

TANZANIA / JUDGMENT

20190827 TZHC Dar es Salaam

COURT
TZHCDECIDED
27 August 2019

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

(f, . . -, ' J~ IN THE UNITED REPUBLIC OF TANZANIA ., THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM CIVIL APPEAL NO. 129 OF 2016 (Originating from the Judgment and Decree of the Resident Magistrate's Court of Dar es Salaam at Kisutu, in Civil Case No. 3 of 2014) VICTOR MUTALEMWA ----- APPELLANT
VERSUS PRISICA STANLEY----- 1st RESPONDENT FLORIDA BASHASHA
----- 2ND RESPONDENT CHARLES BASHASHA ----- JRD
RESPONDENT

JUDGMENT

MUTUNGI, J. It all started 1n the Resident Magistrate's Court of Dar es Salaam at Kisutu where the respondents had sued the appellant for judgment and decree as follows: - (1) Tsh. 17,000,000 due and payable to the first respondent's young daughter one MADELINE GERALD SYLVESTER BAS HASHA' S account. ff- I

(2) Interest at commercial rate of 25% from the date the money was credited to the defendant's account as will be proved by the court up to the date of

judgment.

(3) Interest at court rate from the date of judgment to the date of payment.

(4) Advocate's instruction fee Tsh. 4,000,000/=.

(5) Costs of the suit. It was alleged that the first respondent is the wife of the late GERALD SYLVESTER BASHASHA who passed away on 26 th March, 2010 at Huston, Texas - USA and the biological mother of the said MADELINE the daughter and only child of the late GERALD S. BASHASHA. The first respondent is now living with the said child and needs school fees for the said child. The second respondent (aunt) and the third respondent (the uncle) were present during the clan meeting which appointed the appellant to collect the remaining arid proceeds of the deceased and give the said money to the mother to deposit the same in the child's account. After the death the first respondent had in writing authorized the appellant to claim any benefit which the estate of the 2 deceased was entitled and credit the same in Account No. 5014879007 at Twig a Bancorp in Dar es Salaam but to date for reasons best known to him he has not done so while the family of the deceased is suffering in ·poverty.

The appellant did confirm on the collected amount of money but gave conditions and denied crediting the same in Madeline's account. The appellant has long left the USA and resides in Dar es Salaam. On the other side of the coin the appellant alleged that the deceased lived at Ohio while he lived in Texas. After the deceased's death he collected the deceased's belongings which included a saloon car (make Toyota Camry), a computer, a camera and furniture. He sold the car and proceeds remitted to the first respondent. He made a follow up on the insurance opened by the deceased for Madeline with a deposit of USD 17,400. He had already sent the first respondent USD 600, and then USD 1000 followed by USD

5000. The appellant further stated he too was to be paid a total of 2400 USD for transport costs spent while travelling to attend the deceased when he was sick. He went on to admit that he still had USD 11,000 in his possession. 3 The court did deliberate on the adduced evidence and found that, the first respondent had already received USD 6000 from a total of USD 17,400 left behind in Madeline's insurance. Further that the appellant still has USD 11,000 in his possession. In that regard the appellant can not deduct money from the amount left for the maintenance and education of Madeline Gerald Sylvester Bashasha. The court further found that the expenditure the appellant incurred when travelling to take care of deceased was incurred out of his own will hence cannot be deducted from the child's money. The court went further to find that the appellant had failed to prove his counter - claim to the standard required in civil litigation. In conclusion the court decided that the appellant was only to pay USD 11,000 to the first respondent and costs of the suit. In view of the above decision the appellant was aggrieved and filed the instant appeal against the whole of the said decision on the following grounds: - { 1) That the honourable trial Magistrate erred in law and fact by holding that the expenditure incurred by the 4 appellant when he was travelling and taking care of Gerald Sylvester Bashasha, were incurred on the appellant's own will and are not-deductible in the estate.
- (2) That the trial Magistrate misdirected himself in awarding the respondents a total sum of USD 11,000 without taking into consideration the expenditures incurred by the appellant in administration of the deceased estate abroad.
- (3) That the honourable trial Magistrate erred both in law and fact by holding that the appellant failed to prove the counter-claim on the required standards. In support of the grounds of appeal Mr. Mafwele, learned Advocate representing the appellant submitted for the first ground that, the two were living in Ohio (Canton City) and the other (Huston) in Texas. This is about 1,636 Kilometres apart. The appellant had to travel to attend the ailing, now deceased Gerald Sylvester Bashasha. After his death (deceased) the family appointed the appellant as his personal representative. He was to collect, reserve and distribute the estate. To perform this duty, which he diligently discharged, had in the course incurred costs. The question 5 will be where else were these costs to be deducted, if not from the deceased's estate. As far as the second ground of appeal is concerned the learned counsel submitted that, after the deceased's death, the appellant engrossed himself in following up the said estate. As a result, he lost his job in the USA, was arrested and deported. In view thereof as

the law allows for costs incurred to be deducted from the estate, it was wrong for the court to award the respondents US\$ 11,000 without taking into account the expenditure incurred by the appellant in the administration of the estate in issue. As regards the third ground, it was submitted that, the appellant had proved (death certificate) that the two lived far apart. Further, the court in its judgment had acknowledged that indeed, they were not living together but still the court failed to consider this fact and proceeded to dismiss the appellant's counter-claim. In response thereof Mr. Sylvester Aligawesa, learned Advocate submitted, since there is proof that there was money which passed through the appellant and was deposited with the appellant solely for the child, this money should not be touched. More so, the appellant had been appointed the deceased's legal representative by the family, if at all has any demands he should table the same before the deceased's family. As regards the expenditure made by the appellant, these were done out of his own will. He had no agreement with the family to incur these expenditures. Be as it may, the appellant is not an administrator nor was he appointed as one. The deceased died interstate, hence a family meeting was the one empowered to appoint an administrator. The learned counsel contended the appellant had failed to prove in evidence how he spent the claimed amount of money. I now turn to the merits of the grounds of appeal raised. The first and second grounds will be considered together the major grievance as depicted from the evidence adduced before the trial court is the grant of US\$ 11,000 which is to be payable to the first respondent on behalf of her daughter one Madeline Gerald Sylvester Bashasha. It is a laid down principle of law that he who alleges must prove. The same spirit is found in Section 110 (1) of the Evidence Act, Cap. 6 R.E 2002 which states: - 7 I .-; "Whoever desires, any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist". It is in evidence, the first respondent did prove indeed there was money left behind by the child's father the late Gerald Bashasha. The appellant too conceded that the deceased had once told him that he had insurance for his daughter. He further admitted in evidence that after the deceased's death, he found the insurance had US\$ 17,400 and he in turn opened a Trustee Saving Account for the said child and deposited US\$ 17,400 in the said Account. The first respondent did acknowledge that she had received a total of US\$ 6,600 from the appellant a fact which was admitted by the appellant. The appellant admitted that he still has US\$ 11,000 in the said Trustee Account. He did not dispute that he had been appointed by the deceased's family members to collect the estate of the deceased in America. Considering the foregoing, it was just and proper for the trial court to have ordered that the appellant hands over the remaining US\$ 11,000 in the Trustee Account. It is further found that the court was correct to note down that no money should be deducted from the money left for the maintenance and education of Madeline Gerald S. Bashasha. There are further grievances by the appellant that, he had incurred costs during the time he was taking care of the deceased. The court had pronounced that these costs were incurred by him in his own will and can not be deducted from the child's money. Indeed, this court is settled that for whatever reasons, no one should deduct the money left behind for the maintenance of the deceased's child. This court is not in one with the appellant's counsel that if there is a claim of money spent or costs incurred

the same should be deducted from the deceased's estate without proper administration. This argument is neither here nor there, what is important is that, the same is not to be deducted from the child's money kept in the insurance opened solely for her maintenance. It would seem the appellant had followed the proper track in claiming for the costs he incurred by raising a counter-claim which is the basis of the third ground of appeal. He had in 9 evidence claimed for transport charges from Ohio to Texas where he went to take care of the sick (the deceased) which included fare (2,400 USO), accommodation (USO 1000), meals, incidentals and storage charges. He also claimed for USO 1000 per week for seven weeks (7000 USO) which he lost as wages all totaling USO 14,950. The appellant did not prove the same on the standard required. It is a common known principle in civil litigation that a counter-claim is treated as a claim which should be proved on a balance of probabilities. The appellant failed totally to discharge the burden of proof to the required standard. He had tendered no evidence to support his claims. On the same footing the trial court was correct to disapprove his claims in the counter-claim. All said and done, the court finds the appeal has no merits and in the circumstances of the case proceeds to dismiss the same with no costs. B. R. Mutungi JUDGE 27/08/2019 10 Read this day of 27/08/2019 in presence of the appellant, first and third respondents in person and Mr. Sylvester Korosso holding brief for Mr. Mafwele for the appellant Right of appeal explained.)e ~ B. R. Mutungi JUDGE 27/08/2019 11

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/342396/source_file/e6087ddf6107cf68/20190827_TZHC_Dar_es_Salaam.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/victor-mutalemwa-administrationofestates-tzhc-2019>

Prepared on 14 October 2026 · Esheria