

TANZANIA / JUDGMENT

## 20100209 TZHC Dar es Salaam

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TZHCDECIDED  
9 February 2010

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t ~ 11• f. 1 ~/)•~. / IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL REVISION NO 18 OF 2008 (Probate & Administration Cause No. 5 of 2006 Ulanga District Court) THERESIA JOSEPH MAWANYIA ..... APPLICANT VERSUS GEORGE SABINUS CHIGUMBI ..... RESPONDENT Date of last Order 2/12/2009 Date of Ruling 9/2/2010

### RULING

Shangwa, J. This is an application for rev1s1on of the proceedings and judgment delivered on 27 th February, 2006 by the District Court of Ulanga in Morogoro Region in Probate and Administration Cause No. 5 of 2006. It has been brought Under S. 44 (1) (b) of the Magistrates 'Courts, Act, 1984 and it is supported by affidavit of the 1 Applicant Theresia Joseph Mawanyia sworn at Dar es Salaam on 3 rd April, 2008. At paragraphs 3 and 5 of her affidavit, she averred that the Respondent who was appointed as Administrator of the estate of the late Sabinus Sabinus Chigumbi who is her late husband did squander the money from the proceeds of sale of the minerals mined from the deceased's mine at Epanko village in Mahenge and that she applied to the District Court of Ulanga at Mahenge for revocation of his appointment but that the District Court Magistrate refused to do so. The Respondent George Sabinus Chigumbi filed a counter - affidavit in which he denied to have squandered the money realized from the said estate and put the Applicant to strict proof .thereof. The Applicant was represented by Mr. Dominic ) Kashumbugu, Advocate and the Respondent was represented by Mr. B. M. Sanze, Advocate. 2 On 27 th November, 2008, I ordered that the Application should be argued by way of written submissions. In his written submissions, Mr. Dominic Kashumbugu for the Applicant submitted inter-alia that according to the Applicant's affidavit, the Respondent is misusing the deceased's estate by squandering the money which is realized from the sale of minerals obtained from the mine which belonged to the deceased, and that when the Applicant complained to the District Court of Ulanga at Mahenge on 27 th February, 2008, the District Court Magistrate refused her complaint and ordered that both parties should work together. He said that in doing so, the District Court Magistrate never wrote a reasoned judgment. He contended that as the respondent is misusing the deceased's estate, this court should revise the decision of the said Magistrate and revoke the appointment of the Respondent as Administrator of the deceased's estate and appoint another person to administer the same. In reply, Mr. B. M. Sanze for the Respondent opposed this Application. He submitted that it is not true that the Respondent is 3 misusing the deceased's estate and that the one who is misusing it is the Applicant who has started to alienate the 'Dala

Dala~ which used to operate in Dar es Salaam without his knowledge, and that there is no evidence to show that the Respondent is misusing the deceased's estate. Furthermore, Mr. B. M. Sanze submitted that counsel for the Applicant has not shown any error on the face of the record which has caused injustice, and that the District Court Magistrate was right in ordering that both parties should work together in the administration of the deceased's estate especially the mine. He said that the Respondent is prepared to work with the Applicant as a joint Administrator. Finally, he prayed the court to dismiss this Application with costs. I have gone through the record of the District Court of Ulanga in Probate and Administration Cause No. 5 of 2006 and found that on 8 th May, 2006, the Respondent George Sabibus Chigumbi 4 applied for being appointed as Administrator of the estate of the late Sabinus Sabinus Chigumbi. The record shows that his application was granted on the same day by M. I. Mtanda, Principal District Magistrate. In his short ruling, the said Magistrate observ;ed that as nobody has objected to the Application of George Sabinus Chigumbi for being appointed as Administrator of the deceased's estate, he has to appoint him as Administrator of the deceased's estate which he did. In my view, the above mentioned observation has no merit because the Principal District Magistrate who made that observation did not order for the publication of the matter in any News Paper or Gazette prior to the appointment of George Sabinus Chigumbi as Administrator of the deceased's estate. In practice, notice of the Application for Probate and Administration of the deceased's estate has to be given to the public through the News Papers or Government gazette before the Applicant is appointed by the court to be Administrator or Administratrix of such estate. As I have already mentioned, the Respondent's application for being 5 • appointed as Administrator of the deceased's estate was granted on the day it was made and the public was not notified about it. As this was not done, the proceedings of the District Court of Ulanga and its ruling in which the Respondent was appointed as Administrator of the deceased's estate are a nullity. In her complaint against the Respondent's appointment as Administrator of the deceased's estate, the Applicant told the Ulanga District Court that the Respondent is misusing the proceeds of sale of minerals from the mine which was owned by the deceased and herself by converting those proceeds of sale at the expense of the deceased's children and at her own expense as widow of the deceased. She requested the court to revoke his appointment as Administrator of the deceased's estate and be appointed in his place to administer the same. On his part, the Respondent told the District Court of Ulanga 1n his testimony that it is not true that he is misusing the deceased's estate and that the Applicant and the family members 6 . consented to his appointment as Administrator of the deceased's estate. In his judgment which has only ten typed lines, the Principal District Magistrate dismissed the Applicant's complaint and request. It appears plainly from his judgment that he did not give reasons for dismissing the Applicant's complaint and request. In actual fact, he did not take time to consider the grounds for her complaint and request before dismissing it. His failure to do so makes his judgment irregular and inappropriate. I hold therefore that the proceedings and judgment of the trial District Court in which the Applicant's complaint and request was dismissed are a nullity as well. In my judgment, as the proceedings and the ruling in which the Respondent was appointed as Administrator of the deceased's estate are a nullity and as the proceedings and judgment in which the Applicant's complaint and request • for revocation of his appointment as Administrator of the deceased's

estate are a nullity, I hereby revoke his appointment as Administrator of his deceased brother's estate and appoint the Applicant as Administratrix of her 7 , ' deceased husband's estate. Consequently, I allow this application and quash the trial District Court's decision. I do so with costs. On top of that, I order the Respondent who has illegally turned the deceased's mine to be his family property, his agents and servants to quit from the said mine premises forthwith and leave it in the hands of the Applicant who is the deceased's widow for its management or disposal in any manner she deems fit for the benefit of her children who are the sole beneficiaries of the deceased's estate. ~ A.Shangwa JUGDE 9/2/2010 Delivered this 9 th day of February, 2010 in the presence of the Applicant and in the absence of the Respondent. JUDGE 9/2/2010 8

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