

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

PC CIVIL APPEAL NO.81 OF 2004

ALI OMARI.....APPELLANT

VERSUS

HAMISI HAMADI.....RESPONDENT

JUDGMENT

SHANGWA, J.

The appellant Ali Omari was aggrieved with the Ruling and Order of the District Court of Kinondoni in Misc. Civil Application No.26 of 2001 delivered on 31/12/2003 by W. Shonga, SDM. He then decided to appeal to this court against the said court's Ruling and Order.

The appellant's memorandum of appeal has five grounds of appeal. The most important grounds out of those grounds are grounds 1 and 5 which I will only consider to dispose of this appeal.

The first ground of appeal is that the District Court Magistrate erred in law to allow Misc. Civil Application No.26 of 2001 which was filed out of time and without leave of the District Court to do so. The fifth ground of appeal is that the District Court Magistrate erred in law to order the appellant to vacate House No.75 Plot No.91 Block G at Magomeni Kondoia street.

The record shows that Misc. Civil Application No.26 of 2001 was filed by the respondent Hamisi Hamadi in the District Court of Kinondoni for stay of execution of the Ruling of the Primary Court of Manzese delivered on 30/4/2001 in Probate cause No.102 of 1996 pending the final determination of the suit in respect of ownership of House No.75 Plot No.91 Block G at Magomeni Kondoia Street. The said application was granted by the said court which ordered that the appellant should vacate the said house.

At paragraph (a) of his chamber application which was presented for filing in the District Court of Kinondoni on 27/7/2001 the respondent admits that his application for stay of execution of

the Ruling of the Primary Court of Manzese was made out of time. Upon admission by the respondent that the said application was made out of time, I find that it was technically wrong for the District Court of Kinondoni to allow that application in the absence of an order of the said court granting extension of time to file the same.

However, I wish to point out here that upon perusal of the record of the Manzese Primary Court in Probate cause No.102 of 1996, I have not seen any recorded Ruling which is alleged to have been made by the said court on 30/4/2001 of whose stay of execution was intended by the respondent to be ordered by the District Court of Kinondoni. What I have actually seen from the Manzese Primary Court's record is that the appellant Ali Omari was appointed on 8/1/1997 as administrator of the estate of the late Joha Mikidadi who died on 13/7/96 and left behind seven children namely Salima Omari, Hamida Omari, Ali Omari, Mikidadi Omari, Moshi Salum Omari and Nuru Bakari together with a small house at Manzese Uzuri area with three bedrooms.

Also, upon perusal of the record of the District Court of Kinondoni in Misc. Civil Application No.26 of 2001, I have not seen any annexure of the Ruling of the Manzese Primary Court in Probate Cause No.102 of 1996 which is alleged to have been made by the said court on 30/4/2001 of whose execution was intended by the respondent to be stayed by order of the District Court of Kinondoni through that application.

But on perusal of the affidavit filed by the respondent Hamisi Hamadi in support of Misc. Civil Application No.26 of 2001 filed in the District Court of Kinondoni on 27/7/2001, I have realized that House No.75 Plot No.91 Block 9 at Magomeni Kondo Street from which the appellant was ordered by the said Court to vacate did not belong to the late Joha Mikidadi. It belonged to the late Abdalla Juma who died on 17/5/1993.

The respondent Hamisi Hamadi claims that Abdalla Juma was his grand father. In actual fact, the respondent was appointed on 24/4/2001 by the Magomeni Primary Court in Probate cause No.200

of 2001 as administrator of the estate of the late Abdalla Juma to whom House No.75 Plot No.91 Block G at Magomeni Kondo Street used to belong before his death.

At paragraph 3 of his counter – affidavit filed in the District Court of Kinondoni opposing the respondent’s application namely Misc. Civil Application No.26 of 2001, the appellant Ali Omari avers that the late Abdalla Juma is not at all the grand father of Hamisi Hamadi and that Hamisi Hamadi do not have any blood relationship with the late Abdalla Juma.

At paragraph 6 of his counter affidavit, the appellant avers that he is the lawful administrator of house No.75 Plot No.91 Block G at Magomeni Kondo Street which belonged to the late Abdalla Juma. He further avers at the same paragraph that the late Abdalla Juma was the uncle of the late Joha Mikidadi. He contends that as he is the lawful administrator of the estate of the late Joha Mikidadi and as the late Abdalla Juma was the uncle of the late Joha Mikidadi, the

estate of the late Abdalla Juma naturally falls under his administration.

In my judgment, although it was technically wrong for the District Court of Kinondoni to allow Misc. Civil Application No.26 of 2001 which was lodged out of time; its order made by W. Shonga, SDM requiring the appellant Ali Omari to vacate House No.75 Plot No.91 Block G at Magomeni Kondo Street was lawful and quite proper. I so find for the following reasons :-

First, House No.75 Plot No.91 Block G at Magomeni Kondo Street was not a joint property of the late Abdalla Juma and the late Joha Mikidadi so as to be able to be administered by the appellant who was appointed on 8/1/1997 by the Primary Court of Manzese as administrator of the estate of the late Joha Mikidadi. Secondly, the fact that the late Abdalla Juma was uncle of the late Joha Mikidadi does not ipso facto make the estate of the late Abdalla Juma capable of being administered by the appellant who was appointed by the Primary Court of Manzese as administrator of the estate of the

consanguinity, any of the family members of the late Abdalla Juma may lodge an application in the Primary Court of Magomeni which appointed him for revocation of his appointment as administrator of the estate of the said deceased person.

Finally, I allow the first ground of appeal and dismiss the second ground of appeal. Consequently, I order that each party should bear its own costs.


A. Shangwa

JUDGE

18/4/2005

Delivered in open court in the presence of the parties this 18th day of April, 2005.


A. Shangwa

JUDGE

18/4/2005