

TANZANIA / JUDGMENT

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COURT
TANZLII

DECIDED
26 February 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE SUB-REGISTRY (ONE-STOP JUDICIAL CENTRE) AT TEMEKE CIVIL APPEAL NO. 28740 OF 2024 (Arising from Probate & Administration Cause No. 281 of 2021, at Temeke District Court of Temeke at One Stop Judicial Centre) SHABANI KAZIMOTO.....
1stAPPELLAN JUMA
KAZIMOTO.....2ndAPPELLAN YUSUPH
KAZIMOTO..... 3rdAPPELLAN VERSUS
ZAINABU JUMA FARAJI (Administratrix of the estate of late Mohamedi Juma Kazimoto).....
RESPONDENT

JUDGMENT

5th February & 26th February 2025 BARTHY, J.: This appeal arises from the decision of the District Court of Temeke at the Temeke One Stop Judicial Centre (the trial court) in Probate and Administration Cause No. 281 of 2021, which affirmed the accounts and distribution of the estate of the late Mohamedi Juma Kazimoto, as filed by Zainabu Juma Faraji (the respondent), who is the executrix of the deceased's estate. ,</ Aggrieved by the trial court's decision, the appellants; Shabani Kazimoto, Juma Kazimoto, and Yusuph Kazimoto, who also claim to be the deceased's children and beneficiaries, filed this appeal on the following grounds;

1. That the trial court erred in law in confirming the distribution of the estate of the /ate Mohamedi Juma Kazimoto despite the objections raised by the appellants, without any lawfuljustification. The appellants now seek an order to quash and set aside the trial court's decision and direct for a fair and non-discriminatory distribution of the estate. The hearing of the appeal, by consensus of the parties, was disposed of by way of written submissions. The appellants' submission was prepared by Mr. Buruhani Mussa, while the respondent's submission was prepared by Ms. Mary Brown. The submissions were duly filed in accordance with the court's schedule. Upon reviewing the submissions and the trial court's records, this court invited the parties to address the following issues, which arose in the course of arguing the respondent's submission, before proceeding with the determination of this appeal; /r
1. Whether the appellants have the legal standing (locus standi) to institute this appeal.

2. Whether the appellants adopted the appropriate legal remedy in challenging the decision of the trial court. I will begin my deliberation with the first issue as to whether the appellants Have locus standi to institute this matter. The doctrine of locus standi requires a party to demonstrate a direct legal interest in the subject matter of the case. As held in Peter Mpalanzi vs. Christina Mbaruku, Civil Appeal No. 153 of 2019 [2021] TZCA 510 (23 September 2021), a person cannot maintain a suit or an appeal unless they have a legal caveat against the grant of probate to the respondent. As per section 52(b) of the Probate and Administration of Estates Act, Cap. 352 R.E. 2019. In the present case, the trial court records indicate that the appellants filed a caveat which turned the probate cause into a contested suit, where the petitioner (now respondent) becomes the plaintiff, and the caveators (now appellants) become the defendants. This legal position was further stressed in Chantal Tito Mziray & another vs. Ritha John Makala & Another, Civil Appeal No. 59 of 2018

[2020] TZCA 1930 (31 December 2020). It is therefore clear that once a party files a caveat and participates in the probate proceedings acquires the status of a party to the suit. Since the appellants actively participated in the trial proceedings, and objected to the distribution proceedings, they became the parties to the suit. Therefore, they have the necessary locus standi to protect their interest in the matter. Accordingly, the first issue is answered in the affirmative. Turning to the second issue as to whether the appellants pursued the proper remedy to pursue the appeal, the appellant's counsel argued that the appellants should have pursued for a revision rather than an appeal, relying on the case of Emmanuel M. Urembo vs. Emiliana N. Nyoni & another, Civil Revision No. 35 of 2023, HC at Dar es Salaam. In that case, the court held that where a party was not originally part of the main suit, the proper remedy is revision rather than appeal. However, this principle is distinguishable in the present case. The appellants were parties to the probate proceedings by virtue of filing a caveat. The case was converted into a contentious probate suit, and they objected to the accounts of the estate filed in relation to the said probate matter. It is clear that the appellants were parties to the said matter and had the right to appeal against the decision of the lower court, which conclusively determined their rights. Additionally, in Ramadhani Myelele vs. Hamadi Ally Islam, Civil Application No. 40 of 2022, High Court at Morogoro, the court ruled that a party who was involved in the original proceedings has the right to appeal rather than seek revision. Since the appellants were parties to the probate suit, their choice to file an appeal was legally correct. Therefore, this issue is also answered in the affirmative. •» Having found the preliminary issues to be without substance, I now proceed to determine the merits of the appeal. The sole ground of appeal faults the trial court's confirmation of the distribution of the deceased's estate despite the appellants' objections. The appellants, through their counsel Mr. Buruhani Mussa, argued that 4 the respondent, as the administratrix, unfairly allocated a significant portion of the estate to herself while other heirs, including the appellants and the second widow, received disproportionately smaller shares. Specifically, they pointed out that the respondent assigned herself two houses; one with 100% ownership and another with 60% ownership, while the second widow received only a

piece of land. Furthermore, some heirs received multiple properties, while the appellants were limited to a single house with divided shares. On her part, the respondent, through her counsel Ms. Mary Brown, contended that the distribution was in accordance with the deceased's Will, which had already been verified and confirmed by the trial court. She argued that the appellants' complaints stem from greed rather than legal merit and urged the court to dismiss the appeal. 4 Upon reviewing the trial court's proceedings, it is evident that the Will of the deceased was validated by the trial court. The appellants did not challenge the validity of the Will but only the manner of distribution. It is a settled principle of probate law that an administratrix must distribute the estate strictly in accordance with the Will unless there are legal reasons to deviate. Since the trial court already confirmed the validity of the 4 Will, it follows that the distribution must align with the Will's provisions. As the purpose of a Will in a probate matter is to serve as a legal document that expresses the testator's wishes regarding the distribution of their estate after death. The appellants cannot accept the validity of the Will, and later on challenge the distribution made under it. As the appellants decided to sit on their right to appeal against the findings of the trial court stating that the Will was valid, they cannot come back to court on the back door to challenge the distribution of the estate of the deceased in accordance to the Will. Accordingly, this court finds no legal justification to interfere with the trial court's decision. For the reasons stated above, this appeal is found to lack merit and is hereby dismissed in its entirety. With the nature of relationship of the parties I refrain from giving order as to costs. It is so ordered. Dated at Dar es salaam this 26th day of February, 2025. G. N. BARTHY JUDGE

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