IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 58 OF 2001

TATU IBRAHIM ... . APPELLANT

Versus

SALUM IBRAHIM ..... RESPONDENT

J U D G M E N T

KIMARO, J:

This appeal is simple. It originated from Probate No. 126 of 1999 which was filed at Manzese Primary Court. Tatu Ibrahim who is the appellant in this appeal petitioned for appointment of letters of administration in respect of properties of his deceased father - one Kibwana Ibrahim. She was granted letters of administration. The appointment has no problem.

Among the properties which were said to have comprised the estate of the deceased is a house at Manzese. The house is the one which prompted appeals in the probate proceedings. The appellant contended that the house is the property of her late father. Fatuma Abdallah, Fatuma Rashid, Rashid Aikosi and Athuman Aikosi on the other hand alleged that the house was the property of one Aisha Mwikula. Evidence was led to the effect that Kibwana Ibrahim had fraudulently registered the house in his name when he was sent by his mother the late Aisha Mwikula. Those who gave such testimony are grand daughters and grandsons of the late Aisha Mwikula. The appellant is also a granddaughter of Aisha Mwikula.

After taking evidence the Primary Court held that the house was the property of Kibwana Ibrahim because dommentary evidence proved so and there was no other evidence which could disapprove the documentary evidemce. That it was the children of Kibwana Ibrahim who were entitled to inherit and not those who had raised objection.

Those who had raised objection were aggrieved. They appealed to the District Court. On evaluation of the evidence, the District Court believed that the ownership of the house which formed the dispute in the probate proceedings was changed from Aisha Mwikula to Kibwana Ibrahim by Kibwana Ibrahim fraudulently. He allowed the appeal.

The appellant was aggrieved and she filed this appeal. There is only one ground of appeal. That the appellate magistrate erred by not making a proper evaluation of the evidence which was given and as a result he arrived at incorrect decision.

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I have carefully gone thro gh the proceedings in the trial court as well as in the District Court and th grounds of appeal. The judgment of the Primary Court gave very good reasons wh the house is the property of Kibwana Ibrahim and not Asha Mwikula. There was documentary evidence which showed that Kibwana Ibrahim was the owner. It is only Asha Mwikula who could have said that the house did not belong to Kibwana Ibrahim but to her. This was not done. The court was informed that she had knowledge that the ownership was in the name of Kibwana Ibrahim. If she relingushed her right in pursuing the matter, someone else can not come forward and pursue it for her after her death. The Primary Court was quite right in saying that the house was the property of Kibwana Ibrahim and that it was only his children who could inherit and not any body else.

The appeal is allowed with costs.

N.P.Kimaro

JUDGE

20/08/2002