

**IN THE HIGH COURT OF TANZANIA
AT ARUSHA**

(PC) CIVIL CASE APPEAL NO. 12 OF 2010

(C/F Babati District Court in Probate and Administration Appeal No. 2 of
2009 Originating from Magugu Primary Court in Probate and Administration
Cause No. 4/2008)

BETWEEN

SHAIBU HASSAN APPELLANT

AND

ASHA MOHAMED RESPONDENT

Date of last Order: 13/09/2012

Date of Judgment: 05/10/2012

JUDGMENT

A.C. NYERERE, J.

Aggrieved by the Judgment delivered on 12/10/2009 by F. Mtarania, RM in Probate and Administration Appeal Cause No. 2 of 2009, the appellant filed a Petition of Appeal on four (4) grounds;

1. That, the decision of the District Court is not supported by the evidence on record.
2. That, the District Court erred in law and in fact in holding that the fact that the respondent was wife to the deceased per se entitled her to be appointed administratrix of the estate to exclusion of others.

3. That, the District Court erred in law in determining the appeal without adverting its attention to the issues which were before the Primary Court.
4. That, the District Court erred in law in arriving at a decision based on wisdom without due adherence to the law.

This appeal was heard *viva voce* in which the appellant was represented by Mr. Kinabo learned counsel whereas the respondent appeared in person. Addressing the appeal, the appellant's learned counsel submitted that the 1st appellate Court did not take into consideration the minutes of the clam elders meeting which proposed the appellant to be an administrator of the estate of the deceased Haruna Hassan the meeting was attended by the respondent herein in which she conceded for the appellant to be declared an administrator of the deceased's estate.

It was the submission by the appellant's learned counsel that the worry of the respondent on appeal to the District Court was for the appellant to misuse the deceased's estate though reasons for the said worry were not adduced in Court. Accounting for the 2nd ground of appeal, the appellant's learned counsel submitted that in the Judgment by the District Court, nowhere it was stated that administration of the appellant of the deceased's estate was ever revoked.

Addressing the third ground of appeal, the appellant's learned counsel argued that the District Court did not assign reasons in appointing the respondent herein as an administrator of the deceased's estate thus amounting into miscarriage of justice.

It was further submitted that even if the 1st appellate Court revoked administration of the appellant in respect of the deceased's estate, yet; the said Court lacked Jurisdiction in appointing the respondent to administer the deceased's estate arguing that under such circumstances, the parties ought to have applied before the Primary Court to be appointed administrators of the deceased's estate.

In rebuttal; the respondent submitted that the reason for the appeal was because the appellant went astray of the agreement met in the clan meeting by owning the deceased's properties including renting the deceased's house and collect rent adding that in the said administration, the appellant and one MOSHI HASSAN were appointed administrators of the deceased's estate.

The respondent added that the administrators of the deceased's estate stop maintenance to the appellant after the mandatory 40 days *edda* whereas upon complaining to the Primary Court, the Court decided the appellant to be administrator of the deceased's estate thus unjust as the wealth was obtained jointly between the respondent and the deceased but the appellant has never distributed the deceased's estate.

In rejoinder; the appellant's learned counsel submitted that the crucial issue before the lower Courts was appointment of administrators and not distribution of the deceased's estate and that the administrators have failed to distribute the deceased's estate due to several appeals filed in Court since 2009.

Having gone through the Court records, this Court has the following observations in disposal. **First;** truly as submitted by the appellant's learned counsel, the 1st appellate Court did not revoke appointment of the appellant herein as per the trial Court in Probate and Administration Cause No. 4 of 2008.

Second; but the fact that the District Court did not revoke the appellant from being an administrator of the deceased's estate, that position could not bar the respondent herein from being appointed a co administrator to the deceased's estate as it was also was both of them to be appointed administrators of the deceased's estate.

But since the matter remained uncertain as to whether the District Court intended to revoke the former appointment by the trial Court for the appellant to be an administrator of the deceased's estate or rather intended both the parties herein to be co administrator, then; this Court finds that ground with merits thus hereby allowed.

Third; from the trial Court records, it is not disputed that the respondent objected appointment of the appellant as an administratrix of the deceased's estate though the decision of the trial Court did not declare the respondent to be administratrix of the deceased's estate. **Fourth;** the decision of the trial Court was delivered on 04/03/2009 and that the very appeal filed before the District Court was in respect of appointment of the appellant as an administrator of the deceased's estate.

Fifth; though the position of the law regarding administration of deceased's estate vests duty to the administrator/administratrix to properly and justly administer the deceased's estate to the best interest of the deceased's beneficiaries and from the fact that being appointed an administrator/administratrix of the deceased's estate does not at all confer ownership rights over the deceased's estate, yet; consideration of the administrator's personal and direct interest over the deceased's estate plays an important role in determining as to whom stand a better position to properly administer the deceased's estate.

Now, from the above whereas all the parties herein claim interest over the properties which falls to the deceased's estate as per the proceedings of the trial Court and from the fact that the respondent's act in conceding to the proposal of the clan meeting for the appellant to be appointed an administrator of the deceased's estate cannot bar the respondent from objecting the appellant to be appointed an administrator of the deceased's estate, then; this Court finds it just for both the appellant and the

respondent herein to be co administrators of the deceased's estate with duty to focus on administration of the deceased's estate and not sorting for their personal interests of ownership over the deceased's estate.

From the above, the appeal is partly allowed. But due to the state of things in existence as above narrated regarding administration of the deceased's estate, this Court invokes the provisions of section 29(c) of the Magistrates' Courts Act, [CAP. 11 R.E, 2002] to declare and appoint SHAIBU HASSAN and ASHA MOHAMED respectively to be co administrators of the estate of the late HARUNA HASSAN with orders to perform all their duties and responsibilities within six (6) and handle over an Inventory in Court to that effect whereas by virtue of section 32(2) of the Magistrates' Courts Act (supra) this Court certifies the said orders to the Primary Court for all the appropriate measures in terms of administration of the deceased's estate.

Failure to observe the same will amount into criminal sanctions but in case of persistence of any reasonable grounds in performing that obligation, leave may be sought for extension of time in executing the said duty as administrators of the deceased's estate.

From the above circumstances, I make no orders as to costs.

Order accordingly.




Sgd: - A.C. NYERERE
JUDGE
05/10/2012

Judgment delivered in chambers this 5th day of October, 2012 in presence of Mr. Kinabo learned counsel for the appellant and the appellant in person and in presence of the respondent in person.

Sgd: - A.C. NYERERE
JUDGE
05/10/2012

I hereby certify this to be a true copy of the original.


DISTRICT REGISTRAR
ARUSHA
08.10.12
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