

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

PC CIVIL APPEAL NO. 113 OF 2004

*(From the Decision of the Temeke District Court in Civil
Appeal No.44 of 2003 Mzava PDM).*

ABDULHAMANI HASSANI LITOKI.....APPELLANT

VERSUS

HAMISI SHABANI LITOKI.....RESPONDENT

J U D G M E N T

A. Shangwa,J.

This is an appeal against the decision of the District Court of Temeke in Civil Appeal No. 44 of 2003. The appellant raised three grounds of appeal. These grounds are mixed up. They do not exactly indicate as to what the appellant is complaining about. Taking them as a whole, they give the impression that the appellant is faulting the District Court of Temeke for not holding that HOUSE No. 330 Block "L" situated at Kibondemaji Mbagala Zakheim belongs

to him. In fact, in his amended memorandum of appeal filed on 28/4/2004, he prays this Court to declare him as the owner of that house.

In order to resolve this appeal, I have found it necessary to look at the history of the dispute between the parties. It started in mid October, 2002 after the death of Hamisi Saidi Litoki who died on 8/4/2002. After his death, the appellant who is the brother of the deceased started to claim that House No. 330 Block "L" at Kibondemaji Mbagala Zakheim belongs to him. This house was bought by the deceased from one Mohamed Bakari Mohamed and Mariam Mohamed.

The respondent who is one of the deceased's son disputed the appellant's claim over the said house by saying that it belongs to his late father and that it forms part of his

late father's estate. On 17/10/2002, the respondent filed Probate and Administration Cause No.402 of 2002 in the Primary Court of Temeke for being appointed as administrator of the estate of his late father. The citation of his application for so being appointed was issued in Mwananchi News Paper dated 4/11/2002.

After filing the aforesaid cause, the appellant and one Salehe Ally Mlanzi filed an objection against the respondent's application. Their objection was based on three points. One, that the respondent did not call a family meeting before filing the application. Two, that he misappropriated the deceased's property worth Shs.2,500,000/-. Three, that he is not capable of leading the deceased's family.

I have gone through the Temeke Primary Court's record and found that the Primary Court Magistrate Mrs.

Dege did not make a ruling on the said points of objection against the respondent's application. It appears that she ignored them and proceeded to appoint the respondent as administrator of the estate of his late father. During the hearing of the said objection, the appellant raised the issue of ownership of house No.330 Block "L" at Kibondemaji Mbagala Zakheim. He told the Temeke Primary Court Magistrate that it belongs to him and does not form part of the deceased's estate. The said Magistrate considered this issue and dismissed the appellant's claim of ownership of that house and held that it belongs to the deceased's estate together with another house which is located at Liganga Street Temeke namely house No. 3. At page 4 of her typed judgment, the said magistrate held that although the sale document of the house in issue is in the name of the appellant, this house does not belong to him. It is part of the deceased's estate. The major reason which was given by the

said Primary Court Magistrate for so holding is that the appellant had no official document to show that it had been transferred in his name.

On appeal to the District Court of Temeke Mrs Mzava PDM upheld the decision of the Temeke Primary Court for appointing the respondent as administrator of the deceased's estate and for holding that the house in issue namely house No. 330 Block "L" at Kibondemaji Mbagala Zakheim forms part of the deceased's estate and does not belong to the appellant. In her decision, Mzava , PDM was of the view that the deceased had no intention of giving the aforesaid house to the appellant . She said that had it been the deceased's intention to do so, he should have handed it over to him immediately after buying it but instead of doing so, the deceased made it his residential house until his death.

On appeal to this Court against the holding of the said learned Principal Resident Magistrate, the appellant contended that the deceased bought that house for him as a gift and that it was wrong for the said Magistrate to uphold the Temeke Primary Court's decision in which it was held that it forms part of the deceased's estate.

In his written submissions, the respondent vigorously resisted the appellant's claim over the house in issue. He contended that it forms part of the deceased's estate and that the deceased never gave it to the appellant as a gift.

I agree with the holding of the Principal District Magistrate Mrs Mzava that the respondent was properly appointed as administrator of the estate of the late Hamisi Saidi Litoki and that House No. 330 Block "L" at Kibondemaji Mbagala Zakheim forms part of the estate of the said

deceased person. Also, I agree with her holding that the deceased had no intention of giving the house in issue to the appellant as a gift. Had he intended to do so, he would have handed it over to him after purchasing it in his name. On the contrary, after purchasing it, he occupied it together with his family and continued to live in it with his family until his death. Apart from that, the deceased never informed any of his family members including the respondent that he had bought it for the appellant as a gift.


In fact, nobody knows as to why the deceased bought it in the name of the appellant. That remains the deceased's secret. In my view, having bought it in the appellant's name, is not conclusive proof that he bought it for him and gave it to him as a gift. It is common knowledge that for one reason or another some people buy or even register properties in the names of their close relatives while retaining ownership

of those properties. This is what happened in this case. Like both lower Courts, I hold that the house in issue forms part of the deceased's estate and does not belong to the appellant.

For these reasons, I hereby dismiss this appeal with costs.


A. Shangwa, J.
29/6/2006.

Delivered in open Court this 29th day of June, 2006.


A. Shangwa,
JUDGE
29/6/2006.