

TANZANIA / JUDGMENT

19970722 TZHC Dar es Salaam

COURT
TZHCDECIDED
22 July 1997

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IN THE HIGH COURT of Tanzania at Dar es Salaam
IN MATTER OF THE ESTATE OF
ABDALLAH OMAR KANDA

RULING

The court has been called upon by the Executor of the will of the deceased Abdallah Omar Kanda to give a proper interpretation of the last paragraph of Group VIII of the last will of the deceased as to whether or not the shop situated in T. House No. 104 Shaurimoyo even after transfer of a Title Deed has been effected to the relevant beneficiaries. It is in the record that on 6th January, 1987 the deceased Abdallah Omar Kanda prepared a will bequeathing his properties to his beneficiaries, and appointing the National Bank of Commerce as the Executor of that will upon his death. In that will the deceased bequeathed the house No. 101+ at Shaurimoyo to three beneficiaries, namely (1) UPK, (2) ABDI, and (3) JI. In one room of that house the deceased was operating a spare parts shop. He bequeathed the sale products from that shop to his wife R. and his child. The deceased died on 16/3/1988. On 24th October 1992 this court granted probate to the National Bank of Commerce as directed in the will. That will has no dispute. But in the course of executing that will the National Bank of Commerce found itself in a dilemma when the beneficiary of the house and the shop business to be moved somewhere else and the deceased's widow resisted on behalf of other beneficiaries who were bequeathed the enjoyment of the sale products from the shop. The beneficiary of that house wanted the shop business to be moved somewhere else to enable them full enjoyment of their inheritance. The deceased's widow resisted on the ground that the shop somewhere else would be against the deceased's wish who had directed the shop to continue being operated in that house. Secondly, she said, she has nowhere to shift that shop. But the beneficiaries of that house spearheaded by Upeka said the same could be moved to the other house which was bequeathed to B. and other beneficiaries as per Group 1 of the will. Since there was no compromise the matter was referred to this court for a proper interpretation of the relevant clause of the will. In short that is the gist of the matter. There is no doubt that the will is not contested. In that will under clause 4(b) Group I the house on plot No. 550 Bungoni Ilala was bequeathed to the following children of the deceased:-

1. Mwaaburo Abdallah

2. .SFIUDII /'.JIT)/\..tT.f;H 3a OM.\i] ABDJ\..LT.-Illi ;
4. Kti..NDA fl.!3D/\..LT.J1H and Under G:::-oup II house No. 101~ .Shaurir:Joyo Ilala wa,s bequathed to the following da.uthters of the dece<.1.sed:- (1) UPEi<L'. \.BDALLAE
- (2) r1IT(AMI'I'I t:..SDALL!'i.H and (3) ASH!: 'IJ3DAL1AH. Then under Group VII Par2, 1 the deceased bequathex- e.s fol1m-,s:- "Na na0nd,..lca kutarnka lmwa duk-'l lr:i~g,, la spca lililopo Shaurimoyo Ila.la D 1 Salaam liendeJ.Ge kufanya kazi chini ya u;3_nga.lizi i-,a m.jomba ,,o.o JS'ifil Ht\M'!.~,.ZI'fil na i!lEtpato yatok,mayo n.:1 duka hilo yatumike kuhudw•lia mk,1 wan@:u na watoto ,-,angu pamo,j a n,~ gb2rama za masorno ya watoto wangul 1 It is this parairaph which the court has been called upon to give its proper interpretation. According to the beneficiaries of that house spear headed by Upeka the true and proper meaning of Viat paragraph is th.3.t the shop business would continue to be conducted in that room c1-s long as the beneficiaries of that house allo ,1ed, 1 ----- ···----- 3 a..!d that it ,:1ot.1lcl. moved some1!here else ,_,hen the beneficiaries of that house wanted fuJ.1 use of th::tt house. She said since now they 1,m.nt full use of it and are in a process of selling it go that t!ley can share the prpceeds, it is hig11 timi:.) that that shop business should now be removed from there and be Inbved to the house of the benefici2,ries in Group I who are using the proceeds of that shop with BatuJ.i. She said although the proceeds of that shop was supposed to benefit all the children of the deceased, yet 3 of them (i e Upeka, Mkamati a1ld Asha) were getting nothing and were not claiming for anything. What they need is only vacant possession of their house for full and free use of their inhr,ritance •. She i•,ent on statin.<; that thc.1t shop is now merely a matter of definition because the room is empty and the few remcining goods are with Batulio But according to Batuli on beh8.lf of the other beneficiaries in Croup I the true meaning is that thnt shop is to continue to be operated ;i.n that house indefinitely and thctt shifting it somewhere else would amount to' disobeying the dec~ased. 1 s wish 0 Secondly, she said, she hr1.s nowhere to estc-.blish another sho1Jo However she conceded that that room is ?:1ow empty and the few goods left are ·with h0.re But she accused the 3 beneficiaries for st~aling or misappropic::ting som,.) of themo I have carefully considered the contents of the will ;:,md the overall circumstances surrounding this case to·gether ·.,;ith the arguments by the partieso After such a careful consideration of the m.:1tter I have been quite satisfi,~d that a proper intr;rpretation of that para~raph is that the deceasec::.. bequeathed only the business of th:1t shop to all of them and not the room in which the shop wD..!3o The. room which. forrnGd part of the house bequeathed to the 3 beneficiaries romainod their property 0 The shop business would continue to be conducted there as lone: as the owners of thnt house have not indicated thfl.t they want full use of their houseo It was not mea.nt to be operated there for ·, ife. The deceased had wanted the shop 1lusiness to re:11c1.ii: in existence but not necesarily in th---:it house 4 It ·could be moved anywher0, Since the 3 beneficiarie3 n01-, we.nt full a.nd free use of their house 1 and since the ben-:cficiaries of Group I have their own house, the 3 beneficiar :s in Group II are now entitled to have full and fr2e use of th,~t houseo

- 4 ... They can even sell it (if they wish) free of any encumbrance. As that room is now said to be empty, it is hereby ordered that neither Batuli nor the other beneficiaries of Group I nor the said uncle Hamisi Hamza Ziwa is allowed to re-occupy it without free consent of the 3 beneficiaries of Group II or from any proper authority The National Bank of Commerce as executors of the will and holder of the Probate to continue exercising their duties justifiably
- s. N. KAJ! JUDGE 22/7/1997 Court: Rulihir; has been delivered in the presence of Mr.i Sanze learned counsel for administrator NFC~ Batuli, Upeka and /sha this 22nd day of july, 19970 S/ N. I<AJI JUDGE 22/7/1997

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