

IN THE HIGH COURT OF TANZANIA

AT DODOMA

(PC) CIVIL APPEAL NO. 8 OF 2011

**(Arising from Civil Revision No. 7 of 2011, of the District Court of Dodoma,
Original Civil Case No. 56/2009 Makole Primary Court and Probate Case
No.10 of 2008 of Chamwino Primary Court)**

HALFANI JAFARI MSAKUZI
HOLDING POWER OF ATTORNEY
OF SHIDA HAMISI**APPELLANT**
VERSUS

MRISHO HAMISI.....RESPONDENT

J U D G M E N T

27/3/2012 & 14/6/2012.

KWARIKO, J:

This matter has had a chequered and confusing history. The record shows that the appellant herein and one MWAMVITA HAMISI had been the only surviving children of one deceased HAMISI MBORYO as of May, 2008. Thus, MWAMVITA HAMISI applied, on 22/5/2008 before the Primary Court of Chamwino in Dodoma to be appointed administratrix of her deceased fathers' estate which comprised of only one *House at Plot No. 11 Block 17 Mji Mpya, Dodoma Municipality*. MWAMVITA had testified that she was at that time the only surviving child of the late HAMISI MBORYO who died way back in 1942. The trial court heard her and granted her letters of administration of the said estate on 10/6/2008.

Shortly, thereafter, on 21/7/2008 SHADA D/O HAMISI, the appellant herein filed an objection against the appointment of MWAMVITA D/O HAMISI on grounds that the latter lied that she was the only surviving child of the deceased HAMISI MBORYO. She said she was also the daughter of the deceased and was the heir of his estate. Thereby, on 30/7/2008 the court revoked the appointment of MWAMVITA as administratrix of the said estate and in lieu thereof appointed the two daughters to administer the estate of their deceased father. The court went further to confirm that the two were the only heirs of the estate of their deceased father HAMISI MBORYO.

However, it was not until 20/7/2009 when that court was informed that MWAMVITA D/O HAMISI had died and it thus held that the appellant herein SHIDA HAMISI was the only heir of her deceased father's estate namely *House Plot No. 11 Block 17 Mji Mpya, Dodoma Municipality*.

The record further shows that MRISHO HAMISI the respondent herein who is the son of the deceased MWAMVITA D/O HAMISI filed a case before the Primary Court of Makole in Dodoma against the appellant herein (Civil Case No. 56/2009) for division of the said house him being the administrator of the estate of MWAMVITA D/O HAMISI. MRISHO had claimed that the value of the house was Tshs. 80,000,000/= hence wanted half of that i.e. Tshs. 40,000,000/=. The appellant herein claimed that the house was valued only Tshs. 20,000,000/=. However, at the end the respondent herein failed to

attend the court and his case was dismissed for want of prosecution on 10/11/2009 where the court ordered that the disputed house should solely be owned by the appellant herein (then defendant). Also, on 2/2/2010 at the instance of both parties the court ordered all tenants in the disputed house to vacate as they had failed to pay rents.

What followed is a revisional order by the District Court after what it called complaint from the parties and subsequent calling of the original record. The District Court found in its order that the disputed estate had not so far been divided. It thus ordered for the division of the disputed house equally between the heirs of MWAMVITA HAMISI and SHIDA HAMISI, the appellant herein.

Now, the appellant has filed this appeal against that revision order essentially on the following grounds:

1. That, the District Court erred in law and procedure to order sale of the disputed house.
2. That, the revision order was made without her being heard.
3. That, the respondent's case before Makole Primary Court was unwarranted as the respondent ought to have appealed against the decision by the Chamwino Primary Court instead.

4. That, the disputed house was still in the name of the deceased HAMISI MBORYO hence could not be divided but only to be inherited by the sole heir, the appellant.

This appeal was heard where the appellant's Attorney one Halfani Jafari reiterated the grounds of appeal and maintained that the disputed house was rightful property of the appellant since she is the only surviving child of the deceased. That, the respondent being only a grandchild of the deceased has no right to claim any part of the deceased estate.

On his part the respondent submitted that his mother who was the appellant's sister was entitled to the disputed estate. That, since now she is deceased and him appointed administrator of her estate he was entitled share in the disputed house.

On his rejoinder the appellant's Attorney concluded that the disputed house was not subject to sale since it is a family house.

The issue to be decided is whether this appeal has merits. The court has gone through the original record and what the courts below have been entertaining and ordering in relation to this whole matter. This court has found that when the trial court (Chamwino Primary Court) had decided to appoint the appellant herein and MWAMVITA HAMISI to be administrators of their deceased father's estate, it did

not at all err. However, what the court erred in law is to decide that these two were the only heirs of the deceased estate. This was an error since the court has not mandate to decide who and who is not a rightful heir of the deceased estate in the absence of any dispute and evidence to that effect.

Thus, the court ought to have left the administrators to administer the estate and divide the same among the known heirs. If a dispute arose in the course of the administration of the deceased estate then the aggrieved party would have been welcomed to file his/her complaint in court. That is where court's intervention is needed but only upon hearing the disputants.

Thus, the order by the trial Chamwino Primary Court dated 30/7/2008 to order that the two i.e MWAMVITA HAMISI and SHIDA HAMISI were the only heirs of the deceased father's estate is hereby found, through this court's revisionary powers *null* and is quashed.

Likewise, the order of that court dated 20/7/2009 which pronounced SHIDA HAMISI (Appellant herein) the sole heirs to *House Plot No. 11 Block 17 Mji Mpya, Dodoma Municipality* after the death of MWAMVITA HAMISI was *null* and thus is hereby quashed. The appellant was supposed to be left to administor the estate and if anyone was not satisfied with her administration then he should have filed her/his complaint in the same court which appointed her

administrative or open a fresh suit to that effect. However, a complaint filed in the same court and file is preferred for easy of reference and to avoid multiplicity of court files in relation to the same matter.

Therefore, the respondent herein did have right to file a suit against the appellant herein but upon satisfying himself on the following conditions:

1. That, he was the administrator of the estate of MWAMVITA HAMISI.
2. That, the disputed estate was being mismanaged to the detriment of the heirs.
3. That, his rights, if any, in the disputed estate had been violated.

And whether or not these conditions had been fulfilled before the said suit was filed could not be known since the same was not prosecuted for failure of the respondent to appear which led the court to dismiss it. That court also erred to hold that the appellant herein was the rightful owner of the disputed house. This order is thus quashed.

What followed was the trial court to deal with rent issue in respect of the disputed house. This issue had no legs to stand because no any complaint had been properly filed to that effect. Actually, even if there was any such complaint filed, the trial court had no jurisdiction to

entertain the same since its jurisdiction over land matters had been ousted by Act No. 2 of 2002. Thus, the order by that court to order tenants in that house to vacate was illegal and *null* and it is hereby quashed.

As for the revision order by the District Court the same had been issued without both parties being heard. There was no any application to that effect. Even though the court *suo mottu* decided to revise the proceedings but it ought to have summoned the parties and give them opportunity of being heard before the order was made. Therefore, this revisional order was and thus null and it is quashed (*see section 22 (3) of the Magistrate's Court's Act Cap. 11 Revised Edition 2002*).

Consequently, the appellant herein is the administratrix of the estate of her deceased father who has duties to manage, divide the same to the heirs, if any, to collect debts, to repay debts, to sue and being sued in relation to the estate and all those matters relevant in the estate.

Thereafter, this appeal succeeds in part in that the appellant is the administratrix of the deceased estate but the heirs thereto shall be determined by herself and/or the clan members in the course of the administration of the estate. The parties being close relatives. I order no costs.

It is so held.



(M. A. KWARIKO)

JUDGE

14/6/2012

Court: Right of Appeal fully explained.



(M. A. KWARIKO)

JUDGE

14/6/2012

DELIVERED AT DODOMA.

14/6/2012.

Appellants: Absent.

Respondent: Present.

C/c: Miss Judith.



(M. A. KWARIKO)

JUDGE

14/5/2012