IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
(PC) CIVIL APPEAL NO. 9 OF 1998
(FROM BAGAMOYO DISTRICT NO. 24 OF 1996
ORIGINAL BAGAMOYO PRIMARY COURT NO.13/95)
WAZIRI MANENO CHOKA.....APPELLANT
versus
ABAS CHOKA.....RESPONDENT

JUDGEMENT

MWITA, J.

This is an appeal from the District Court of Bagamoyo on a matter which originated from the Bagamoyo Primary Court. Briefly stated the facts are as follows:

In February 1995, Maneno Choka, a Muslim, died leaving a will bequeathing all his property , to WAZIRI BIN MANENO CHOKA. There is evidence that the deceased never contracted a marriage in his life time. He cohabited with Waziri's mother and begot Waziri. In other words Waziri was born out of wedlock. However the deceased brought up Waziri as his child and he appears to have acknowledged him as his legitimate son. Even in his will he refers to Waziri as his son. He states in his will (in swahili):

> "4. Na husiya kwamba milki yangu yote, kinachosema na kisichosema kama banda, nyumba, pesa taslimu na shamba langu ambalo liko Nunge Tarafa ya Bagamoyo ni mali ya mwanangu pamoja na mali yeyote niliyonayo na nitakayokuwa nayo wakati nitakapo kufa viwe ni vyote mali ya mtoto wangu WAZIRI BIN MANENO CHOKA..."

After the death of Maneno Choka, his younger brother, Abas Choka applied to the Bagamoyo Primary Court for letters of administration. This application was opposed by Waziri Maneno Choka. Eventually the Bagamoyo Primary Court Magistrate appointed Waziri

Maneno Choka administrator of the Estate of Maneno Choka, deceased.

Being dissatisfied by the Primary Court's decision Abas Choka appealed to the Bagomoyo District Court against that decision. The District Court Magistrate up held the Primary Court's decision appointing Waziri Maneno Choka administrator of the estate of Maneno Choka, deceased. He held, further, that since a muslim cannot by will Dispose of more than a third of his estate the share of Waziri Maneno Choka is only one third and not the whole of the estate as indicated in the will.

Waziri Maneno Choka, being dissatisfied has appealed to this court. At the hearing of this appeal the Appellant was represented by Mr. H.J. Muccadam, learned Advocate, and the Respondent Mr. Abas Choka appeared in person.

In his memorandum of appeal the Appellant has put forward two grounds of appeal, namely:

1. That the learned Magistrate erred both in law and facts in holding that the Appellant was not entitled to inherit his father's estate when the said deceased father by a properly executed will appointed the Appellant as his administrator and heir of the estate.

2. That the learned Magistrate erred in law and on facts in placing great reliance on Indian Law of Inheritence whose local conditions are different from the local conditions obtaining in Tanzania.

At the hearing of this appeal Mr. Muccadam emphasised the fact that the Appellant is the natural son of the deceased, that the deceased brought up the Appellant and accepted him as his son; that since the deceased left a will directing that the Appellant should inherit all his property the Appellant should inherit as intended by the deceased. Mr. Muccadam conceded that the deceased was not married to the Appellant's mother. No case was cited to the effect that Muslim law in India was different from Muslim law of inheritance in Tanzania.

indicated in the will had the other heirs consented after the death of the testator. This is not the case here.

The appeal is accordingly dismissed with costs.

MWITA
JUDGE

Delivered in Chambers this 3rd day of July, 1998 in the presence of the parties and Muccadam Advocate.

MWITA
JUDGE
3/7/98