that, the Probate Court did not find hold that the Appellant and the deceased were divorced. The Court merely found the issue of existence of marriage between the Appellant and the deceased to be beyond its jurisdiction as it appears at page four of the judgement of the Probate Court. The District Court did not determine the issue regarding existence of two marriages alleged to have been contracted by the deceased. It only considered the same to be doubtful as it appears at page 12 of the decision of the District Court. I understand that a caveat is filed to express interest in the deceased estate. In that regard the Probate Court ought to have determined the legality of the two marriages of the deceased in order to ascertain the alleged interest

of the Appellant in the deceased's estate. Although the Court cannot go further to determine the amount or percentage of such interest, it should determine whether the alleged husband wife relationship between the Appellant and the deceased existed at the time of the deceased's death so as to determine whether the Appellant has any interest in the deceased's estate. I have also considered the fact that, the Appellant has no any other forum to lodge his claims regarding his alleged status as the husband of the deceased except the Court which deals with the administration of the deceased's estate. Since neither Court determined whether the Appellant was legally married to the deceased at the time of her death, this Court cannot determine this issue as it requires evaluation of evidence which is beyond the jurisdiction of a second appellate Court. For that reason, I hereby return the matter to the Probate Court for the same to determine whether the Appellant was married to the deceased at the time of his death. With such findings I will not determine the third ground of appeal which concerns the names of the deceased because I might pre-empt the trial Court from determining the legality of the document alleged to be an affidavit regarding confirmation of names of the deceased person which was tendered by the Appellant before the trial Court. In that regard the Probate Court's decision appointing the Respondents to be administrators of the deceased estate is upheld. The matter is returned to the Probate Court for determination of the issue whether the Appellant was married to the deceased at the time of her death. In upshot, the appeal is partly dismissed to the extent stated in this judgement. Given family and blood relationship between the parties in this case, I do not award costs. Dated at Tabora this 12th December 2024 Z.D.MANGO JUDGE

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Prepared on 13 October 2026 · Esheria