

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

(PC) CIVIL APPEAL NO. 138 OF 2019

*(Appeal from Kinondoni District Court Civil Revision No. 31 of 2018,
originated from Kinondoni Primary Court Probate Cause No. 234 of
1999)*

Michael Nyamonge -----APPELLANT

VERSUS

Hazio Zedekia -----RESPONDENT

JUDGEMENT

Date of last order: 24.06.2020

Date of Judgement: 23.09.2020

EBRAHIM, J.:

The Appellant herein being dissatisfied with the decision of Kinondoni District Court in the exercise of its revisional jurisdiction, has come to this court raising eight (8) grounds of appeal. In his grounds of appeal, the Appellant is faulting the District Court Magistrate for holding that the Kinondoni Primary Court complied with the order of the High Court dated 17th June 2014 before Kaduri, J and the procedure. He is also

complaining that the District Magistrate ignored the fact that Ihema, J declared the will valid and the same was verified by hon. A.P. Heri.

In arguing this appeal, the Appellant appeared in person and the Respondent preferred the services of advocate Thobias Kavishe.

Submitting in support of his grounds of appeal, the Appellant argued before the court that Kaduri, J (as he then was) issued an order on 17.06.2014 so that the case can be sent to Primary Court for execution. Therefore on 04/12/2018 Hon. Deputy Registrar Tiganga (as he then was) wrote a letter to Magistrate Incharge, Kinondoni District Court forwarding the proceedings and awards in Civil Revision No. 16/1999 – HC. He explained that on 26/01/2015 – Resident Magistrate incharge Kinondoni wrote to High Court that the Primary Court file is missing.

Submitting on 2nd and 3rd grounds of appeal, the Appellant stated that the Primary court Magistrate decided on the issue of the WILL without having the order of the High Court - Kaduri, J. of 17/06/2014.

As for the 4th ground of appeal, the Appellant stated that the District Court entertained decision of Ihema, J. (as he then was) which was

res-judicata. However, on execution on 22/03/2001, Primary Court Magistrate stated that the decision of Ihema, J has nullified the Will which prompted him to file an application for interpretation. Hon. Ihema, J responded that he has not nullified the WILL.

As for the 5th, 6th and 7th grounds of appeal, the Appellant stated that they have been covered in ground no. 4 and he prayed for the appeal to be allowed with costs so that execution can proceed as ordered.

Responding to the submission by the Appellant, advocate Kavishe submitted before the court that the appellant and the respondent are brothers. The Appellant was appointed as the administrator of the estate of the late Caroline Sarota Nyamonge who died in 1996. However, his appointment was revoked in 2001 and letters of administration granted to the Respondent. The Appellant unsuccessfully appealed at Kinondoni District Court and it was dismissed on 24th November 2003. He submitted thus the appointment of the Respondent has not been revoked, the inventory has already been filed and the appellant has been availed his share of the estate. He explained to the court that there is no such order of the High Court

saying that the WILL was legal, however there are 3 rulings of Ihema, J. (as he then was) which he dismissed the application and ordered the appellant to ensure that the distribution be done within 60 days. He brought to the attention of the court that the matter has taken 24 years. He also informed the court that Primary Court found that the will was illegal. He prayed for the Court to look deep into the matter and dismiss the appeal.

In rejoinder, the Appellant insisted that the issue of validity of the Will was res -judicata giving incomplete citation of a case reported in [2003] at page 345 – CAT of which upon visiting the Law Report I came across the case of **Umoja Garage V NBC Holding Corporation [2003] TLR** which adjudicated on the doctrine of res – judicata. He admitted that the letters of administration granted to him were revoked in 2001 by the Primary Court in misinterpreting the decision of Ihema, J which he applied for interpretation. He reiterated his prayers.

Following the nature of the matter before me, I thoroughly visited the proceedings on record to firstly ascertain as to what exactly transpired since 1996.

Indeed, the genesis of this appeal is Probate Cause No. 234 of 1996. As the records reveal, on 14.11.1996, the Appellant was appointed as the administrator of the estate of the late Carolina S. Nyamonge (his mother) by the Primary Court of Kinondoni at Kinondoni. The Kinondoni District Court adopted the WILL in appointing the Appellant as an administrator. The deceased passed on 23rd September 1996. Sometimes in 1998, the Appellant herein filed Revisional Proceedings at District Court against the decision of the Primary Court wanting the Appellant to avail original copy of the WILL to the Respondent. The revisional proceedings were dismissed by the District Court for being time barred and being brought under the wrong provision of the law. Aggrieved the Appellant initiated Revisional Proceedings at the High Court, **Civil Revision No. 16 of 1999**; and so, did the Respondent. In determining the application for revision, this Court, hon. Ihema, J (as he then was) dismissed the application. In so doing hon. Ihema J (as he then was) made the following findings and orders:

"I have further looked into the application in relation to the order of the Primary Court of Kinondoni and I have found nothing substantive therein. On the contrary the applicant is making frivolous attempts to

circumvent the ends of justice in order to deny the respondent his rightful share in the estate of the deceased. It is pertinent and I order that the applicant as administrator of the estate of their late mother Caroline Sarota Nyamonge give full account of all the properties, monies etc. to the Kinondoni Primary Court within sixty days (60) from the date of delivery of this order. The Primary Court of Kinondoni is to oversee and ensure that the applicant dutifully and equitably discharges his responsibilities as Administrator of the estate of the late Caroline Sarota Nyamonge. Both records of the courts below are to be returned for safe keeping and compliance of the direction of this court."

Further to that there was an order from Judge, Ihema directing District Court to cause one A.P. Heri @ Hellen to swear an affidavit that she witnessed the WILL. Judge Ihema gave further orders that the original documents pertaining to the said WILL be produced before the Court for verification and certification to the High Court on/before 24.08.2001.

Following the above order of judge Ihema, on 06.02.2001, the Respondent herein wrote a letter to the Magistrate In charge of the

Primary Court of Kinondoni complaining non adherence to the order of the High Court by the Appellant on failure to distribute the estate among the rightful heirs equitably.

Further to that, on 20th February 2001, the Appellant wrote a letter to Judge In-Charge Dar Es Salaam Zone complaining that he has been blocked from executing the ruling of the High Court in Civil Revision No. 16/1999.

On 22.03.2001 parties herein appeared before Primary Court where the Appellant filed the inventory as per the WILL. The Respondent objected the distribution of the estate and prayed for the court to order equal distribution. The trial court accordingly ordered equal distribution and availed the Appellant herein to finalize the distribution failure of which another administrator to be appointed. The Appellant could not distribute the estate as agreed as he failed to include other properties claiming that there is a pending proceeding at the High Court. Consequently, on 06.04.2001, the Primary Court revoked letters of administration granted to the Appellant and in place they appointed the Respondent as the new administrator of the deceased's estate.

On 27.01.2003, hon. Ihema, J (as he then was) struck out the application brought by the Appellant praying for vacant possession.

Following the appointment of the new administrator, the Respondent on 22nd April 2003 filed inventory at the Primary Court particularizing the distribution of the deceased estate to the beneficiaries. Further to that on 03.06.2003, the Primary Court issued an execution order on the basis that the decision the application by the Appellant was dismissed on 27th January 2003- and the Respondent is the new administrator.

On 17th June 2014, hon. Kaduri J, following various letters wrote by the Appellant in an attempt to file revision issued an order that the instant matter has already been settled by the ruling of Ihema, J hence the file be remitted to Primary Court for compliance.

Another case for the sake of seeking further clarification in respect of the same Probate Cause No. 234/1996 was filed by the Appellant at the Primary Court of Kinondoni. In that matter the Primary Court confirmed the appointment of the Respondent as the administrator of the deceased estate and accordingly nullified the WILL.

Aggrieved, the Appellant lodged an application for revision at the District Court of Kinondoni vide Civil Revision No. 31 of 2018. The same was dismissed with costs hence the instant appeal.

I have thoroughly reproduced the series of events leading to the claimed grounds of appeal.

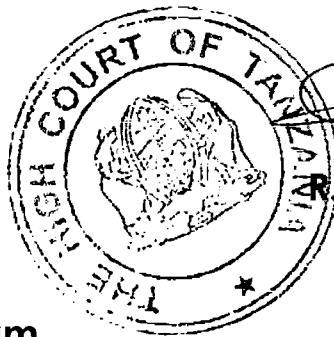

Indisputably is the fact that following the revocation of the letters of administration granted to Appellant, the legally recognized administrator of the estate of the late Caroline Sarota Nyamonge is the Respondent who was appointed in lieu thereof. More- so, I find that the assertion that Ihema, J said that he did not nullify the WILL is incorrect because going through all the findings of Ihema, J there is nowhere that he said about nullifying the WILL. All he said was wanting the District Court to ensure that the WILL is authenticated and the witness swears an affidavit in his order whereby he availed the time the authentication to be done by 24th August, 2001.

It is on that basis when the Appellant herein filed another revisional proceedings at the Primary Court, the Primary Court went further and nullified the WILL. Again, the effect of the decision of hon. Kaduri, J (as

he then was) was simply to subscribe and associate with the orders made by Hon, Ihema, J(as he then was).

All said and done, I find that the appeal is unmeritorious and geared towards delaying the end of justice to other beneficiaries of the deceased's estate. Accordingly, I dismiss it in its entirety with costs.

Accordingly ordered.

 
R.A. Ebrahim
Judge

Dar Es Salaam

23.10.2020