

# IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM  
PC CIVIL APPEAL NO. 16 of 2010

**TABU ALLY.....APPELLANT**

**VS**

**FARAJI AHMAD.....RESPONDENT**

## **JUDGMENT**

Date of last Order: 03-09-2010  
Date of Judgment: 27-10-2010

**JUMA, J.:**

In this appeal Tabu Ally (the appellant) is relying on a single ground of appeal contending that like the Primary Court before it; the Kinondoni District Court (Rugemalira-RM) on appeal, failed to consider the WILL which was purportedly made by the late Fatuma Ahmad. The background leading up to this ground of appeal traces back to the Probate Case Number 378 of 2006 at Primary Court, Magomeni where the respondent (Faraji Ahmed) applied for letters of administration of the estate of Fatuma Ahmedi who died on 19-12-2003.

The deceased, who left a house at Temeke, a four acre farm situated at Kibaha; was survived by the respondent and another relative known as Jakazi Selemani. In the primary court the respondent had opposed the Will which the appellant had

introduced. Respondent claimed that the Will sought to be included as court exhibit was not prepared by the deceased but was instead prepared by Juma Ally (who testified as SM 3) and the appellant (Tabu Ally) who testified as SM 4. All the same, respondent had admitted before the trial court that this Juma Ally and the appellant were his nephew and niece respectively born to his sister (Salma Ahmdi). Respondent told the primary court that appellant and Juma Ally could not in law inherit from the estate of Fatuma Ahmedi because their mother (Salma Ahmdi) had died in 2000 predeceasing Fatuma Ahmedi, the latter having died in 2003. Respondent testified further that Juma Ally and appellant were brought up by the deceased Fatuma Ahmedi. Respondent maintained that the house in dispute did not belong to appellant's mother (Salma Ahmed) but to Fatuma Ahmedi.

Testifying at the primary court as SM 4, appellant (Tabu Ally) claimed that the deceased Fatuma Ahmed left her and her brother (Juma Ally) a Will; and requested that his brother (Juma Ally) should have been appointed the administrator of the estate of Fatuma Ahmedi. On 17<sup>th</sup> March 2008 the Primary Court gave its judgment in which the respondent and Jakazi Selemani were both declared to be the sole lawful beneficiaries of the estate of Fatuma Ahmadi.

After carefully re-evaluation of the evidence at the primary court I am left with no doubt that the primary court correctly directed its mind to identify who the beneficiaries of the estate were, what law

to apply and whether Islamic law was applicable to the estate of Fatuma Ahmedi. In my opinion, the primary court as confirmed by the district court, properly and correctly directed its mind to the question of legality of the Will. The records clearly demonstrate the appreciation by the primary court that it was the Islamic law which was applicable to the estate of Fatuma Ahmadi,

“...hii ina maana kwamba wosia ulio mbele ya Mahakama siyo halali kwani muusia ametoa nyumba nzima kwa wosia badala ya <sup>1/3</sup> kama sheria ya kiislamu inavyotaka kwa sababu hiyo basi mahakama hii inaona kuwa wosia wa marehemu ni batili kwa hiyo inaitupilia mbali na kuacha mali zote kwa warithi halali wa mirathi hii..”

It was at the appellate District Court (in Civil Application No. 32 of 2008) where the appellant contended that having tendered a Will the primary court should have decided that it was the appellant (Tabu Ally) who was an heir to the estate of the late Fatuma Ahmad. Again, I am satisfied that the learned Resident Magistrate (Rugemalira-RM) correctly and sufficiently re-evaluated the evidence that was tendered in the trial primary court to dismiss appellant's appeal on 18 November 2009. The learned appellate magistrate was of the view that the trial primary court was right to reject the Will the appellant purportedly relied on,

*“...With regard to the ‘WOSIA’ of the deceased, at the primary court file there is only a copy not even certified copy. What was required to be tendered is the original document. Therefore basing on the above facts, this appeal cannot stand. Appeal dismissed with no order as to cost.”*

It follows from the above that both the primary court and the district court made correct decisions. With my foregoing finding and conclusion, this appeal is without merit and is hereby dismissed. No order is made with respect to costs because the appeal was filed under the legal aid assistance of Women's Legal Aid Centre (WLAC).



**I.H. Juma**  
**JUDGE**  
**27-10-2010**

Delivered in presence of Tabu Ally (Appellant) and Faraji Ahmad (Respondent).



**I.H. Juma**  
**JUDGE**  
**27-10-2010**