

IN THE HIGH COURT OF TANZANIA

AT TANGA

PC. CIVIL APPEAL NO.1 OF 2010

[Originating from Probate Cause No.7 of 2009 of Soni Primary Court and Civil Appeal No.8 of 2009 of Lushoto District Court]

SAIDI HASSANI KAMOTE.....APPELLANT

VERSUS

AYUBU SELEMANI }

IMAMU SELEMANI }

.....**RESPONDENTS**

Date of last Order: 02/12/2011

Date of Judgment: 29/3/2012

JUDGMENT

Teemba, J;

The appellant, Said Hassani Kamote, applied for letters of administration of the estate of the late Amina Hassani Kamote at Soni Primary Court in Lushoto District. The Respondents appeared and objected the application on the ground that four farms and a house listed as part of the estate of the Late Amina Hassani Kamote belonged to their late father, Selemani Mbilu. The trial court proceeded to receive evidence of both sides. The appellant, whose version was supported by two witnesses, stated that the late Amina Hassani Kamote who died in 2009 was married to the respondents' father. That her husband – Selemani Mbilu, died in 1994. During their marriage, the late Amina Hassani Kamote and Selemani Mbilu were not blessed with a child. The late Selemani Mbilu left four farms and one house to the late Amina Hassani Kamote. On their side, the respondent's version was supported by three witnesses. They claimed

that the estate belongs to their late father and one Zaini Guga was appointed in 1996 to administer the same. They added that the property was given to the late Amina Hassani Kamote by their late father for use only but she was not entitled to inherit the same. After receiving evidence, the trial court found the estate to be the property of the late Amina Hassani Kamote. The Primary Court overruled the objection and granted the application. On 7/12/2009, the trial court issued the letters of administration to the appellant. The respondents were aggrieved with that decision and they appealed to the District Court of Lushoto.

The District Court found the appeal with merit on account that the appellant was wrongly appointed the administrator of the said estate because the deceased was no longer in her clan but had moved to her husband's clan. For this reason, the appellant's appointment was revoked. The court ordered the matter to be instituted at the ward tribunal for determining the question of ownership and alternatively ordered the children of the late Selemani Mbilu to apply for a letter of administration in respect of undistributed properties of their father. Dissatisfied with the decision, the appellant has come to the court on a second appeal. This appeal has six grounds of appeal.

I am of the considered view that ground number 3 and 4 will dispose of this appeal as they are based on the issues of ownership of the estate in question and appointment of the administrator.

At the hearing of this appeal, Mrs Kabwanga, learned counsel represented the appellant whereas, the respondents were represented by Mr. Akaro, learned

counsel. The court allowed the counsel to argue the appeal by way of filing written submissions.

In her written submissions, Mrs Kabwanga insisted that the main issue in this case is the appointment of the administrator. In that respect, Mrs Kabwanga pointed out that the District Court erred by considering the issue of ownership of the estate in question. In conclusion, she urged the court to allow the appeal.

On his part, Mr. Akaro insisted that the issue of ownership and appointment of the administrator were closely interwoven. He added that the appellate court considered the core issue of appointment of the administrator of the estate in question. The counsel urged the court to dismiss the appeal with costs.

Having considered the grounds of appeal and the submissions of the learned counsel, I am of the considered view that the main question to decide in this appeal is whether the first appellate court erred in relying on the issue of ownership in deciding the appeal that the appellant was wrongly appointed the administrator of the deceased's estate. It a well established principle that the court has the power to appoint any fit person or authority to discharge the duty as an Administrator of the estate of the deceased person. This principle is found in cases decided and a recent one is **Sekunda Mbwambo vs Rose Ramadhani [2004] T.L.R. 239**. In the present appeal, the appellant applied for letters of appointment. Although the respondents opposed, the Primary Court considered the issue of appointment in a manner, which in my view, was correct.

The respondents did not show interest to administer the estate but openly they disputed the inclusion of property allegedly falling under the estate of their deceased father.

On application for appointment of an administrator of a deceased's estate, the duty of the court is to appoint as administrator a person who has interest in the estate, and according to the wishes of the deceased if any are expressed. [See: **Seif Marare Vs Mwadawa Salum [1985] T.L.R. 253**]. The deceased Amina Hassani Kamote left no children of her own. The respondents are her step-sons whereas the appellant is her brother. The two sides have shown interests in the estate [the farms and a house]. The fact that the respondents have interest in the property in dispute and not the actual appointment I see no good reasons for the 1st appellate to nullify the appointment of the appellant as an administrator. The respondents have fear of losing their father's farms. The ownership of the alleged farms and house is subject to evidence. After all, the administrator of the estate is not the owner of the deceased's property. His duty is to collect and distribute the property, falling under the deceased's estate, to beneficiaries in a fair manner. Rutakangwa, J. [as he then was] when deciding the case of **Sekunda Mbwambo vs Rose Ramadhani [supra]** held:

"An administrator of an estate of a deceased person is not supposed to collect and monopolize the deceased's properties and use them as his own and/or dissipate them as he wishes but he has the unenviable heavy

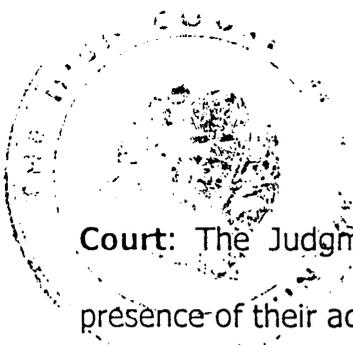
responsibility, which he has to discharge on behalf of the deceased, of distributing the estate to beneficiaries impartially."

So the fact that the appellant is/was appointed administrator, it does not mean that he will use the deceased's property as he wishes. He has to discharge the duties of an administrator and in case of any mis-use/mis-appropriation, the beneficiaries have a right to sue him accordingly.

Likewise, if there is any property unlawfully included in the deceased's estate, then the person claiming ownership over such property may sue the administrator for its recovery. The respondents fall under this category. They may wish to exhaust this option to recover their rights.

for the reasons given above, I allow the appeal. I have considered the nature of this dispute and I order each party to bear own costs.


R.A. TEEMBA, J.
29/3/2012

 **Court:** The Judgment is delivered in the presence of all parties and in the presence of their advocates.


R.A. TEEMBA, J.
29/3/2012.