

IN THE HIGH COURT OF TANZANIA  
AT MOSHI

PC. CIVIL APPEAL NO.56 OF 2001

(ORIGINAL MASAMA PRIMARY COURT PROBATE AND  
ADMINISTRATION CAUSE NO.53 OF 2000  
HAI DISTRICT COURT)

CIVIL APPEAL NO.13 OF 2001

ASAELI NDOSSI.....APPELLANT  
VERSUS  
ELISIFA JACKSON NDOSSI.....RESPONDENT

J U D G E M E N T

MUNUO, J.

In Masama Primary court Probate and Administration Cause No. 53 of 2001 the present appellant Asael Ndossi was appointed the administrator of the estate of his deceased brother, Jackson Eliakimu Ndossi who died interstate on the 9<sup>th</sup> October, 2000. The widow of the deceased successfully challenged the appointment of Asael the administrator of the estate of her husband vide Hai District Court Civil appeal No.13 of 2001. Dissatisfied with the revocation of the letters of administration issued to him, the appellant, younger brother of the deceased Jackson Ndossi, preferred this second appeal to dislodge the decision of the appellate District Court and seek the restoration of the Primary Court decision.

In this appeal the appellant contended that the probate and administration cause was duly published and cited in the UHURU Newspaper on the 5<sup>th</sup> December, 2000 at Page 13 upon which the respondent entered no objection so she is estopped from challenging the grant thereafter. He further contended that the clan appointed him to administer the estate of the deceased so the letters of administration were rightly issued to him by the trial primary court and the same should be restored to him.

The appellate District Court reversed the decision of the trial primary court on the ground that it did not comply with the provisions of Section 2 A (a) of the 5<sup>th</sup> Schedule of the Magistrates Courts Act No.2 of 1984 which requires the administrator to be a person with an interest in the estate of the deceased which the appellant Asael is not. Upon revoking the letters of administration granted to the deceased's brother in favour of the deceased's widow, the appellant preferred this second appeal seeking the restoration of the primary court decision. Hence this second appeal.

A perusal of the primary court record shows that the late Jackson Ndossi married the respondent Elisifa Kimaro on the 30/3/1997 at Sawe Lutheran Church in Hai District within Kilimanjaro Region per the marriage certificate No.A 00006591. For the short period of three years the marriage subsisted before the husband succumbed to death on the 19<sup>th</sup> October, 2000, the spouses

were blessed with two sons namely Elvis and Nickson Jackson Ndossi now aged 5 and 3 years respectively. The deceased Jackson Ndossi is survived by a widow Elisifa w/o Jackson and their two marital children Elvis and Nickson, his natural heirs. Jackson Ndossi died interstate.

There is a list dated the 13/02/2001 in the record of the trial court showing the properties of the deceased to wit:

- Registered property on Plot No.415 Block NN, Tanga Municipality;
- A house on Plot No.184 Block MM Duga, Tanga Municipality;
- Bank Accounts at the Postal Bank and in the CRDB Bank Ltd and shares in Tanzania Breweries Ltd and in the CRDB Bank Ltd, per the listed certificates.
- Customary developed land at Sawe Village in Hai District.

Because the estate of the deceased comprises of registered and unregistered immovable property, the trial primary court, lacked jurisdiction to determine the matter for section 18(1)(a)(i) states that the primary court.

“ .....shall have no jurisdiction in any proceedings affecting the title to or any interest in land registered under the Land Ordinance.....”

The matter should therefore not have been instituted in the primary court.

More importantly the appellant is not a beneficiary of the estate of his late brother for he is not one of his heirs. The widow, the respondent has an interest in the estate as the surviving spouse charged with the responsibility of protecting and further developing the matrimonial assets and using the same for the upbringing, upkeep, maintenance, care, education, medical treatment and other basic necessities of the deceased's heirs Elvis and Nickson, their two marital issues until they reach the age of majority and, or can depend on themselves.

The widow and the two heirs of the deceased are further protected by the Constitution of the United Republic of Tanzania, article 24 (1) which entitles the widow to possess and retain her matrimonial property stating:

“ 24 (1) Bila ya kuathiri masharti ya sheria za nchi zinazohusika, kila mtu anayo haki ya kumiliki mali, na haki ya hifadhi kwa mali yake aliyonayo kwa mujibu wa sheria.”

The constitution further protects human rights and recognizes human rights instruments ratified by our country. Of relevance here are the human rights instruments which protect widows and children which include the convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the

Rights of The child (CRC). Tanzania ratified CEDAW on the 17<sup>th</sup> July, 1980 while she ratified the CRC on the 1<sup>st</sup> June, 1990. Article 2(b)(f) of CEDAW protects widows in that it requires State Parties to:

Article 2:

- (a).....
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.
- (c) .....to (d).....
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women....."
- (g).....

The protection of two sons of the deceased, Elvis and Nickson are guaranteed protection under Article 3 of the CRC which recognizes the interests and best welfare of the child by stating:-

Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law,, administrative authorities or legislative

bodies, the best interests of the child shall be primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well being, taking into account the rights and duties of his parents, legal guardians, or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures."

I stated supra that the 1977 Constitution of the United Republic of Tanzania recognizes human rights under Article 9(a) and (f) which state:

" 9. ....

(a) kwamba utu na haki nyinginezo za binadamu zinaheshimiwa.

(b) .....(c).....

(f) kwamba heshima ya binadamu inahifadhjiwa na kudumishwa kwa kufuata Kanuni za tangazo la Dunia kuhusu Haki za Binadamu.

(g) .....

(h) kwamba aina zote za dhulumu, vitisho, ubaguzi, rushwa, uonevu na upendeleo zinaondolewa nchini.

(i) .....(k).....

The provisions of article 9(a) and (f) of the Constitution are of Special significance to law enforcers because Parliament has not domesticated the international human rights instruments ratified by Tanzania which entitles the courts to invoke these provisions to enforce human rights conventions ratified by this country because vide Article 9 (f) Parliament generally domesticated the human rights instruments ratified by Tanzania. In that respect the Constitution fully protects widowers, widows and heirs against uncouth relatives prying and or attempting to alienate the estate of deceased fathers or mothers under the shield of custom.

Under the circumstances the appellate District Court correctly reversed the decision of the trial primary court but since the trial court lacks jurisdiction to determine the cause, the proceedings of the courts below are a nullity and are hereby nullified.

The widow should institute a probate and administration cause in the High Court at Moshi to get authority to administer the estate of her deceased husband, she being the surviving spouse responsible for the marital children, herself and the matrimonial assets the deceased left behind.

In view of the above the appeal is dismissed with costs.

It is so ordered.

E.N.MUNUO,

JUDGE.

13/2/2002

At Moshi this 13/2/2002.

Appellant: In person.

Respondent: Mrs. Minder for

E.N.MUNUO,

JUDGE

13/2/2002