

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 169 OF 2018**

*(Originating from Primary Court Decision in Probate Cause No. 44 of 2001)*

**MOHAMED YUSUFU MKILALU ..... APPLICANT**

***VERSUS***

**HASHIM YUSUFU MOHAMED ..... RESPONDENT**

*Date of Last Order: 19/06/2020*

*Date of Judgment: 24/07/2020*

**J U D G M E N T**

**MGONYA, J.**

This Honourable court is the second appellate court in respect of this matter. The Appellant above named **MOHAMED YUSUFU MKILALU** being aggrieved by the Judgment and Decree of the District Ilala at Samora (Hon. F. E. Haule) in **Civil Appeal No. 111 of 2017** dated the 5<sup>th</sup> day of June, 2018 hereby appeals to this honourable Court against the whole of the said Judgment and Decree on the following two grounds:

- (i) That the learned Magistrate erred in law and in fact by upholding the decision of the Primary Court in Probate Cause No. 44/2001; and*
- (ii) That the learned Magistrate erred in law and in fact in denied the Appellant his right to be heard.*

From the above, the Appellant prays for the following orders:

- (a) This Honourable Court be pleased to allow the appeal;  
and
- (b) Costs of this appeal.

When the matter came for hearing, upon request from both parties, I ordered them to dispose the Appeal by way of written submissions. The said order was adhered to accordingly and from the parties' respective submissions, this is the Judgment in that respect.

In the cause of writing this Judgment, I have carefully read the parties' respective submissions in support and against the Appeal and I don't intend to reproduce their submissions, but rather to straight determine the grounds of appeal as herein below:

Having considered the rival submissions of both parties, and perusing the entire Court record, I will now determine 1<sup>st</sup> the **second ground** of Appeal as the remaining first ground's fate depends much on the second ground outcome.

In the second ground, it is the Appellant's assertion that, the learned **Magistrate erred in law and in fact in denied the Appellant his right to be heard.**

Despite the fact that the Appellant did not specify which court in the sense of the trial court or 1<sup>st</sup> appellate court, denied him the right to be heard, as I have gone through both courts' records, I can still determine this ground accordingly.

Starting with the trial court that is the Primary Court which originally this matter was heard for the first time, I have revisited the proceedings thereto and it came to my knowledge that, the Appellant being one amongst the heirs to the estate in issue, was indeed availed with the right to be heard as other heirs thereto. Since this ground has been a major complaint even at the 1<sup>st</sup> appellate court, let me quote his narration when the Appellant was availed with right to be heard. The same can be found at page nine (9) of the Proceedings as seen below:

**"MAELEZO YA MOHAMED YUSUPH:**

***Mimi nakubali kuwa kiwanja cha Kassim Yusuph nimeuza bila ridhaa yake. Kuhusu viwanja vingine nahusika kuuza kwa ridhaa zao na mashahidi ninao wa sahihi zao.***

***(Signed)***

***08/09/2017"***

It is from the above, this court is satisfied that the Appellant herein was given the right to be heard as others and

in the cause of testifying, he also confirmed that he sold part of the estate without the person's concerned consent, something that was the major concern of other heirs, in that event, the trial court was satisfied with the Appellant's confession to the extent of issuing its decision by nullifying the illegal sales that the Appellant ensured.

From the above, the Appellant's **second ground of Appeal fails as the same is hopeless and meritless.**

As to the first ground of Appeal, that **the learned Magistrate erred in law and in fact by upholding the decision of the Primary Court in Probate Cause No. 44/2001**, I can't labour much on the same as. at the 1<sup>st</sup> Appellate court, the sole ground was again that **the learned Magistrate erred in law and in fact in denying the Appellant his right to be heard**, of which the appellate Magistrate too from the same record detected that the Appellant herein was availed with right to be heard as observed above. From that record, the Appellate Magistrate confidently dismissed the said ground of appeal and uphold the trial court decision as the same was valuable and fair as the complaint thereto had merits against the Appellant. Hence the decision to nullify the illegal sales of part of the deceased's estate by the Appellant herein.

In the event therefore, and from the above explanation, it is my firm view that the Appellate Magistrate was right to

**uphold the decision of the Primary Court in Probate Cause No. 44/2001, and dismiss the appeal in its entirety.** From the above, the first ground being baseless, follows the second and is hereby **rejected accordingly.**

Consequently, as the **1<sup>st</sup>** and **2<sup>nd</sup>** grounds of appeal have failed; in the circumstances, **I proceed to uphold the Decisions and Orders made by both trial Court and 1<sup>st</sup> Appellate Court.**

Thus, **the instant Appeal is accordingly dismissed in it's entirely with costs.**

It is so ordered.

Right of Appeal Explained.



**L. E. MGONYA**  
**JUDGE**  
**24/07/2020**



**Court:** Judgment delivered in my chambers in the absence of both parties and Ms. Janet RMA, this 24<sup>th</sup> day of July, 2020.



**L. E. MGONYA**  
**JUDGE**  
**24/07/2020**

