

TANZANIA / JUDGMENT

19980821 TZHC Dar es Salaam 1

COURT
TZHCDECIDED
21 August 1998

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I. DAR ES SALAAM DISTRICT COURT AT DAR ES SALAAM, CIVIL APPEAL NO. 11 OF 1998
WINNIE CHIKOYA 0000-0100-0000-0000 BU BE, SHI, J: In course of hearing this appeal, I
allowed the appeal and reserved my reasons for so doing. I now proceed to give my reasons.
I have written for the appeal. The appellant had filed six grounds of appeal. The grounds when
submitted, to this Court. That the proceedings at the trial court were highly irregular in that
first there was a suit filed before interlocutory orders could be applied for. - - - .

- 'That this offends 37 of the CIC. Again the proceedings at the trial were supposed to start
by way of petition
- Section 56 of the Probate and Administration Ordinance 9 C. - - - and in event of a
contention that the petitions be turned into a suit in terms of section 52 (b) of same Act, . . .
- - - . Act. That the ruling delivered by the trial magistrate was as if the court
was trying to correct an earlier decision while that was not the case. And again that
case the order is contrary to the orders given. After a careful study of the
Ruling, I find myself in agreement with the submissions made by the appellant.
One does not file for an application for interlocutory orders in absence of a suit. That this is
a probate matter is not disputed and an irregularity in terms of
- Section 68 (c) of the Code of Civil Procedure. The proceedings filed therefore were not only
irregular but not maintainable at law; I have no alternative but to quash and set
them aside. I make no order as to costs. - - - / . / . . (- , - / t - ' ~ J : : ~ ~ 1 ; ~ \ . ! : ; / \ ~ - \
Delivered before A. G. BUBESHI . . JUDGE Magafu for Mwengele and in absence of
Respondent 21/8/98" I, J, R. ! . r . . .
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