

IN THE HIGH COURT OF TANZANIA

AT TANGA

CIVIL APPEAL NO. 1 OF 2011

**(Originating from Civil Revision No. 1 of 2010 in the
District Court of Tanga at Tanga and Administration Cause No. 125 of
2010 in Tanga Urban Primary Court)**

MARIAM ELIAS ASSERY APPELLANT

VERSUS

EMMA ALLY BAKARI RESPONDENT

J U D G M E N T

Teemba, J.

The dispute in this appeal is the appointment of the administratrix of the estate of the late Elias Assery Maeda. The latter died on 04/02/2010 and on 24/04/2010 his clan members nominated the deceased's wife – the Respondent in this appeal, to administer the deceased's estate. The Respondent proceeded and filed an application for letters of administration in Tanga Urban Primary Court. The application was opposed by the appellant together with her brother – Frank Elias Maeda, both the children of the deceased. They alleged that the Respondent was no longer the wife of their late father. They also claimed that she was already married to another man – Denis Sebastian Simba and for that reason, the objectors alleged that the Respondent could not administer the deceased's estate fairly. The trial court resolved the objection by granting letters of administration to both the appellant and the Respondent as joint administratrixes of the deceased's estate. The Respondent was aggrieved with

the decision of the trial Court. She therefore, preferred Civil Revision No. 1 of 2011 in the District Court of Tanga at Tanga seeking for an order that the Appellant's appointment be nullified because she (*the appellant*) was not nominated by the deceased's clan members and second, that as the deceased did not leave behind a minor, then there was no need for two administratixes. The District Court was convinced by these arguments. It therefore nullified the appellant's appointment noting that she was born out of wedlock and since there is already a sour relationship between the appellant and Respondent, then they could not cooperate to administer the estate properly. The appellant was aggrieved with that decision and has preferred this appeal challenging the same under the following grounds:-

- 1. That the Learned trial Magistrate erred in law and fact by nullifying the appointment of the appellant without considering that the Appellant and her brother, one Frank Elias are beneficiaries and Legal heirs of the estate of their deceased father.*
- 2. That, the Learned trial Magistrate erred in Law and fact for appointing the Respondent to be the sole administratix of the deceased estate without considering the existing misunderstanding between the Appellant and her step mother (Respondent) as a factor to appoint the duo as the administratixes of the estate of the deceased Elias Assery Maeda*

3. *That, the Learned Magistrate erred in Law and fact by delivering the Ruling in favour of the Respondent basing on the sour relationship between the appellant and the Respondent without warning himself as to the welfare of the appellant and her brother who are legal heirs of the estate of their deceased father.*
4. *That, the Learned Magistrate erred in law and fact by delivering the ruling in favour of the Respondent on the reason that the Appellant and his brother were born out of wedlock without considering the reality that when the Respondent married the deceased, she found him with two issues (Appellant as his brother).*
5. *That, the learned trial Magistrate erred in law and fact by delivering the ruling in favour of the Respondent without taking into consideration that the Respondent left the deceased and married another man while her marriage with the deceased was existing.*

Mr. Fredrick Mkatambo and Mrs. Kabwanga both Learned Counsel for the appellant and Respondent respectively, prayed and were allowed to argue this appeal by way of written submissions.

Arguing the first ground of appeal, Mr. Mkatambo submitted that the appellant is a lawful heir and that she was nominated by the clan members on 19/06/2010 after learning that the Respondent was married to another man. He added that, since the Respondent is already married to another man, she can not be impartial in administering/dividing the deceased's estate. In that regard, the Learned counsel argued that the Respondent is incompetent to administer the estate of the deceased.

The Learned Counsel argued the 2nd, 3rd and 4th grounds of appeal together. He contended that as the Respondent is incompetent to administer the deceased's estate then, even the decision of the Primary Court of appointing her as a co-administratrix was not appropriate. He went ahead and stated that since the appellant is the deceased's daughter then, she is competent to administer the estate. The Learned Counsel added that, the fact that the appellant was born out of wedlock should not be considered because under the Law of the Child, 2009 all children are equal regardless of the nature of their births. He concluded this point by submitting that in case the Respondent is declared a sole administratrix then, the interests of the beneficiaries will be in danger.

As regards the fifth ground of appeal, the Learned counsel submitted that the record reveals that the Respondent is married to Denis Sebastian Simba and therefore the District Court Magistrate misdirected himself by disregarding this fact and hence arrived at a wrong decision. In conclusion, Mr. Mkatambo urged the court to allow the appeal with costs.

In her rebuttal Mrs. Kabwanga insisted that, there is no substantial proof indicating that the Respondent is married to Denis Sebastian Simba.

In respect of the 2nd, 3rd and 4th ground of appeal, Mrs. Kabwanga insisted that the District Court considered the faithfulness and personal integrity of the Respondent and hence declared her sole administratrix of the estate.

Responding to the fifth ground, the Learned Counsel insisted that there is no evidence justifying that the marriage between the deceased and Respondent was broken down irreparably. In that regard, the learned Counsel urged the Court to dismiss the appeal with costs.

In his rejoinder, Mr. Mkatambo reiterated that the certificate of marriage between the Respondent and Denis Sebastian Simba justifies that the Respondent committed adultery and she cannot administer the estate of the deceased.

Having examined the record, and considered the grounds of appeal together with the submissions advanced for and against this appeal, I am mindful that this appeal is devoid of merit.

First, an administrator/administratrix is a person who is supposed to diligently and faithfully administer the estate of the deceased. This person can be a widow, parent or child of the deceased or any other close relative. If such people are not available or if they are found to be unfit in one way or another, the Court has the power to appoint any other fit person or authority to discharge his duty. This position of law was emphasized in the case of **Sekunda Mbwambo V. Rose Ramadhani [2004] TLR 439.** As far as the present appeal is concerned, there is no dispute that the Respondent was married to the deceased and they had a Christian marriage. Again, there is no evidence on record justifying that the Respondent and the deceased divorced each other. For that reason, the argument that she should not be appointed the

administratrix of the estate of her late husband on the ground that she is married to Denis Sebastian Simba is not founded.

Second, the record clearly indicates that following the death of Elias Assery Maeda, his clan members including the appellant, nominated the Respondent on 24/04/2010 to administer the estate of the deceased. They nominated her knowing that the Respondent was a wife of the deceased.

Third, the alleged subsequent nomination of the appellant and her brother Frank to be administrators of the deceased's estate by the purportedly clan members without involving the Respondent is in my considered view, an afterthought, improper and unfair to the respondent.

Fourth, there is no evidence on record, either produced by the appellant or any other person, indicating that the Respondent will administer the deceased's estate unfairly. This argument is mere speculations and fears by the appellant.

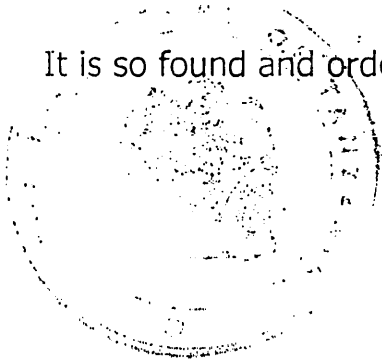
Fifth, the issue of inheritance as argued by the Learned Counsel for the appellant can not be determined by this Court. The only matter at hand is on the appointment of an administrator of the deceased's estate. It is important to note that the administratrix has a duty to collect all the properties of the deceased and distribute the same to the dependants/heirs. If any of the beneficiaries is dissatisfied at the way the estate is distributed, he/she may complain to the Court and upon investigation, the Court will make an appropriate order according to law.

For the above reasons, I have no doubt that the District Court made a fair decision. The respondent enjoys the trust and confidence of clan members (*including the appellant and her brother*) who nominated her to apply for letters of administration of the estate of her deceased's husband. I therefore uphold

the decision of the District Court and confirm the appointment of the respondent as the sole administratrix of the estate.

In the upshot, this appeal fails. However, in the circumstances of this dispute, it is my considered view that, in order to promote the harmony between the parties, I will order each party to bear own costs in this Court and the two courts below.

It is so found and ordered.




R.A. TEEMBA

JUDGE

DATE: 2/11/2012

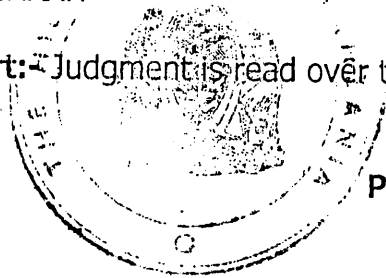
CORAM – P.C. MKEHA – DR.


APPELLANT: PRESENT

RESPONDENT: PRESENT

/C SARAH

Court: Judgment is read over to the parties on this 2nd day of November, 2012.




P.C. MKEHA – DR
02/11/2012