

TANZANIA / JUDGMENT

20181106 TZHC Mwanza

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TZHCDECIDED
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IN THE HIGH COURT OF TANZANIA AT MWANZA ·, :u_.,;. PC. PROBATE APPEAL NO. 08 OF 2018

- ,II {Arising from Ukerewe District Court in Probate and Adm,,ration Appeal No.01of 2018
Originating from Bukindo Primary Court in Probate Cause No. Sof 2017} PAMBA FESTUS
•11•.....a • 11•.....APPELLANT VERSUS PUDENCIANA MKAMI MAJ
ULA RESPONDENT

JUDGMENT

Last order 04/09/2018 Judgment delivered .. 06/11/2018 Gwae, J One Sabato Mgusi, applied for. a grant of letters of administration in the. Bukindo Primary Court at Ukerewe Distri~t iri respect of the estate of Majula Chacha (hereinafter to be referred to as "deceased") . . who died . on 22 nd July 20103. The application filed by the said Sabato Mgusi was objected by one Stella Barongo Festus however in the course of hearing the objection

- • proceeding, the s~id Sabata declined his prayer a~d as resul~ the trial court Pv,i,: ---_\ 1 ~ide its ruling dated 5th September 2017 ruled out that the clan members should sit and appoint an administrator. U_. nd Meanwhile the record also reveals that on 22 July 2017, one Pudenciana Mkami Majula, filed a Probate Cause No. 5 of 2017 in respect of the estate of Festus Majula Chacha who died on the 22 nd July 2005 in the Bukindo Primary Court in the District of l'.Jkerewe. The later Probate Cause was objected by one Pamba Festus but in its verdict dated 25 th September 2017, the trial court, invoking provisions of law, under paragraph 2 (a) of the 5th ~chedule to the Magistrates Courts Act Cap 11 of the Revised Edition, 2002, appointed the Kagunguli village chairperson, Kagunguli Village Executive Officer and Buyoga hamlet chairperson to be administrators of the estate. On 29 th November 2017, the trial court closed the probate and ~dministration Cause No. 5 of 2017 after it had been satisfied with the distribution of deceased's estate to its beneficiaries. 'I Aggrieved by the decision of the trial court, on 18th January 2018, the . respondent preferred an appeal to Distr_ict Court of Ukerewe at Nansio alleging th;;it she was not sati.sfi.ed wi~h the distribution of the deceased~ plot, his appeal was partly allowed. i · -2: ! I ' ...The appellant named above has now filed this appeal challenging the ' decision of the District Court exercising its appellate jurisdiction by stating; u

1. That, the 1st appellate magistrate_ erred in law and facts by delivering ambiguous or dilemma decision by saying each wife of the deceased person should remain with the plot in which they had been living since the life time
2. That, the 1st appellate magistrate erred in law and fact by delivery unfair decision basing on a contradictory reasoning saying that the distribution included the plot where the respondent's mother lived but the plot the appellant was living left untouched. Opposing the appellant's appeal, the respondent through her reply to the memorandum of appeal, stated that the 1st appella.nt properly evaluated evidence as the appellant fraudulently omitted to list his mother' splot as being the deceased's estate At the hearing, both parties appeared in person, thus unrepresented and indeed each party had to seek adoption of his petition of appeal and reply~- thereof. 3 .. As earlier indicated, I have failed to know how the 1st appellate magistrate " entertained· the respondent's appeal again~t the present appellant taking ;v into account both were not appointed administrators of estate of the said Festus Majula Chacha (deceased) as tie appointed village persons in authority duly filed inventory as required by the law. To my view therefore if one between the applicant and objector ·was aggrieved by the trial court decision in respect of the appointment of administrators of the estate in question would appeal against those so appointed. I Nevertheless the appeal· before the District Court for challenging either the I trial court appointment (25/09/2017) of village leaders as administrators of the estat~ or closure of administration of estate on 29/11/2017 was already time barred since the respondent's appeal was duly filed in the District th Court on 18 January 2018, hence contrary to the mandatory requirement ' envisaged under section 20 (3) of Cap 1f (supra). • I It is trite law that one with power to distribute estate of a deceased is an executor or administrator of such estate and not the court which granted I letters of administration or appointed ,lexecutor. My holding is judicially I . guided by a .decision in Samson Kisho;ha .Gabba v..Charles Kingongo ~ . 4 Gabba (1990) TLR 133, where this court (the late Mwalusanya, J) stated inter alia that: "The appointment of the Wards Secretary as the administrator of the deceased estate was quite correct. However the trial court had no power to distribute the estate of a deceased person to the respective heirs: that power of distribution is given to the administrator of the deceased estate. So the trial court usurped the power it does not have under the law. Again it is the administrator of deceased estates who knows the property of the deceased and distributes it. If any of the property is alleged not to belong to the deceased, then the person to be used in court is the administrator of the deceased estate. In this case the trial court was wrong to decide the ownership of -the houses on plots No. 125 and No. 33 Block A, when the administrator had yet to distribute them". In our case, the respondent was not supposed to file an appeal against the appellant except the appointed administrators. It follows therefore the 1st appellate magistrate ought not to deal with issue of whether a cer:tain property was subject to administration of estate or not. Consequently; the proceedings before the 1st appel_late court and decision therefore are none other than a· nullity; the same are quashed and set .. aside. Co~sidering the existence of the ·r~lationship. between the parties,~ · 5 . .. a Parties are advised to follow the necessary procedures if aggrieved by the i"~' manners the estate was distributed. I hereby

make an order with effect that each party to bear his own costs. It is so ordered ~ M. ~.a'e,
Judge < . 06/11/2018 6

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