

TANZANIA / JUDGMENT

richard joseph somba vs maria j somba 2005 tzhc 176 5 may 2005

COURT
TZHCDECIDED
5 May 2005

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM PC CIVIL APPEAL NO.92 OF 2003
RICHARD JOSEPH SOM BA..... APPELLANT VERSUS MARIA J. SOMBA.....RESPONDENT

JUDGMENT

SHANGWA, J. This appeal is against the ruling of the District Court of Kinondoni in Misc. Civil Application No.36 of 2002 in which the appointment of the Appellant Richard Joseph Somba as administrator of the estate of the Late Joseph Somba was revoked by Kisseto, DM on 4/4/2003. 2 Both the Appellant and the Respondent are brother and sister respectively. The Appellant was appointed by the Primary Court of Kinondoni as Administrator of the estate of the Late Joseph Somba on 7/11/2001 in Probate and Administration cause No.254 of 2001. Initially, the Appellant raised four grounds of appeal but in his written submission, he abandoned the fourth ground and maintained the rest. I have looked at grounds 1, 2 and 3 of his memorandum of appeal which he maintained and I have seen that ground 1 is a basic ground to this appeal. It reads as follows : "The trial magistrate erred in law and in fact by revoking the appointment of the Appellant as an Administrator of the deceased Joseph Somba in the absence of dear estate to administer". Before going further, I wish to point out some anomalies in this ground of appeal and correct them. First, it is wrong to refer to the magistrate who dealt with this case in the District of Kinondoni as a trial magistrate: This case originated from the Primary Court of Kinondoni where it was dealt with by M.S. Mazora, SPCM who should be referred to as a trial magistrate. The magistrate who dealt with it in the District Court of Kinondoni, Kisseto DM did so in the exercise of his appellate jurisdiction. So, he should not have been referred to as the trial magistrate. He should have been referred to as the appellate District Court Magistrate. Second, it is wrong to refer to the Administrator of the deceased's estate as an Administrator of the deceased because the deceased persons are not capable of being administered. It is their properties which are capable of being administered. Therefore, instead of referring to the Administrator as the Administrator of the deceased, the Appellant should have referred to him as the Administrator of the deceased's estate. Let me state here that I will only deal with ground 1 as above quoted in order to dispose of this appeal. This ground raises two important issues. The first one is whether or not the appellate District Court magistrate acted wrongly in revoking the Appellant's appointment as Administrator of the estate of the late Joseph Somba. The second one is whether or not there was any estate left

behind by the late Joseph Somba. to be inherited by his heirs. Both issues will be considered and determined in the course of my judgment. First of all, let us look at the reasons which were given by the Respondent in the District Court of Kinondoni in her request to revoke the Appellant's appointment as Administrator of the deceased's estate. These reasons are two. The first one is that the Appellant did not file an inventory of the deceased's estate within six months of the date of his appointment as required under SS 45 and 82 of the Probate and Administration Ordinance, Cap 445. The second one is that the Appellant has been collecting and misappropriating the rentals of house No.228 Block A Mwananyamala area Dar es Salaam. The argument which was given by the Appellant in the District Court of Kinondoni and advanced on his behalf by his Advocates M/s B & B Law Partners for his failure to file the inventory within the 5 statutory prescribed period of six months is that House No.228 Block A at Mwananyamala area was in the Respondents possession who refused to surrender its title deed to him. This submission was resisted by the Respondent both in the District Court of Kinondoni and in this Court through the assistance of learned counsel Mr. Z.G. Muroke, Advocate by saying that after his appointment as Administrator of the deceased's estate, the Appellant was in full control of this house. The Respondent's claim that the Appellant has been collecting and misappropriating the rentals of House No.228 Block A Mwananyamala area was neither refuted or accepted by the Appellant before this court. As it can be seen, the basic ground of appeal in this case centers on whether or not the appellate District Court Magistrate erred both in law and in fact in revoking the appointment of the Appellant as Administrator of the deceased's estate. I wish to point out at this juncture that whenever there is need to revoke the appointment of an Administrator of the deceased's estate, the procedure to be followed is to apply to the trial court which made such appointment to revoke it but not to file an appeal to the superior court in the hierarchy for its revocation as it was done in this case. An appeal should only lie in cases where the trial court has declined to revoke such an appointment without any lawful cause. Let us now look at the facts of this case. The facts of this case do show that there is only one property which was listed by the Appellant on his application form which he filed in the Primary Court of Kinondoni for being appointed as Administrator of the estate of the late Joseph Somba. This property is House No.228 Block A Mwananyamala in Dar es Salaam. The one who built this house is the Respondent. The Plot on which it is built belonged to her father the late Joseph Somba who allowed her to build a house thereon. This house was built by the Respondent with her own money. None of the deceased's heirs including the Appellant did contribute even a single five cents towards the construction of this house. She had a noble intention that once built, this house should accommodate any of her relatives at any time in case of need. It is as if she built it for the welfare of the whole members of her family. By doing so, I do not think that her intention was to surrender her proprietary rights and interests to the said family members as a whole such as it was contended by M/s B & B Law Partners for the Appellant. She simply wanted to protect them from lack of accommodation whenever it could befall them. I find therefore that this house belongs to the Respondent and the rest of her family members can only enjoy it at her own pleasure. It will be inherited by her own heirs in case she desires so. The plot on which it is built also belongs to her because houses are never built on the air but on land. This means that when the late Joseph Somba allowed her to build this house on the piece of land on which it is built, he

simply gave it to her. • 8 At the time when Joseph Somba died, the general owner of this house was the Respondent and not him (deceased). When the Appellant filled the Form of Application for being appointed as Administrator of the deceased's estate, he indicated that there is one house to be administered. That is House No.228 Block A Mwananyamala area Dar es Salaam which house belonged to the Respondent. After filling that Form, he did not show it to the Respondent and even if he did so, the Respondent did not know that he had the intention of depriving her of the same by claiming that it is part of the deceased's estate. What happened after his appointment as Administrator of the deceased's estate is that he took full control of this house and he started collecting rent from it but he never accounted for the same. This acted as an eye opener to the Respondent who appealed to the District court of Kinondoni for revocation of his appointment as Administrator of the deceased's estate. Due to the fact that the Appellant did not file the inventory after his appointment as Administrator of the late Joseph Somba's 9 estate, and as he harboured an evil intention of depriving the Respondent of her house by wrongly listing it in the application Form as the deceased's estate; and the fact that after taking full control of this house, he collected rents from its tenants for his own ends, I cannot say that the District Court of Kinondoni was wrong either in law or fact by revoking his appointment as Administrator of the late Joseph Somba's estate. In my opinion, the late Joseph Somba left no estate to be administered by anybody. Therefore, in effect, the appointment of the Appellant by the Primary Court of Kinondoni as Administrator of the said deceased's estate had nothing at all to serve. I hold that House No.228 Block A Mwananyamala area Dar es Salaam does not form the estate of the late Joseph Somba and none of the late Joseph Somba's heirs is supposed to claim any hereditary rights or interests over it or the plot of land on which it is erected. For this reason, I quash the appellate District Court Magistrate's order for evaluation and sale of this house and the land on which it is erected together with his order giving directions as to whom the proceeds of sale of this house should be handed over, and on how the proceeds of sale of the plot of land on which it is built should be distributed among the heirs of the late Joseph Somba. I order that from now onwards, all rentals from tenants occupying this 'house should be handed over to the Respondent. These include the rentals which were ordered by the District Court Magistrate to be paid in the District Court of Kinondoni with effect from October or November, 2002. v . r V I cfemiss this appeal with costs. -\t f* * ». •*¹ A. SHANGWA JUDGE 5/5/2005 11 Delivered in court in the presence of the appellant and in the absence of the respondent this 5th day of May, 2005 . A. Shangwa JUDGE 5/5/2005

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/186597/source_file/richard-joseph-somba-vs-maria-j-somba-2005-tzhc-176-5-may-2005.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/richard-joseph-somba-v-maria-j-somba-revocationofadministratorappointment-tzhc-2005

Prepared on 14 October 2026 · Esheria