

TANZANIA / JUDGMENT

shamsa salum vs mohamed mackbel

2014 tzhc 2161 1 august 2014

COURT
TZHCDECIDED
1 August 2014

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1 IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM PC CIVIL APPEAL NO. 42 OF 2013
(Originating from Civil Appeal NO. 33 of 2012 in the District Court of Kinondoni District) SHAMSA
SALUM..... APPELLANT V MOHAMED
MACKBEL..... RESPONDENT Date of last Order 15/7/2014 Date of
Judgment 1/8/2014

JUDGMENT

A. Shangwa, J This appeal arises from the decision of the District Court of Kinondoni delivered on 4th July, 2013 in Civil Appeal NO. 33 of 2012 which originated from the decision of the Primary Court of Kinondoni in Probate and Administration Cause NO. 55 of 2008. In its decision, the District Court of Kinondoni Makabwa, R.M dismissed the 2 Appellant's appeal on grounds that the matter before him had already been decided by the High Court Prof Juma, J as he then was in P.C Civil Appeal NO. 88 of 2010. In his petition of appeal, counsel for the Appellant Mr, Dennis Msafiri raised two grounds of appeal namely: -

1. That the District court of Kinondoni grossly erred in law in abdicating its judicial duty to consider and decide the appeal on merit for reasons of and on a pretext that the matter at issue before it had already been decided by the High Court in another appeal...
2. That the District Court of Kinondoni erred in law and fact in not appreciating that the appeal before it was on matters and grounds wholly and completely different from those, that were decided by the High Court Juma, J in (PC) Civil Appeal NO. 88 of 2010. I 3 He prayed this Court to step into the shoes of the District Court and decide the matter that was before it on merit or remit the case file to the District Court with directions that a decision on merit be made. At page one of his written submissions in support of this appeal, Mr. Dennis Msafiri pointed out that the matter before the primary Court was on appointment of Administrators of the estate of the late Salum Aklan Abdallah, and that the Primary Court appointed two Administrators as joint Administrators namely Alhaji Mohamed Mackbel, the Respondent in this appeal and Shamsa Salum, the Appellant in this appeal and gave a limit to properties that can be collected by Administrators and determined ownership of those properties. 4 Mr. Dennis Msafiri further submitted that the District Court of Kinondoni was called upon to

decide as to whether or not the Primary Court of Kinondoni was correct in entertaining and determining issues of ownership and whether or not the said Court was correct in holding that the deceased (Salum Aklan Abdallah) had no property of his own except a share from the estate of his deceased mother one Zuena Salum, and whether or not the said court was correct in appointing the Respondent namely Mohamed Mackbel who had a conflict of interest in the deceased's estate. He said, the District Court never decided any of those issues on pretext that the matter had been decided by the High Court Juma, J as he then was in PC Civil Appeal NO. 88 of 2010 whereas the matter which was decided by Juma, J is completely different. He said, the Appellant's grounds of appeal in the District court were different from her grounds of appeal in High Court PC Civil Appeal NO. 88 of 2010. He 5 said, in the case before the High Court, the Appellant preferred four grounds of appeal against the decision of the District Court namely that the Principal Resident Magistrate erred in law in entertaining an application for review that was filed under the Civil Procedure Code and in entertaining revision proceedings whose effect was to determine Land ownership whereas the Land Disputes Courts Act, 2002 has ousted the jurisdiction of District Courts from Land Matters and by quashing orders of the Primary Court without assigning reasons. Counsel for the Respondent Mr. Rutabingwa submitted that Makabwa, RM correctly held that he was bound by the decision of the High Court in PC. Civil Appeal NO. 88 2010 (Hon. Juma, J) where the decision of the Primary Court in Probate NO. 55 of 2008 at Kinondoni that Salum Aklan Abdallah (deceased) has no property of his own was not interfered with and where Mr. Justice Juma directed the distribution of the estate of Zuena Salum and that of Salum Aklan Abdallah to the beneficiaries and gave a time frame of concluding both probate matters. He contended that it would have been proper for the Appellant to appeal against Mr. Justice Juma's decision instead of lodging this appeal. He said, what was decided by Mr. Justice Juma, J was in order and that the Court had exercised both Appellate and revisional powers and gave orders/ directions which assisted the parties. Finally, he prayed this court to dismiss this appeal. 1 have gone through the decision of this Court in PC. Civil Appeal NO. 88 of 2010 which was given by my learned brother professor Juma, J as he then was. After doing so, I have come to the conclusion that the appeal before this Court was quite unnecessary. In fact, as I shall soon show, 7 the Magistrate in the District Court of Kinondoni did not err in declining to determine the appeal before it on grounds that he was bound by the decision of the High Court Juma, J in PC Civil Appeal NO. 88 of 2010. Although in PC Civil Appeal NO 88 of 2010, the central issue between the parties which was earmarked by my learned brother professor Juma, J was whether the District Court can be moved under the provisions of the Civil Procedure Code to hear an application on matters which originated from a Primary Court never - the - less, he exhaustively captured the matters involved between the parties by exercising the revisional powers vested in this Court under S. 30 of the Magistrates' Courts Act, Cap 11 R.E. 2002. In doing so, he examined the record of the Primary Court of Kinondoni in Probate Cause NO 55 of 2008 and found that both the Appellant and the Respondent who 8 were appointed as joint Administrators of the estate of the late Salum Aklan Abdallah had not complied with the directions given by A.P. Mshigwa, PCM who required them to make full account of the inventory. Also, he found that the

record do not show to what extent the order issued by A. P. Mshigwa, PCM directing that distribution of the estate of Zuena Salum in Probate Cause NO 442 of 2007 at Magomeni Primary Court had been complied with. After so finding, he ordered the Primary Court of Magomeni to direct the Administrator of the estate of Zuena Salum in Probate Cause NO- 442 of 2007 pending in that court to make full account of the inventory and to show how he has administered that estate of Zuena Salum and to file the inventory at the Primary Court of Magomeni within 14 the Magistrate in the District Court of Kinondoni did not err in declining to determine the appeal before it on grounds that he was bound by the decision of the High Court Juma, J in PC Civil Appeal NO. 88 of 2010. Although in PC Civil Appeal NO 88of 2010, the central issue between the parties which was earmarked by my learned brother professor Juma, J was whether the District Court can be moved under the provisions of the Civil Procedure Code to hear an application on matters which originated from a Primary Court never - the - less, he exhaustively captured the matters involved between the parties by exercising the revisional powers vested in this Court under S. 30 of the Magistrates' Courts Act, Cap 11 R.E. 2002. In doing so, he examined the record of the Primary Court of Kinondoni in Probate Cause NO 55 of 2008 and found that both the Appellant and the Respondent who 8 were appointed as joint Administrators of the estate of the late Salum Aklan Abdallah had not complied with the directions given by A.P. Mshigwa, PCM who required them to make full account of the inventory. Also, he found that the record do not show to what extent the order issued by A.P. Mshigwa, PCM directing that distribution of the estate of Zuena Salum in Probate Cause NO 442 of 2007 at Magomeni Primary Court had been complied with. After so finding, he ordered the Primary Court of Magomeni to direct the Administrator of the estate of Zuena Salum in Probate Cause NO 442 of 2007 pending in that court to make full account of the inventory and to show how. he has administered that estate of Zuena Salum and- to file the in v e n t r y at the Primary Court of Magomeni within.

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