

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC CIVIL APPEAL NUMBER 50 of 2012

**(Originating from Ilala District Court at Samora, Civil Case No. 17 of 2011, T.
Kisoka-RM)**

MARIA CHUWA.....APPELLANT

VS

MARIAMU CHUWA.....RESPONDENT

Last Orders: 24-07-2012

Judgment: 31-10-2012

JUDGMENT

JUMA, J.

Appellant Maria Chuwa appeals against the judgment and decree of the District Court of Ilala (Civil Appeal No. 17 of 2011- Kisoka-RM) dated 27 January 2012 which had found that a house at Chanika was not part of the estate of the late James Alawa Chuwa but belongs to Mariamu Chuwa. Although in her appeal, Maria Chuwa has preferred four grounds to express her dissatisfaction with the decision of the

district court, the centre of her grievance is the exclusion of the house at Chanika from the estate of the deceased.

James Alawa Chuwa died on 28 October 2008. His widow, Mariamu James Chua applied to the Primary Court for letters of administration of the Estate of her late husband and she was duly appointed on 14th April 2009. Later on, Maria Chua one of the children of the deceased filed an objection requesting the primary court to intervene and include a house at Chanika in the estate of the deceased. Maria Chua maintained that the house concerned does not belong to Mariamu James Chua but to James Alawa Chuwa (her late father). Maria Chua told the Primary Court that at a family meeting convened to decide on who should be appointed the administrator of the estate of the deceased, the widow of the deceased (Mariamu Chua) had lied to them that they should exclude one house from the list of the properties of the deceased because the deceased had left behind outstanding bank loans creating the possibility of the banks moving and to repossess one of the two houses.

The primary court found that the house at Pugu-Chanika was built by the deceased and was completed by contributions which the estate of the deceased received from the National Social Security Fund (NSSF). In its Ruling on 20 November 2010, the primary court directed the administrator of the estate of the deceased to include the house at Chanika in the estate of the late James Alawa Chuwa.

Mariam Chuwa, the administrator of the estate of the deceased was not satisfied. She appealed to the District Court. The district court quashed the order of the Buguruni Primary Court that had included that house the estate of the deceased. Maria Chuwa filed PC Civil Appeal Number 50 of 2012 in this Court. Hearing of this appeal before me proceeded by way of written submissions.

The main issue for my determination is whether the District Court was right to exclude the house at Chanika from the estate of the deceased.

On page 5 of the judgment, the learned Resident Magistrate suggests that the plot over which the house at Chanika was built was in accordance with a sale agreement

dated 03/01/1990, bought by Mariamu Chuwa then known as Zainabu Maulidi Athmani. The learned Resident Magistrate further suggested that the marriage of Mariamu Chuwa to the deceased took place in 1995 which was well after Mariamu Chuwa had bought the plot of land and started to build thereon. One question arising from this conclusion of the district court is whether this conclusion was based on evidence that was presented before the primary court during the objection proceedings.

Evidence on records of the trial primary court shows that on 26 March 2009, Mariam James Chuwa testified in support of her application for letters of administration of the estate of the deceased. She testified that the deceased left one unfinished house. In his very brief testimony on that same day, Patrick Manda supported the application by Mariam James Chuwa. Appellant Maria James Chuwa, Patrick Mbaba, Pili James Chuwa and Abedi Chuma also supported the application seeking the appointment of Mariam James Chuwa to be the administrator of the estate of the deceased. After hearing the evidence of six witnesses who all supported the

appointment of Mariamu Chuwa, the presiding Primary Court Magistrate (A. Mussa-PCM) on 14th April 2009 granted Mariamu Chuwa letters of administration. The letters allowed the administrator to collect the properties left behind by the deceased, pay his debts and to distribute what remains to the heirs and beneficiaries.

Later, during the course of administration of the estate, a dispute cropped up between on one hand the administrator of the estate, and beneficiaries to that estate on the other hand. The dispute was referred back to the Primary Court. Exercising its powers under Fifth Schedule to the **Magistrates Courts Act**, on 7th October 2010 the Primary Court conducted an objection proceeding and heard the appellant Maria James Chuwa on her prayer that before he died, their father had two houses at Kiwalani and at Chanika which the administrator of the estate should include in the estate of the estate. The trial magistrate also reviewed the evidence of Patrick Mbaba who supported the objector when he testified that he knew that deceased left two houses, including one house at Chanika. Dorica James Chuwa also testified that the deceased left

behind two houses and she was surprised why the administrator of the estate excluded one house from the estate. Michael Mwasota, who was a mason also, testified in support of the objector to the effect that the deceased occasionally took him to help in the construction of the house at Chanika and repair of another house at Kiwalani.

Mariamamu Chuwa testified on 25 November 2010 to oppose the objection. She and her husband married in 1994. She testified that she bought the house in 1990 before her marriage to the deceased and completed its construction in 2006. She and her late husband bought another house in 1998 during the subsistence of their marriage. Mariamamu Chuwa insisted that the house at Pugu is her own. Andrea supported the testimony of Mariamamu Chuwa that he is the one who looked out for a plot which Mariamamu bought.

From my re-evaluation of evidence that was presented when the primary court heard the objecting Maria Chuwa, I am left with no doubt that evidence in support of objection had established on balance of probabilities that the house at Chanika also belonged to the late James Alawa Chuwa and

the primary court was right to include it in the estate of the deceased. In my opinion, the primary court magistrate properly exercised his powers under Rule 8 of the **Primary Courts (Administration of Estates) Rules** when he heard the objection and on the basis of preponderance of evidence ordered the inclusion of the house at Chanika in the estate of the late James Alawa Chuwa.

From the foregoing, appeal is allowed and the decision of the trial primary court is restored. The case file shall be returned to the Primary Court of Buguruni to oversee the conclusion of Probate Number 13 of 2009. I shall not make any order as to costs. It is ordered accordingly.

DATED at DAR ES SALAAM this 31st day of October, 2012



**I.H. Juma
JUDGE**

Judgment is delivered in the presence of MARIA CHUWA (Appellant) and MARIAMU CHUWA (Respondent).



**I.H. Juma
JUDGE
31/10/2012**