

IN THE HIGH COURT OF TANZANIA

AT TANGA

[PC] CIVIL APPEAL NO.8 OF 2010

***[Originating from Civil Appeal No.4 of 2010 at Tanga District
Court and Probate and Administration Cause No.70 of
2004 at Tanga urban Primary Court]***

STEVEN MEENA.....APPELLANT

VERSUS

1. REHEMA MSIGWA

2. MARY MSIGWA

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.....RESPONDENTS

Date of last order: 27/10/2011

Date of Judgment: 16/03/2012

JUDGMENT

Teemba, J.

This is a second appeal in which the appellant, Steven Meena, is challenging the order of Tanga District Court at Tanga which ordered the appellant, an administrator of the estate of the late Simon Msigwa, to return Tshs.8,000,000/= to the Respondents the daughters of the Late Simon Msigwa.

In brief, Simon Msigwa, the father of the respondents died in 2004. In his life time, he married Angelina Kijangwa, the mother of the respondents in 1984. Their marriage was not a happy one. In 1989, his wife constructively deserted the matrimonial home. Following that desertion, the deceased decided to cohabit with Rose Msigwa from 1990. When Simon Msigwa died, Rose Msigwa and Damas Msigwa applied before Tanga URBAN PRIMARY Court to be appointed

the administrators of the deceased estate. This was in Probate and administration Cause No.70 of 2004. On 29/4/2004, the respondents' mother filed a caveat objecting the appointment of Rose Msigwa. Instead of determining the filed objection, the trial court proceeded on 27/6/2004 to appoint Rose Msigwa and Damas Msigwa the deceased's brother as co-administrators of the deceased estate. The objector was dissatisfied and hence decided to refer the matter to the District Court and later on to the High Court at Tanga. On 9/9/2005, justice Mkwawa, J. [as he then was] quashed the entire proceedings of the lower courts, set aside orders thereon and directed the Tanga Urban Primary Court to determine the lodged objection. The objection was determined in favour of the objector who is turn proposed one Steven Meena the appellant to be appointed the administrator of the deceased's estate.

No one objected to her proposed. For that reason, the Tanga Urban Primary Court appointed the appellant as the administrator of the deceased's estate and on 16/3/2006 a letter of administration was issued to this appellant.

In the course of discharging his duties as the administrator of the deceased estate, the appellant received Tshs.30,000,000/= from Tanga Cement Company Limited an employer of the deceased and distributed the money to the heirs. The respondents somehow felt that the appellant was not impartial or faithful in distributing the received money. On 11/02/2010 they lodged an application at Tanga Urban Primary Court seeking for an order to revoke the

appointment of the appellant. They also urged the court to appoint them as administrators of the estate of their late father. During the hearing of the application, the respondents advanced arguments that the appellant was not their close relative and that he was Chagga by tribe who could not administer the estate of the deceased who was from Bena. They also stated that their mother is cohabiting with the appellant as a husband and wife and that the appellant distributed more than half of the received money to their mother. They added that the appellant had asked them to give back to him the share received so that he could build a house for them. That, the respondents innocently withdrew the money from their respective bank accounts and gave it to the appellant. It was also claimed by the respondents that the appellant built a house/structure at the back yard of the plot but had refused to hand over the house and documents [in respect of the house] to them. The appellant who was present he sent at the hearing, did not object the revocation of his appointment. After the hearing of the application the trial court found the application to have merit and proceeded to grant the same. The respondents were then issued with letters of administration as co-administratrixs of the deceased estate. The court went ahead and ordered the appellant to return Tshs.16,000,000/= to the respondents on the ground that the respondents mother was not a heir after separation. It also ordered the appellant to surrender the offer of Right of Occupancy together with keys over a house purported to have been build it by the proceeds from the estate of the deceased. The appellant was aggrieved with

the two orders and preferred an appeal to Tanga District Court. On appeal, the District Court partly allowed the appeal on account that the prayer to surrender the offer of right of occupancy and keys of the house in question ought to have been referred to and determined by the District Land and Housing Tribunal. The first appellate court also ordered the appellant to return Tshs.8,000,000/= to the respondents and the remaining amount of Tshs.8,000,000/= be given to the respondent's mother who was still legally married to the deceased at the time he died. The appellant was still dissatisfied and he has preferred this appeal. His main grievances in this appeal are: First, that, the Lower Court had no powers to distribute the of the deceased because estate by so doing it usurped the powers of the administrator of the estate. Secondly, that his appointment having been revoked by the Primary Court, he is not duty bound to return the proceeds which he has already distributed to the heirs.

In his submissions, the appellant fully adopted the grounds of appeal, his rejoinder to the reply to the grounds of appeal and urged the court to consider them positively, hence allow the appeal.

In response, the respondents also adopted their reply to the grounds of appeal and urged the court to dismiss the appeal.

On the basis of the background of this case and the grounds of appeal together with arguments advanced by parties in this appeal, - I am of the considered view that the appeal has merit. In the first place, the application before the Tanga Urban Primary Court was for revocation of the appointment of

the appellant. Secondly, the application was also for the appointment of the respondents as co-administratrix of their father's estate. Third, on the basis of the reasons advanced in support of application, the Primary Court was satisfied that the appellant was not impartial or faithful in administering the estate of the late Simon Msigwa. So far there are no complaints to challenge the decision of the Primary Court which revoke the appointment of the appellant. However, I have noted that after the revocation and appointment of the respondents, the trial court went ahead to distribute the estate of the deceased. I am certain that, this was not the duty of the Court. This position was emphasized in the case of **SAMSON KISHOSHA GABBA VS CHARLES KINGONGO GABBA [1990] TLR.133** in which the court stated that:

"The trial court had no power to distribute the estate of a deceased person to the respective heirs; that power of distribution is given to the administrator of the deceased estate. So the trial court usurped the power it does not have under the law..."

In the present case, the courts below were caught in the trap to the effect that they gave orders to distribute the amount of money which is part of the estate of the deceased. The fact that the respondents are appointed administratrix, then under the law they have powers to sue and recover any property which is part of the deceased's estate. Where there is evidence that the former administrator or any other person has mis-used any asset or part of the

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Before I let me also point out that the heirs [as was the case in this appeal], have a right in their capacity to sue and recover any apart of the deceased's estate if it was unfairly distributed or concealed by the administrator. This can be done without necessarily applying for revocation of the appointment of the former administrator.

The complaint made by the appellant that he had already distributed the estate of the deceased can not be concluded in this appeal. The reason is simple. The administrator is discharged by the appointing court after filing the Inventory with details on what was collected and how distributed to the legal heirs. There is nothing on record to suggest that he had filed the inventory.

Finally, the appeal has merit and it is hereby allowed to the extent explained above. Save for the appointment of administratrix, other orders in respect of the estate are nullified. Under the circumstances of this dispute, I order each party TO BEAR OWN COSTS.

It is so ordered.

R.A. TEEMBA, J.
16/3/2012

Court: The Judgment is delivered in the presence of all parties.

R.A. TEEMBA, J.
16/3/2012

I hereby certify that this is a true copy of the original.


DISTRICT REGISTRAR