

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 32 OF 1991

BETWEEN

IBRAHIM SHAHA APPELLANT

AND

MTUMWA SHAHA RESPONDENT

(Appeal from the Judgement of the High
Court of Tanzania at Dar es Salaam)

(Kazimoto, J.)

dated the 7th day of August, 1986

in

(PC) Civil Appeal No. 50 of 1984

R U L I N G

MAKAME, J.A.:

The parties are siblings. The appeal by the appellant against his sister, the respondent, was heard by the Court of Appeal and judgement was pronounced on 18th August 1992. The matter has been lingering since then, quite unnecessarily in my view. It has been brought back to me, as the presiding judge of the panel, to clarify the position in terms of Rule 39(2)(c) of the Tanzania Court of Appeal Rules, 1979.

The respondent in this appeal, MTUMWA SHAHA, has a 50% share, in her own right, in the house in question, No. 20 SUKUMA STREET KARIAKOO, having inherited that much from her deceased childless sister, MWANAABASI. The Court of Appeal found that the intended wakf by Mtumwa and her deceased brother, KHAMISI, was not absolute, for reasons given. It meant therefore that Khamisi's portion, 50% of the house, was subject to inheritance by Mtumwa and Ibrahim.

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Mr. Mlanzi submitted that his client is entitled to $\frac{1}{3}$ of that 50%, and SWAHIEA, Ibrahim's daughter is of the same view - that her father is entitled to only $\frac{2}{3}$ of that 50%. One cannot easily see where the problem is, therefore in terms of percentage Mtumwa has

(i) 50%;
plus (ii) $\frac{1}{3}$ of 50% = 16.67;
Total 66.67% of the house.

As I am informed that the house has 10 rooms she is entitled to 6.67 rooms. Because I am told that there is also a banda. That one should go to Ibrahim 100% in return for 0.33% a room, to make Mtumwa's share complete 7 (seven) rooms. The final outcome is therefore:

Mtumwa 7 rooms in the main house;

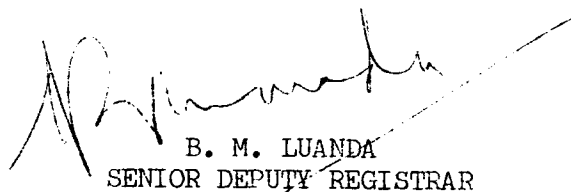
Ibrahim 3 rooms in the main house plus the banda.

Let the matter finally rest at that and each party to bear his or her own costs of this exercise.

DATED at DAR ES SALAAM this 25th day of October, 1996.

L. M. MAKAME
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


B. M. LUANDA
SENIOR DEPUTY REGISTRAR