

TANZANIA / JUDGMENT

zebedayo w kaka vs yusuph mhawi another 2016 tzhc 2308 20 september 2016

COURT
TZHCDECIDED
20 September 2016

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

IN THE HIGH COURT OF TANZANIA AT DODOMA CIVIL CASE NO. 4 OF 2013 ZEBEDAYO W. KAKA PLAINTIFF VERSUS

1. YUSUPH MHAWI 1st DEFENDANT
2. LAURENT CHALO 2nd DEFENDANT 23/08/2016 & 20/09/2016

JUDGMENT

SEHEL, J: Machibya Professional Attorneys filed a suit on behalf of their client, Zebedayo W. Kaka (the Plaintiff), against the Defendants. The plaintiff claims against the defendants jointly and severally for payment of Tanzanian Shillings two hundred twenty six million nine hundred and seventy thousands (Tshs. 226,970,000/=) being value of properties of the estates of the late William Kaka, left under the hands of the Defendants. It is alleged by the Plaintiff that the Defendants refused to deliver the properties of the late William Kaka to the Plaintiff, the administrator of the estates of the late William Kaka. In his pleadings, the plaintiff alleges that before the demise of the late William Kaka, William Kaka was residing with the Defendants together with his properties. Under Paragraph 1 of the Complaint, the plaintiff itemized the properties that William Kaka had. These are 500 herds of cattle (worth Tshs. 500,000/= each); 50 goats (valued at Tshs. 50,000/= each); 3 donkeys (worth Tshs. 160,000/=); one cart worth Tshs. 600,000/= and three plough each valued at Tshs. 130,000/=. He further alleges that the defendants were in charge of all the properties of the late William Kaka during his life time. The Plaintiff further alleges that he was able to recover only 54 herds of cattle from the Defendants and that the Defendants are still in possession of more than 446 herds of cattle worth Tshs. 223,000,000/= in total, 50 goats valued at Tshs. 50,000/= each; 3 donkeys worth in total Tshs. 480,000/=; one cart of Tshs. 600,000/= and three plough each worth Tshs. 130,000/=. It was the Plaintiff's allegation in his complaint that the animals are increasing every day and the Defendants benefit from the animals through milk and manure while the heirs are denied their right to benefit from the estates of their late relative. The Defendants through the services of Wasonga & Associates Advocates filed a joint Written Statement of Defence denying each and every allegation and put the Plaintiff to strict proof. The Defendants further stated that the late William Kaka had only 65 herds of cattle; eight goats; three sheep; and four donkeys. They further allege that the Plaintiff and his family

received all the properties left by the deceased and there is no outstanding asset and properties left. At the hearing of the case, Ms. Mbasha and Mr. Machibya, learned advocates from Machibya Professional Attorneys appeared to represent the Plaintiff at Plaintiff's case and Defendants' case (respectively), whereas, Mr. Wasonga, learned advocate from Wasonga & Associates Advocates appeared to represent the Defendants. Pursuant to Order XIV Rule 1 (5) of the Civil Procedure Act, Cap. 33 this Court framed the following issue on which the right decision of the case appears to depend:

- 1) Whether the deceased William Kaka left properties and assets to the Defendants;
- 2) To what relief(s) are parties entitled? The Plaintiff paraded a total of two witnesses in order to prove the case. The first witness was Mr. Zebedayo William Kaka, the Plaintiff himself (hereinafter referred to as PW1). PW1 testified to the effect that he is a farmer residing at Iwondo village and that the late William Kaka was his father. His father died on 11th January, 2011 and on 6th September, 2011 he appointed by Chipogoro Primary Court as administrator of the estates of his late father William Kaka. He tendered and it was admitted the form of appointed as Exhibit PI and also he tendered the judgment of the Chipogoro Primary Court and it was admitted as Exh. P2. He told this Court that at the Primary Court they enlisted the following as properties left by the deceased: 500 cows; 50 goats; 3 ploughs; 3 donkeys; one cart; and two farms and that the 2nd Defendant did not dispute about these mentioned properties. However, PW1 said, later on his brother, Alfred William Kaka, lodged an appeal before the District Court at Mpwapwa whereby the District Court dismissed the appeal and told them that they were both jointly appointed by the Primary Court to be administrators of the deceased assets. He tendered the judgment of the District Court of Mpwapwa at Mpwapwa and it was admitted as Exh. P3. PW1 further testified that all the properties left by their late father were in the hands of Yusuph Mhawi since Yusuph Mhawi was looking after them. He said after the demise of their father, a family meeting was convened and Yusuph Mhawi was present. He told this Court that Yusuph Mhawi and his wife Victoria, the sister of PW1, were summoned by Chipogoro Primary Court because they were both looking after the properties of the late William Kaka. PW1 further said Mhawi at the meeting agreed to return the properties but to date he has not yet returned them. PW1 continued to narrate that he was able to seize two cows at Chipogoro auction from Yusuph Mhawi and he said he identified these cows as theirs because they had special marks. PW1 further told this Court that he then went to report the incident at Chipogoro police but the police handed over the cows to him and was told that to keep them and if there will be any criminal charges preferred then the cows will be required to be tendered as exhibits. PW1 continued to narrate that the case was never instituted and till the day he was testifying the cows are still at his residence. After that incident, he said he went to Vinolo area where he was also able to seize two cows from Amani Ngogowe. He told this Court that Amani informed him that the cows were brought to him by Yusuph Mhawi. So he took Amani to Sasajila village office and a settlement agreement was entered between Amani and him before Dickson Muhaka, the village officer. PW1 tendered a letter written by Dickson Muhaka evidencing that PW1 seized two cows from Amani Ndogowe. The letter was

admitted as Exh. It was the testimony of PW1 that he was able to return only 54 cows from Yusuph Mhawi. He said these 54 cows were surrendered by Yusuph Mhawi before the Parish Church. In his testimony, PW1 also disputed the defendants' allegation that PW1 received 65 cows. He explained to this Court that the receipts attached by the Defendants in their Written Statement of Defence are not new to him. PW1 concluded his testimony by praying for the return of the deceased's assets; costs and compensation. In his cross examination, PW1 said he is praying to be paid money of Tshs. 226m because cows are no longer there. When asked as to why his co administrator did not file a suit against the Defendants, PW1 responded that Alfred William Kaka did want to come to court. When asked further if he knows the exact number of cattle that were handed over to Mhawi by his late father, PW1 said he does not know because he did not witness the handing over but he was only told by his late father that his cattle are with Mhawi. The second witness for the plaintiff is Ainea William Kaka (PW2). His evidence was to the effect that he recalled in 1999 he moved with his late father to Yusuph Mhawi's place as such he was present when his late father moved his cows to Yusuph Mhawi. He said his father moved in with 190 cows in year 1999 and by the time PW2 left in 2006 the cows were 247. He thus believed that the cows must now be 500 in numbers because of more breeding. It was also PW2's testimony that since they were able to recover 54 cows (two from Laurent Chalo and others from Mhawi as he surrendered them at the Parish Church) then they are now claiming a total of 446 cows; 2 donkeys; 1 plough; and 1 cart. In his cross examination, PW2 told this Court the handing over of 54 cows by Yusuph Mhawi was done at the Parish meeting held on 3rd December, 2011 and in that meeting it was agreed that all cases that were before the court to be withdrawn and that they will not continue to claim anything. He further replied that the present suit was commenced on 7th May, 2013 after the Parish Church meeting was convened. That was the end of the Plaintiff's case. The Defendants on their part also called two witnesses, the first witness is Laurent Ndooyopo Charlo (DW1), the second Defendant in this suit. This witness testified that he is a resident of Iwondo village and that he knows Yusuph Mhawi since 1983 when he moved in that village but he has no relationship with Yusuph Mhawi and he never worked with Yusuph Mhawi. He told this Court that he knows that he has been sued by the Plaintiff but do not know why since all the witnesses did not mention him in their testimonies. When cross examined, DW1 said he is the relative of the Plaintiff since the late William Kaka was his uncle and that before William Kaka passed away, the deceased was residing with Yusuph Mhawi. In his cross examination, this witness also said Yusuph Mhawi is his in law as he married his cousin Victoria Mhawi. The second witness was Yusuph Yohana Mhawi (DW2), the first Defendant in this case. DW2 testified that he is a farmer and pastoralist. He owns about 100 cows. He told this Court that he is sued by Zebedayo Kaka who claims from him Tshs. 256m being a claim for 500 cows but he does not know where these cows are. DW2 further testified that he was residing with his father in law, the late William Kaka from 1999 to January, 2011. DW2 said the late William Kaka was looking for grazing land for his cattle that is why the late William Kaka went to camp to his home with 65 cows, 8 goats, 3 sheep, and 4 donkeys as he was looking for green pastures. The late William Kaka arrived at PW2's place with Ainea William Kaka but after a quarrel ensued Ainea left William alone.

^ DW2 further testified that since his in law was old and he had eye problems, the late William Kaka decided to give his daughter Victoria the cattle to look after them and that since Victoria is his wife then he had to look after the cattle because his wife requested him to assist her. At that time he said, the cows were 65, 3 sheep, 8 goats, and 4 donkeys. He said they continued to live with the late William Kaka till he met his death in year 2011. It was the testimony of DW2 that after the burial services, a clan meeting was convened and he was asked to return the cattle but since the cattle were grazed at Kilosa, DW2 notified the clan that he will return the cattle upon their return from Kilosa. DW2 testified that somehow a dispute arose but it was then resolved before Iwondo Parish on 3/11/2011 and he was able to hand over 54 cows, 7 goats, 2 donkeys and 2 ploughs. DW2 further told this Court that it was agreed that there will be no more disputes and all cases will be withdrawn but in 2013 he received a demand letter from Machibya Advocate. He said the present suit has no merit and prayed for it to be dismissed with costs. In his cross examination, DW2 said he counted all the cows of the deceased when they were brought in and at the time the deceased met his death, he left behind 25 cows. He also ^ ^ said he was present before the Primary Court Probate case and that he was not asked how many cows were with him. He further said he handed over 54 cows to Ainea because he wanted for the dispute to be finalised and that some of the cows that the late William Kaka had, William Kaka, himself, distributed them to his children and wife and at the time he met his death he was only left with 25 cows. This was the end of the defence case. Both counsels opted not to make any final submissions. They let the court to decide the dispute according to the evidence adduced. The bone of contention, as per the framed issue, is whether the deceased William Kaka left properties and assets to the Defendants. According to the evidence brought before this Court by both the Plaintiff and Defendant establish that the late William Kaka before he met his death in 2011 he was residing with the 1st Defendant and that the late William Kaka moved with his cattle to the 1st Defendant's place in 1999. Unfortunately, PW1 does not know how many cattle his late father moved with-in 1999. It is only PW2 who told this Court that in 1999 when his late father moved with to the 2nd defendant's place, he had 194 cows and in year 2006 at the time PW2 left his late father, the cattle were 274 ^ ^ On the other hand, the 1st Defendant (DW2) highly disputed the numbers stipulated by PW2. In his testimony DW2 told this court that his father in law moved in with 65 cows, 8 goats, 3 sheep, and 4 donkeys and that at the time of his death in 2011, he was only left with 25 cows because the deceased distributed some of his cows to his children and some of them the deceased paid as bride price for his son and gave it to his wife. The Plaintiff, in a bid, to prove his allegation that the deceased left behind 500 herds of cattle; 50 goats; 3 donkeys; one cart; and three ploughs, tendered Exhibit P2. Exhibit P2 is the judgement of the Chipogoro Primary Court in respect of Probate Administration Cause No. 01 of 2011. It is therefore prudent to reproduce parts of Exhibit P2 which PW1 put reliance on in order to see whether it proves that the deceased left the mentioned properties to the defendants. Part of page 1 of the judgment reads: "Tarehe 6/6/2011 mwomba mirathi ndugu Zebedayo William Kaka alileta maombi yake ya usimamizi wa mirathi ya marehemu baba yao ndugu William Kaka, baada ya kukaa kikao chao cha wanafamilia ambacho kilikaliwa tarehe 16/4/2011 kama katika muhtasari unavyoonyesha.

Katika maelezo yake mwombaji anasema baba yake alifariki ta re h ^ ^

11/1/2011.....Mwombaji pamoja na mambo mengine amesema marehemu ameacha ng'ombe mia tano (500); mbuzi hamsini (50); majembe ya ng'ombe matatu (3); punda watatu (3); na mkokoteni mmoja. Na vitu vyote hivyo anasema vipo kwa shemeji yake Yusuph Mhawi....” It follows then that page 1 of the judgment only reproduces what PW1 testified before Chipogoro Primary Court. That part of judgment cannot be taken as a proof that the deceased left 500 herds of cattle; 50 goats; 3 donkeys; one cart; and three ploughs to Yusuph Mhawi. It is only a reproduction of what PW1 testified before Chipogoro primary court. Further, first Paragraph of page 3 of the judgement reads: “..Mahakama ilimpa nafasi Ndugu Yusuph Mhawi ambaye inadaiwa kuwa mali za marehemu zipo huko kwake, na pia alihudhuria kikao cha pili kilichoamriwa na mahakama naye akasema wengi wao katika kikao hicho waliendelea kumpendekeza Ndugu Zebedayo Kaka, lakini hawa ndugu wawili tu Victoria na Alfred ndio walipinga na kumpendekeza baba yao mdogo na kaka yao mkubwa Denes ambao wote walikataa. Anasema alijaribu kuwashauri Alfred na Victoria kuwa wamkubali tu Zebedayo lakini walikataa. Anasema hata yeye haoni shida yoyote In essence the above transcript shows that the trial Court gave Yusuph Mhawi a chance to say something about appointment of Zebedayo Kaka. Yusuph Mhawi in his response told Chipogoro Primary Court that he had no objection in appointing Zebedayo Kaka as the administrator of the estates of the late William Kaka. This part of judgement also does not prove that Yusuph Mhawi at Chipogoro Primary Court conceded that 500 herds of cattle; 50 goats; 3 donkeys; one cart: and three ploughs are with him. At page 4 of the judgement, the trial Court further stated: “...Tukianza kujibu swali la pili, ambalo linasema nini hatma ya mali za marehemu na watoto endapo mwombaji hatateuliwa. Kwa mujibu wa ushahidi wote wa mwombaji wameithibitishia mahakama kuwa mali zote zikiwemo ng'ombe 500, mbuzi 50, mikokoteni mitatu na punda watatu kwamba vipo kwa Yusuph Mhawi mme wa SM5 Victoria Kaka, ni dhahiri kuwa endapo mwombaji hatateuliwa mali hizo zote zitaendelea kushikiliwa na Yusuph Mhawi na mke wake Victoria Kaka pamoja na familia yao na kuacha familia kubwa ya marehemu ikihangaika bila kufaidi mali za marehemu baba yao. Hivyo basi kukosa kuteua msimamizi ni kuipotezea mali ya marehemu au kuiruhusu itumiwe na mtu mmoja tu. Kwa hiyo hatma ya mali za marehemu itakuwa ni kupotea na hatma watoto wa marehemu tegemezi ambao ni wadogo itakuwa m ashakani....” This part of the judgment was trying to answer the question that it posed as to what will be the outcome of the deceased's properties if no appointment is made. In trying to answer this question, the trial Court noted that the applicant through his evidence was able to establish that the deceased left behind 500 herds of cattle; 50 goats; 3 carts; and three donkeys as such the trial Court came to the conclusion that all these properties left behind by the decease are with Yusuph Mhawi, the husband of SM5 Victoria, so if Zebedayo Kaka is not appointed as the administrator then all the properties will be lost and the heirs of the deceased will not benefit from the properties. In essence, Chipogoro Primary Court was dealing with the appointment of the administrator of the deceased that is why, at page 5 of the judgment the Primary Court directed the appointed administrators, one Zebedayo W. Kaka and Alfred W. Kaka to collect all the deceased assets including the ones that are in the hands of Yusuph

Mhawi and distribute them amongst the heirs. It is important to note here that Exh. P2 did not direct administrators to collect 500 herds of cattle; 50 goats; 3 carts; and three donkeys. Exh P2 only directed administrators to collect all the deceased assets including the ones that are in the hands of Yusuph Mhawi be it 54 cows or 6 ^ cows. Exhibit P2 is therefore irrelevant for all intent in respect as to whether the deceased left 500 herds of cattle; 50 goats; 3 donkeys; one cart; and three ploughs to the Defendants. Having ruled out Exh. P2 then we are only left with the testimony of PW2 who told this Court that in 2006 when he left his late father, the cattle were 274 and that he believes they are now 500 because of more breeding. It should be noted here that none of the Plaintiff's witnesses were able to say with certainty how many cattle were left by the deceased in year 2011 . What we have in evidence that both PW1 and PW2 acknowledged in their testimonies that DW2 returned to them 54 cattle at the Parish meeting. Further PW2 told this Court in his cross examination that in that Parish meeting it was agreed that they will have no more claim against DW2 and they will withdraw all the cases that were before the Court. This being the fact then I see no justification for the Plaintiff to continue to claim properties which are no longer in the hands of the 2nd defendant. I tend to believe the testimony of PW2 because if taken along with Exhibit P2 that directed both administrators to collect the properties of the deceased, then one wonders as to why the other administrator, Alfred W. Kaka did not sue along with the Plaintiff in this suit. The only logical response to this question is the fact that the properties were already handed over at the Parish meeting as testified by DW2. Issue number one is therefore answered in the negative. The next issue is what relief are parties entitled? Since I have found that the deceased William Kaka did not leave any properties and assets to the Defendants then the only relief is to dismiss the suit with costs. Therefore, this court finds that the deceased William Kaka did not leave any properties and assets to the Defendants as such the suit is hereby dismissed with costs. Order accordingly. DATED at Dodoma this 20th day of September, 2016. B.M.A Sehel JUDGE Judgment delivered in open court at Dodoma, under my hand and seal of the court, this 20th day of September, 2016 in the r.Wasonga, learned advocate for Defendants /god in absence\of Plaintiff >eal is fully explained. T lt T * .- B.M.A Sehel JUDGE 20th September, 2016.

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.tanzlil.org/media/judgment/184094/source_file/zebedayo-w-kaka-vs-yusuph-mhawi-another-2016-tzhc-2308-20-september-2016.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/zebedayo-w-kaka-administrationofestates-tzhc-2016>

Prepared on 26 October 2026 · Esheria