

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

PC. CIVIL APPEAL 213 OF 2004.

ASHURA M. MASOUD.....APPELLANT

VERSUS

SALMA AHMADRESPONDENT.

Date of last Order: 14/12/2006

Date of Judgment: 14/09/2007

JUDGEMENT.

Mlay, J.

This is an appeal from the decision of the District Court of Kinondoni in Probate and Administration Cause No. 52 of 2004. SALIMA MOHAMED applied for letters of administration of the estate of the JUMA KAUNDA in the District Court of Kinondoni. One OMAR SEIF purporting to act for himself and another, filed a counter affidavit to oppose the grant of letters of administration to SALIMA AHMED, substantially on grounds that "***the applicant has no relationship whatever with the said Chausiku Seifu***" (the lawful heir of the deceased who was apparently suffering from a mental illness) and that the applicant has never taken care of the said Chausiku Seifu. He further alleged in the said counter affidavit that "***the applicant has alternative motives of confiscating property that does not belong to her. She has no any good intention of***

maintaining Chausiku Seifu".

The matter came up for hearing before MAKWANDI RM who, in a judgment dated 23/09/2004, found "***that the objections have no merits at air.*** The court also found that "***the rightful heir of that late Bimkubwa Seifu (in law of of Kauda Juma) si Chausiku Seifu who is alleged to be morally sick. I therefore agree that the applicant is entitled to be appointed an administrative of the estate of Bimkubwa Seifu on behalf of Chausiku Seifu who is mentally sick as her cousin".***

One of the two Respondents ASHURA MASUDI (the first respondent Omar Seif having died before the matter was heard by the District Court), has appealed to this court on two grounds, namely:-

1. That the Resident Magistrate misled herself in admitting the fact that the step mother of the appellant one Chausiku is suffering from mental illness without the same being proved by medical practitioner.
2. That the trial Magistrate misled itself in admitting the respondent is the sister of the late Chausiku Seif.

At the hearing of this appeal the Respondent was represented by Mr. Mtanga, learned advocate while the appellant appeared to argue the appeal in person. She submitted on the first ground of appeal, that it is not true that Chausiku Seif was mentally sick. She argued that the respondent did not prove that Chausiku Seif was not mentally ill. Lastly, on the second ground of appeal, she submitted that the respondent was not the sister of Chausiku Seifu. She argued that there was no evidence that she was her

sister.

Mr. Mtanga advocate for the Respondent, on the first ground submitted that, the matter before the court did not involve the mental state of Chausiku Seifu.

He argued that what was before the court, was an application for letters of administration of the estate of BIMKUBWA SEIF who was the widow of the late Juma Kaunda. He further argued that BIMKUBWA SEIF was survived by her younger sister CHAUSIKU SEIF whose health was not good and did not know what to do because of mental instability. He argued that there was evidence of the Respondent and PW1 SAIDI MWINCHANDE that the respondent is the cousin of BIMKUBWA SEIF.

On the second ground of appeal Mr. Mtanga submitted that there were no reasons in evidence given to show that the respondent was not a relative of BIMKUBWA SEIF. He contended that the objector/ appellant merely alleged that they did not see the respondent at the house.

At the close of the submissions the court asked Mr. Mtanga to assist the Court on whether the District Court of Kinondoni had jurisdiction in the administration matter. Mr. Mtanga replied, and I quote, ***"If the presiding magistrate was a District delegate the court had jurisdiction. I do not know if the Magistrate was appointed District Delegate. If he was not so appointed the court has no jurisdiction and the proceedings would be a nullity"***⁹.

The issue of jurisdiction being a purely legal matter, the appellant was not called upon to submit on the matter.

Before considering the appeal on its merit, there is clearly an issue of whether the District Court of Kinondoni or Makwadi RM who presided over the probate and administration proceedings had jurisdiction to entertain the matter.

Section 3 Cap 445 RE 2002 confers jurisdiction in all matters relating to probate and administration of deceased's estates and power to grant probates of wills and letters of administration to the High Court. However, under section 5 (1) of the Act, the Chief Justice has the power from time to time, to "**appoint such Magistrates as he there fit to be District Delegates**".

Subsection (2) of section 5 confers jurisdiction upon District Delegates in all matters relating to probate and administration, if the deceased had at the time of death, a fixed abode within the area for which a District Delegate is appointed, in non contentious cases. In contentious cases like the present case in which there were two objectors, the District Delegate can only exercise jurisdiction if he is satisfied that the gross value of the estate does not exceed fifteen thousand shillings, or if the High Court authorizes the delegate to exercise jurisdiction.

In the present case there is no evidence, and in fact there is no existing record to show that MAKWANDI RM has been appointed a District Delegate by the Chief Justice pursuant to the provisions of section 5 of Cap

445.

Even if Makwandi RM had been appointed a District Delegate, which is not the case, this being a contentious case, there is no evidence that the value of the estate is only shs. 15,000/- or that this court granted permission to the magistrate to entertain the matter. At any rate contentious proceedings in Probate and Administration matters are governed by the provisions of Rule 82 of the Probate and Administration Rules, and for proceedings before the District Delegate, also by the provisions of Rule 83 thereof which require the District Delegate to forward the record of proceedings in contentious cases to the District Registrar.

The jurisdiction of the District Court as such, in Probate and administration matters, is governed by the provisions of section 6 of Cap 445 RE 2002. Under that section, District courts only have jurisdiction in respect of "*small estates*" and "*small estates*" defined by section 2 (1) of Cap 445, are those whose value does not exceed sh. 10,000/= (ten thousand). The estate in this case is a house situated on Plot No. 1 Block "A" Kigogo whose value exceeds shs. 10,000/-. In the circumstances, the Kinondoni District Court did not have jurisdiction to entertain the matter.

Since Makwandi RM who presided over the probate and administration proceedings is not a district delegate appointed by the Chief Justice under section 5 of Cap 445 and also that, the estate involved is not a "***small estate***" for which the District Court could exercise jurisdiction, the proceedings in Kinondoni Probate and Administration Cause No. 52 of 2001 and there consequential grant of letters of administration to the

respondent, are a nullity, and they are so declared.

It appears from the record that the application for letters of administration was initially filed in Magomeni Primary Court as Probate Cause 193 of 2001 and that the matters was "*transferred*" to the District Court by reason of a request by H. H. Matanga that "***the Applicant intends to employ the service of an advocate and as a matter of law, the Advocate cannot enter appearance in the Primary Court.***" This as contained in the advocates letter to the District Magistrate I/C dated 20/9/2001. This was a gross error. The District Court does not acquire jurisdiction in probate and administration matters by reason that a party wishes to be represented by an advocate. Jurisdiction is conferred by the law and not by the wishes of a party.

The law relating to probate and administration demonstrated earlier on, only grants limited jurisdiction to District Courts in this matter, and this matter does not come within small estates in which District Courts can exercise jurisdiction.

The powers of transfer of cases under section 47 (1) (a) of the Magistrates Courts Act Cap 11 RE 2002, can only be used to transfer a case from a Primary Court to a District court or a

Court of the Resident Magistrate "having jurisdiction" . Since the District Court of Kinondoni did not have jurisdiction in the probate and

administration proceeding for the reasons given above, the District court was wrong to transfer the proceedings to itself. The reason that the applicant wished to engage an advocate, as I have stated, does not in itself, confer jurisdiction upon the court.

The proceedings being a nullity it is ordered that the proceedings in Magomeni Primary court Probate Cause 193 of 2001 be restored and heard by the Primary Court in accordance with the law relating to administration of estates applicable to primary courts.

Since the proceedings are a nullity there is no appeal worth of consideration on merits. This being an administration matter, I make no order as to costs. It is ordered accordingly.

JUDGE

J.I Mlay

14/09/2007

Delivered in there presence of one MATAMA ABDALLAH the niece of the Respondent and in the absence of the appellant this 14th day of September, 2007. Right of appeal explained.

J.I Mlay
JUDGE.
14/09/2007

Words: 1,558