

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

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 21 OF 2019

(Originating from Kinondoni District Court Civil Appeal No. 16/ 2018, Before Hon. J. Mushi RM and Originating from Kimara Primary Court, Probate and Administration Cause No. 195/2017 Before JJ Masua RM)

HAPSA SAID SULTAN APPLICANT

VERSUS

YONA LEONARD LUGONGO RESPONDENT

Date of last Order: 06/10/2019

Date of Ruling: 14/02/2020

J U D G E M E N T

MGONYA, J.

Aggrieved by the decision of **Kinondoni District Court in Civil Appeal No.16/2018** the Appellant in this matter sought for an appeal before this Honorable Court with one ground of appeal against the decision of the Kinondoni District Court , as herein below:-

- 1. That, the District Court erred in law and in fact by failing to record and analyze strong oral and***

documentary evidence adduced and tendered by the Appellant during trial hence the Court continued to declare the Respondent's mother as one of the widows and legal heir of the late Yona Leonard Lugongo without any proof.

When the Appeal was placed before me for hearing the Appellant submitted to this Court by requesting this Court to accept the prayer that Appeal be disposed off by way of written submissions. I granted the prayer accordingly.

The Appellant in the written submission in support of the Memorandum of appeal avers that, the Court erred by failing to have recorded and analyzed clearly the evidence concerning the legal widow of the deceased who is subject to inheritance and further acknowledged that both the wives as mentioned by the Respondent before the Court are the Widows left behind and therefore lawful heirs to the Estate of the deceased one **LEORNARD YONA LUGONGO**.

Moreover the Appellant still states to have testified before the Court that she was the legal married wife who contracted an Islamic marriage and is in possession of a Marriage Certificate which was tendered before the Court but unfortunately the Court refrained from recording such fact in

the proceedings neither in the judgment, and acknowledged the Respondents Mother as one of the widow in a mere say without proof.

It is also in the Appellant's submission that the Respondent's statement that the deceased has left behind two wives is false the wives had the duty to prove being the deceased's lawful wives by Marriage certificate. An event that the Respondent's mother did not do so and upon the Appellant's tendering of the marriage certificate, the trial Court did not record the same.

In reply, teh Respondent states that the trial Court was fair enough in its decision for it followed all the procedure and law as required in probate matters. Further that the relatives of the deceased were present at the day when the matter was scheduled for hearing after the matter was placed in the gazette. And that the Appellant should not suggest to have been denied the right to present evidence before the Court.

The Respondent states that, the Appellant was present in Court and was given the opportunity to testify and did not object on the matter of the number of wives the deceased left behind neither did the Appellant pray for tendering of the marriage certificate but rather lamented on the competence of

the Respondent in administering the estates of the deceased and a ruling to that effect was delivered.

It is in the Respondent's submission that when the matter was before the Court for hearing, parties present were the relatives of the deceased the wives and the Respondent the Son to the deceased. The relatives to the deceased were aware of the deceased style of life and knew him until when death took his life. It is the same persons that were in the clan meeting and the same people mentioned the legal heirs to the deceased estate that they recognize.

However, the Respondent avers that soon after the burial a meeting was held that comprised of the family members and in that meeting a date was set for conducting a meeting to suggest and propose administrator to manage the deceased estate. The Appellant was present in that meeting and decided not to show up on the second meeting.

Having carefully gone through the submission of both parties and records before me, I at this juncture find it appropriate to determine the appeal before me.

It appears that the main cause of the appeal at hand is the Appellant being aggrieved by the Court's conduct on matters of

evidence that had been adduced at the trial Court. It should be well noted that the Court as an institution that adjudicates matters before it and renders justice is at all times in the dark at matters before it. The Court is shown light of a matter before it only when the parties testify before it on matters at hand, and then therefore evidence and the laws applicable cause the Court to arrive at a decision.

It is in the records that there was a clan meeting that was held to nominate an Administrator to administer the deceased's estate and it is at the clan meeting that the members of the meeting mentioned the legal heirs that they recognize to be beneficiaries of the deceased estate and these included the Appellant, Respondent and Respondent's mother. These clan meetings in Probate matters are not a requirement of law but rather a matter of practice and the same is highly respected for it is from such meetings relative discuss crucial matters in relation to the deceased, estate and heir recognized.

Having gone through the trial Court proceedings, with relation to the ground of appeal and submissions of the parties, the Appellant appears in records to have testified before the Court after the Respondent had already testified and named the legal heirs being the Appellant, the Respondent and the

Respondent's Mother. The Appellant did not object or dispute at that juncture that the Respondent's Mother is also the deceased wife. The only objection raised was upon the Respondent being nominated to be the Administrator, of which a ruling was delivered.

Evidence that was adduced by the Appellant is in records and was well analyzed and is the same evidence that the first appellate Court had at hand in reaching its decision. The Court on appeal is bound by the evidence before it. Therefore **if the Appellant did not tender evidence she states to be strong or documentary, the same cannot be dealt with on appeal.**

However it is in records that after the Appellant's testimony, her testimony was read over and explained to her and the Appellant did not object if there was something wrong. The same is observed and reads as ***I.K.S (Imesomwa Na kuonekana sawa)***. It is therefore that the Appellant is introducing new facts on appeal a fact that she did not dispute at the trial Court, which in law is bad.

The Court of Appeal of Tanzania in the case of ***FARIDA AND ANOTHER VS. DOMINA KAGARUKI, Civil Appeal***

No. 136 of 2006, refused to deal with issues raised so belatedly. It held:

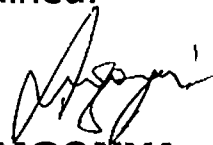
"It is the general principle that the Appellate court cannot consider or deal with issues that were not canvasses pleaded or raised at the lower Court. For that reason, they are dismissed".

In the final analysis therefore, I find it unnecessary at this stage for me to deal with the issues that were not raised at the trial Court. Indeed to me this is an afterthought by the Appellant.

From the reasons set forth above, **I dismiss the appeal and each party to bear its own costs.**

Order accordingly.

Right of Appeal Explained.



L. E. MGONYA
JUDGE
14/02/2020



Court: Ruling delivered in the presence of the Appellant in person, Respondent in person and Ms. Janet Bench Clark in my chamber today 14th February, 2020.



L. E. MGONYA
JUDGE
14/02/2020

