

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**PC CIVIL APPEAL NO. 3 OF 2019**

(Appeal from the Judgment of District Court of Arumeru at Arumeru in  
Civil Appeal No. 8 of 2018, Originating from probate cause No. 57 of 2017  
in the Primary Court of Maji ya Chai)

**REGINALD KORA HUGO ..... APPELLANT**

**VRS**

**DESIDERI RIVA URASSA..... 1<sup>st</sup> RESPONDENT**

**ALPHONCE TIMARA URASSA .....2<sup>nd</sup> RESPONDENT**

**VICENT SHAURI URASSA ..... 3<sup>rd</sup> RESPONDENT**

**JUDGMENT**

Last Order: 10/12/2019

Date of Delivery: 25/3/2020

**MWENEMPAZI, J.**

The appellant herein filed a Petition for Letters of Administration of the estate of the late Irene Mkasahabu Hugo, his late mother who passed away in 1992 in the Primary Court of Maji ya Chai vide Probate and Administration Cause No. 57 of 2017, which was successfully objected to by the Respondent. The

trial Court, in its decision, held that the late Irene Mkasahabu Hugo left no estate to be administered. It was the reasoning of the objectors (the respondent) that the estate mentioned by the appellant was part and parcel of the estate of the late Hugo Kahumba, who passed away on the 15th October, 1965. The estate of the late Hugo Kahumba was administered by the First Respondent herein, who was appointed by Moshi Primary Court vide Probate and Administration Cause No. 11 of 1972.

The appellant is one of the issues of the matrimonial unity between the late Hugo Kahumba and late Irena Mkasahabu Hugo. Other issues of the late Hugo Kahumba and the late Irene Mkasahabu Hugo are: - Desideri Riva Urassa, Alphonse Timira Urassa, Viscent Shauri Hugo (the Respondents in this appeal), Nortburga Hugo Urassa, Bernadeta C. Mallya, Benadicta Uisso, Marry Hugo and Reginald Kora Hugo.

After the death of their father, the family was left under the care of Irena Mkasahabu Hugo their mother who, with the assistance of the respondent in the appeal, took care of the other children. She was left with everything they jointly acquired by the late Hugo Kahumba. The first respondent was also an administrator of the estate of the late Hugo Kahumba as stated above. When she passed away in 1992 that is when the family sat down to discuss the future of the family and the 1<sup>st</sup> Respondent turned against them.

The appellant being aggrieved by the decision of the trial court appealed to the District Court which upheld the decision of the trial court

hence this appeal. The appellant has filed six (6) grounds of Appeal in order to challenge the decision of the first appellate Court, namely: -

1. That, the Honourable Magistrate erred in law and fact to uphold the Judgement and decree of Maji ya Chai Primary Court while the evidence on record does not support such finding.
2. That, the 1st Appellate Court grossly erred in law and fact to hold that Irena Mkasahabu Hugo had no estate to be administered while that was not an issue to be determined at the appointment stage.
3. That, the whole decision of the 1st Appellate court is a bad in law for lack of reasoning supporting the findings.
4. That, the 1st Appellate Court grossly erred in law and facts by awarding the Respondents costs that they do not deserve.
5. That, the Judgement and Decree of the 1st Appellate Court is bad in law for lack of property analysis of facts, evidence and in law applicable, thereby causing injustice to the Appellant.
6. That, the 1st Appellate Court grossly erred in law and fact by relying on the weak evidence given by the Respondents at the trial court hence caused injustices to the Appellant.

Parties sought leave of the court to dispose the appeal by way of written submission, which prayer was granted. They duly complied to the Order of the Court. The appellant was being represented by Robert Roghat and the Respondents were being represented Hamis Mkindi, learned advocate, working at the Legal Aid Unit of the Legal and Human Rights Centre.

The counsel for the appellant in his submission in support of an appeal prayed to submit on grounds 1, 2, 3, 5, and 6 of the petitions of appeal together. According to the appellant, the question whether or not the deceased left estate could be properly answered by the Administrator of her estate upon being dully appointed by the Court. This issue could not be properly answered at the time of appointment because it is only the administrator of her estate who has the legal powers to defend the interests and estate of the deceased person. It was therefore premature for both courts below to rule against the late Irena Mkasahabu Hugo as to her status on the ownership of property before her death, without being properly heard because the appellant was not in the position to speak for the deceased person's estate before being appointed as an administrator of the estate of the deceased. The deceased person pursues his or her right before the Court of law through his or her dully appointed legal representative. The question whether Irena Mkasahabu Hugo owned any estate could not be conveniently answered and or defended by any person until her legal representative was first appointed. The appellant has called this court into an attention to the case of **Ibrahim Kusaga V Emanuel Mweta [1986] T.L.R 26** where it was observed that:

*"I appreciate that there may be cases where the property of a deceased person may be in dispute. In such cases all those interested in determination of the dispute or establishing ownership may institute proceedings against the Administrator or the Administrator may sue to establish claim of deceased's property.*

*The law regarding institution of civil claims has not been changed by the Administration of estate enactments. It only provides a machinery whereby a legally recognized person is placed in the place of a deceased person in all matter relating to the deceased's estate."*

It is also the argument by the appellant that the decision was made basing on the evidence relating to the administration of the estate of the late Hugo Kahumba and not Irena Mkasahabu Hugo. In the opinion of the appellant Hugo Kahumba and Irena Mkasahabu Hugo were husband and wife, and they are distinct personalities in the eyes of the law with separate rights including the right to have their estates being properly administered. It was therefore wrong for both lower courts to deny Irena Mkasahabu Hugo the right to have an administrator of her estates merely because the 1<sup>st</sup> Respondent was appointed the administrator of the estates of the late Hugo Kahumba. The position could have been different if the appellant was petitioning for letters of administration of the estate of Hugo Kahumba. While the estate of Hugo Kahumba has presumably a legal representative if Exhibit D1 is considered genuine, the estates of the late Irena Mkasahabu Hugo is yet to have a legal representative until the court appoints one.

In conclusion the appellant has prayed that this court allows the appeal with costs and the appellant be appointed as the administrator of the estate of the late Irena Mkasahabu Hugo as applied. As to whether the late Irena had any property will be an issue of determination in the court of administration of her estate.

The respondent has been, as said before, enjoying the services of Hamisi Mkindi, learned advocate. He filed written submission as ordered by the court, in reply to the submission in chief by the appellant. He has opted to respond to submission sequentially according to the grounds of appeal. I however, would follow up on the submission in summary form capturing the relevant points for the purpose of recording the essence of his arguments in reply. Generally, it is the argument by the counsel for the respondent that the trial court was right in its decision to deny the petition by the appellant to be appointed as an administrator of the estate of the late Irena Mkasahabu Hugo; and also, the first appellate court did not conduct any error in law and fact when it upheld the Judgement and Decree of Maji ya Chai Primary Court. The evidence on record support the findings and the decision are correct and just.

The trial court in its decision dated 25<sup>th</sup> January, 2018 rejected appellant's application(petition) to be appointed as administrator of the estate of the late Irena Mkasahabu Hugo on reason that, she had no properties to be administered. The properties mentioned form part and parcel of the estate of the late Hugo Kahumba who passed away on the 15<sup>th</sup> October, 1965. The said properties were already administered and distributed by the first respondent herein after he had been appointed by Moshi Primary Court vide Probate and Administration Cause No. 11 of 1972.

The learned counsel referred the court to page 8 of the judgement of the 1<sup>st</sup> appellate court. There the court observed that the record of the proceedings of Maji ya Chai Primary Court and evidence adduced before the court (1<sup>st</sup> appellate) show the 1<sup>st</sup> respondent was appointed as an

administrator of the late Hugo Kahumba. Due to the fact that the 1<sup>st</sup> Respondent had duties to settle disputes or any other matter affecting the deceased estate. The set of proceedings show that the 1<sup>st</sup> respondent was appointed as an administrator of the deceased estate (Hugo Kahumba) in which the other part was given to Irena Hugo for supervision until her death, hence she did not leave any estate to the applicant.

The respondent's counsel has, then submitted on the duty of the appellate court not to interfere with the findings of fact of the lower court if there is no evidence of misdirection or misapprehension of evidence. He has cited the case of **Bushangila Ng'oga versus Manyanga Maige** [2002] T.L.R. 335 where Mwita J, held that:

*"It is settled that in the absence of misdirection or misapprehension of evidence, an Appellate Court should not interfere with concurrent findings of fact of the two lower courts; in this case there was no misdirection or misapprehension of evidence and therefore no justification for interfering with the findings of fact of the two lower courts."*

The respondent has also cited the case of **Amratlal D.M. T/A Zanzibar Silk Stores vs. A. H. Jariwara T/A Zanzibar Hotel** [1980] T.L.R 31 court of appeal held that: -

*"where there are concurrent findings of fact by two courts, the Court of Appeal, as a wise rule of practice, should not disturb them unless it is clearly shown that, there has been a*

*misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure.”*

As to the question whether the deceased Irena Mkasahabu had any estate to be administered while that was not an issue to be determined at the appointment stage, the respondent had answered the same in that Irena Mkasahabu Hugo had not estate to be administered. In the reasoning of the Counsel for the respondent, after the death of Hugo Kahumba, the First Respondent was appointed as administrator of the estate of the deceased by Moshi Primary Court. The first Respondent discharged his duties by distributing the deceased estate to the heirs according to their customs. He complied with the law and filed an inventory and a statement of account form No. V and VI as evidenced by Exhibit D1 and D2. Thus, the Primary Court became functus officio as the Probate and letters of administration on the same properties cannot be granted to another person as the same had already been administered.

It is the argument by the Respondent that it was wrong for the appellant to petition for letters of administration of the estate of Hugo Kahumba after 52 years and Irena Mkasahabu Hugo 25 years after her death. And that the estate of the late Hugo Kahumba was administered by the first respondent and the late Irena Mkasahabu Hugo left no estate to be administered.

I have gone through the record. I am satisfied that the appellant petitioned for the letters of administration of the estate of the late Irena Mkasahabu Hugo after obtaining the necessary extension of time in Probate Application No. 90 of 2017 in Maji ya Chai Primary Court. The court granted

an extension of time after it was satisfied that there were good grounds to apply for extension of time so that he may petition for Administration of the Estate of Irena Mkasahabu Hugo. It held as follows:

*"swali ambalo Mahakama imejiuliza ni Je sababu hizi zina masing kuweza kumwezesha kuongezewa muda wa kuomba mirathi. Jibu ya swali hili bila shaka ni ndiyo. Nasema ndiyo kwa kuwa mwombaji alipotoshwa na kuamini kuwa mirathi hiyo imeshafunguliwa na kaka zake, kitu ambacho hakikifunyika pengine kwa sababu ambazo kaka zake wanazifahamu wenyewem hivyo basi kutokuongezewa muda ni kuruhusu mali za marehemu ziendeleo kufujwa kitu ambacho mahakama isingependa kitokee..."*

Also, I do agree with the argument by the applicant that Hugo Kahumba and Irena Mkasahabu Hugo are two different persons in law. The 1<sup>st</sup> respondent was appointed as an administrator of the estate of the late Hugo Kahumba. There has never been any administrator for the estate of the late Irena Mkasahabu Hugo. The record shows that the courts below were looking at the two personalities interchangeably; sort of mixing and maintaining their matrimonial unity that once administration of estate of the late Hugo Kahumba has been effected then there is no need to administer the estate of the late Irena Mkasahabu Hugo. For example, the Honourable District Court Magistrate, in the Judgement on first appeal, observed at page 8 that, I quote: -

*"Due to the fact that the 1<sup>st</sup> Respondent one of his duties was to settle the dispute or any other matter affecting the deceased estate. From the set of the proceedings the 1<sup>st</sup> Respondent was appointed as an administrator of the deceased estate, in which the other part of the estate was given to Irene Hugo for supervision until her death, hence Irene Hugo didn't (was not) left any estate to (be administered by) the applicant."(since it is a quote the words in bracket I have added to supply the meaning I assume it was intended)*

Though one may remotely understand the argument, still the late Irena Mkasahabu Hugo is a different person capable of owning properties which may have been left after her demise for the survivors to administer in accordance to the probate laws and rules. I say remotely because upon consideration of the succession law it is possible to find that no estate devolved into Irene Mkasahabu Hugo under Chagga customary law upon the demise of her late husband; which may operate to validate the argument. However, in my view, that consideration would be premature, given the fact that this was just a petition for letters of administration. The argument will best be considered when fulfilling the duty of an administrator.

In the case of **Godbless Mathew Naibala versus Annet John M. N. Lukumay**, **Civil Application Nos. 119 and 142 of 2008, Court of Appeal of Tanzania at Dar es salaam**(unreported) it was held that: -

*"It should be noted that section 107(1) (of the Probate and Administration Act, Cap. 352 R.E 2002 of the laws) requires a grantee*

*of Probate or Letters of Administration to perform two functions within set time limits. The first function is to exhibit in the appointing court an Inventory of a full and true estimate of the estate within the six months of the grant, and the second function is to exhibit an account of the estate showing the assets which have come into his/her hands and how he/she has applied them or disposed of them."*

And in the case of **Ibrahim Kusaga V Emanuel Mweta** [1986] T.L.R 26 the duty of the court in the petition of the letters of administration is to grant or refuse and not to deal with distribution of the property. Preparation of an inventory of the collected property and distribution of the property is the duty of the grantee of the letter of administration not the court. In the cited case it was observed as follows:

*"...a Primary Court may hear matters relating to grant of Administration of estates where it has jurisdiction (i.e. where the law applicable is customary law or Islamic Law). After hearing the application for grant of Administration the Primary Court ought to decide all matters relating to and affecting the grant and after such decision the court ought to grant Administration to the applicant or make an order refusing grant. It would follow therefore that a Primary Court ought not to distribute the estate of the deceased. That is the job of an Administrator appointed by court."*

With this guidance, obviously the first appellate court, in the impugned decision, did not properly direct itself; first, by mixing up the appointment of the 1<sup>st</sup> Respondent as the administrator of the estate of the late Hugo

Kahumba and the petition by the appellant for the letters of administration of the estate of the late Irena Mkasahabu Hugo. Secondly, by deciding against the petition on the reason that the late Irena Mkasahabu Hugo did not leave an estate to be administered by the petitioner. I am in agreement to the submission by the appellant that the trial court and the first appellate court was wrong in making the decision of the appellant's petition basing on the evidence of administration of the estate of the late Hugo Kahumba. Thus, it is not true that the concurrent findings of the lower courts were proper.

For the reasons stated herein above the appeal by the appellant has merit and the same is allowed. Each party to bear his/her own cost. The decisions of the lower courts are quashed and the orders set aside. The primary court of Maji ya Chai is thus directed to issue letters of administration of the estate of the late Irena Mkasahabu Hugo to the Reginald Kora Hugo.

It is ordered accordingly.



  
**T. MWENEMPAZI**  
**JUDGE.**  
**9<sup>TH</sup> MARCH, 2020**