

TANZANIA / JUDGMENT

19970423 TZHC Dar es Salaam

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TZHCDECIDED
23 April 1997

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... .. 'i...t/(f,l?#b'~ · IN Tli.E HIGH COUR'.11 OF TAN~ANIA AT DA?. E.S SALAAM (PC) CIVIL APPEAL NO. 6 OF 1994 (From Original Magomeni Primary Court Probate and Administration Cause No.233 of 1992, and District Court of Kinondoni District, Miscellaneous Civil Appeal No.30 of 1993) SHJ\Jl'iSA HASSAN oooooooooooooooooooooo•oooooooooaoooooo APPELLf\..NT VEHSUS SJLI\..BUKA RAJABU oooooeoooooo..10000000000000::ocooooooooo Ri:SPONDENT ,r -

JUDGMENT

MSUMI 1 J.: This application originates from Administration cause Number 233 . . of 1992 filed in the primary court of Magomeni. In that cause the respondent Shabuka Rajabu applied for letters of administration for the estate of the deceased Tukia Abedio The applicant object,~d the application on the sole ground th:::t before her death, d~ceased had already distributed all the property of the est,1te. She mentioned three houses situated at different parts of Dar e,s Salaam, some ladies golden ornaments including hear rings, a suitcase cont:i.ining unidentified items and a wardrobe as the property of the estate. According to her the houses were bequeathed to her and the third house wa:s sold to her by the deceased herself aDd the remaining i terns were given to t}1e appellant 9 s children. In a unanimous decision the trial court upheld the objection. ,· The court considered the avail:i.ble documentary evidence and made a finding that the three houses are in fact the property of the appellant. Respondent appealed to the 1!istrict Court ,,:md succeeded. Being disatisfied with the judgment of the .s,:cid first appellate court, appellant unsuccessfully appealed to this court · /0,,·0·2 , .., 11.. 2 In the present a.p_Jlic.~'tion, c:_)peJ.lant is asking for lee.ve to appeal to the Court of Appeal out of tirne a.7.d a.lso contends that the intended appeal involves some important triable legal issues hence she should be granted leave to file it. He faulted the learned Judge for not determining the issue involved in the aiipeal, thc::t is the question of ownership of the aforementioned three houses. In his written submission Mr i'l-ilanzi forwarded the following ::u-gument, r;6.2. Your Lordship~ the main suit herein concerns a dispute involving.the ownership of real property in that whether or not the houses in question form. part of the Deceased estate which has to be administered by the Hespondent as she claims and or whether the disputed houses belong to the 1:i.pPLICANT as she contends in that two houses in dispute hRd long been bequeathed to he_r by the Deceased, long before she met her death and the other one had been bought by the applicant herself. It is our cont(mtion.my Lord that the question of ownership of the disputed property as such is a point of law which ought to h:1.ve been adequately resolved by the Honourable Jueti:-:e Chua·. With respect, this argument is not

tenable. As mentioned earlier, the original case is a probate and administration cause in which the respondent applied for letters of administration in respect of the deceased's estate. The issue involved is the suitability of the respondent for the said appointment. In other words the court was required to decide whether the respondent was a suitable person for the grant of the prayed letters of administration. The alleged issue of ownership of the three houses could be properly raised in those proceedings after the appointment of the administrator has been made. There are a number of pronouncements by this Court on this point. For example in (PC) Civil Appeal 17 of 1983 High Court of Tanga Registry, Kapoor J issued the following guidance: "For the general guidance of the primary courts I would like to make one observation that in any probate and / or administration matters the first step should be to grant letters of administration in respect of the deceased person to those persons who may be lawfully entitled to the grant and once a grant has been issued then the holder of the letters of administration can institute proceedings against anyone against whom claim of the deceased's property may lie. It is totally incorrect for a primary court to declare an applicant for letters of administration as owner of any property of the deceased in those proceedings". Indeed it is equally wrong to declare anybody, as it has been done in this case as owner of any property alleged to be part of the estate. Any issue involving ownership of such property should be determined after the appointment of the administrator. In conclusion, whereas I hold that sufficient reasons have been advanced by the appellant explaining her delay in filing the application for leave to appeal to Court of Appeal, I am of respectful view that the intended appeal for which leave is sought does not raise an important point of law. Hence this application is dismissed with costs. JUDGE 23/4/97 For the Applicant: Absent For the Respondent: Mkondya

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