

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

(PC) CIVIL APPEAL NO. 33 OF 2019

(C/F the Decision of the District Court of Karatu at Karatu in Civil Appeal No. 04 of 2018, Original Probate and Administration Cause No. 42/2016 at Karatu Primary Court)

CECILIA THEOPHIL GUMLO..... APPELLANT

Versus

ANDREA STANLEY.....RESPONDENT

JUDGMENT

03/10 & 04/12/2020

MZUNA, J.:

Andrea Stanley, the respondent herein, is the appointed administrator in Probate and Administration Cause No.42 of 2016 in respect of the estate of the late **Stanley Wilbard Joseph** who died intestate. He is survived by three issues. **Cecilia Theophil Gumlo**, the appellant herein who allegedly claimed under the title of a wife to the deceased lodged a caveat at the time of the division of the deceased's estate, not at the time of the appointment of the administrator. The said objection is on the claim that the respondent failed to distribute the estate to the lawful heirs, herself inclusive. The crux of the matter is on the failure to be allocated PPF/Insurance contribution Tsh 31,862,680/=.

The primary court just like the District court found that the appellant had prohibited sexual relationship with the late Stanley Wilbard Joseph and therefore cannot claim was married to him at best, the two courts labelled her as a concubine. There was also a dispute on the alleged child she sired with the deceased, born six months after his death. The trial Primary court held that the objection was prematurely brought as the respondent did not file inventory and accounts with the court for one to inspect and raise any objection. It proceeded to dismiss the objection with a directive that the respondent should file the inventory and accounts within one month period.

The appeal before the District Court of Karatu was premised on two grounds namely: **One**, that the trial court failed to find that the appellant was a lawful wife to the deceased; And, **two**, that the trial court misdirected itself in determining the status of the appellant since it was not among the questions for determination before it.

The appeal court having found she was not a lawful wife to the deceased, proceeded to find that she could not claim any share of distribution from the estate. The appeal was dismissed. Further aggrieved, the appellant has lodged eight grounds of appeal which are based on failure to analyze the evidence instead relied on the opinion of the respondent; That the trial and first appellate

court erred in finding that the appellant was not a lawful wife to the deceased while there was sufficient evidence including family meeting to that effect. Lastly that the respondent failed to divide the estate of the deceased through official family meeting instead opened his personal account not accessible by other persons.

Hearing of the appeal proceeded by way of written submissions. The appellant had services of Ms. Naserian Ally Guga and Ms. Veneranda Joseph, both learned counsel from the Legal and Human Rights Centre's legal Aid Unit whereas Mr. Samwel Welwel, learned counsel drafted submissions for the respondent.

The main issue (s) for determination in this appeal are:-

- (1) Whether the appellant could validly lodge an objection at the time when the respondent had not fully discharged his duty as administrator of the estate of the deceased.
- (2)
 - (a) Are there evidence of squandering the deceased' estate which needs intervention of the court?
 - (b) If so, who can lodge objection against the appointed administrator in case of such squandering?

Let me start with the first issue, the question is, *was the objection properly lodged?*

In her submissions, the appellant argued that the respondent failed to discharge his duties in good faith. She is of the view that the respondent misapplied the estate thereby failing to distribute the insurance payments to the heirs. She invited the court to revoke his appointment based on the provisions of sections 108 and 138 of the Probate and Administration of Estates Act, Cap 352 R.E 2002. She referred this court to the case of **Sekunda Mbwambo v. Rose Ramadhani** [2004] TLR 439 to emphasis that the respondent ought to have distributed the deceased's estate to the beneficiaries instead of monopolizing it. Similarly, the case of **Safiniel Cleopa vs. John Kadegehe** [1984] TLR 198 (HC) was cited to show that misapplying of the estate is the good cause for revocation.

In reply, the respondent stated that the appeal is premature since the inventory and accounts forms were not filed in court. That he was still in the process of distributing to the beneficiaries. The dispute is on Tshs 31,862,680/= being the Insurance money. He is in agreement that in case he was found to be misappropriating the funds as it was held in the case of **Safiniel Cleopa vs. John Kadegehe** (supra) he can make good for it. In any case, he insisted, the appellant being not a lawful wife, could not claim any share on the estate of the deceased.

The governing law on the administration of estates of the deceased is the fifth schedule to the Magistrate Courts Act, Cap 11 R.E 2019 and the Primary Courts (Administration of Estates) Rules, GN No. 79 of 1971. Under rule 8 of the GN No. 79 of 1971 the Primary Court can hear and decide, among others, on 'any question relating to sale, partition, division or other disposal of the property and other assets'.

The administrator's duty is therefore to collect and distribute the estate of the deceased to the lawful heirs whereas the court's duty is to appoint the administrator and if there is evidence suggesting failure to faithfully discharge his/her duty, can revoke the appointment on good cause. The above notwithstanding, it cannot interfere with his functions by determining the shares which each beneficiary can get.

In this case the Primary court admitted that there was no filed report of distribution nor inventory from the respondent. Page 7 of the typed ruling of the trial court, reads in part-

"...Pia hata yeye msimamizi na familia yake wote hawakufuata utaratibu wa kuijulisha mahakama hii kuwa pesa imellpwa kwa kujaza Fomu namba 5. Hivyo kiujumla msimamizi aliishaanza kukusanya mali muda mrefu. Ni taratibu tu za kujaza fomu namba 5 na 6 hazikufuatwa..."

The, administrator, it was proved, had partially started to distribute the estate to the heirs, save that Form No 5 and 6 were not filled. In view of this, I find that the raised objection was prematurely made. The respondent should comply with the Primary court order, to file the inventory and accounts of estate within one month which is mandatorily stated under Rule 10 (2) of the GN NO. 79 of 1971. It is on these reports that one may bring objection on distribution to court based on Rule 8 paragraph (g) of the GN No. 79 of 1971. If there is such objection(s), the court shall be mandated to hear same and make a ruling. The first issue is resolved against the appellant in that, issue of mismanagement of the deceased's estate was lodged prematurely unless and until such time the necessary reports are filed in court.

Now to the second issue, the first question is, are there evidence of squandering the deceased' estate which needs intervention of the court. According to the appellant, the respondent is misusing the estate including failure to divide the estate of the deceased through official family meeting instead opened his personal account not accessible by other persons.

The argument by the respondent is that she was given her share on the pension fund. She is now complaining on distribution of the insurance money which was withheld on ground that she is not a lawful wife to the deceased. The

appellant suggest that the respondent is not a fit person to administer the estate.

The question is, who is mandated by law to administer the estate? It was held in the case of **Sekunda Mbwambo v. Rose Ramadhani** (supra) by Rutakangwa, J (as he then was) that:-

*"An administrator may be **a widow/widows, parent or child of the deceased or any other close relative**; if such persons are not available or if they are found to be unfit in one way or another, the Court has the power to appoint any other fit person or authority to discharge this duty."*[Emphasis supplied]

I fully associate myself with that holding. The respondent qualifies to stand as the administrator having been proposed in the family meeting to which the appellant was a member but not mentioned as a wife.

Now to the last point, who can lodge such objection should it be found there is such mismanagement of the estate?

Issue of mismanagement of the deceased's estate is not new in our jurisdiction. The question is on the *locus* of the person who may lodge such objection in case of mismanagement. It was held in the case of **Ibrahim Kusaga v. Emanuel Mweta** [1986] TLR 26 at page 30 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 appointed by the court or the Administrator may sue to establish claim of deceased's property.**"* [Emphasis added]

That position which I fully subscribe to, is self explanatory. Before lodging an objection, one has to establish that he/she is **"interested in determination of the dispute"** which I would suppose, even the said insurance or PPF shares is covered.

In the case of **Safiniel Cleopa vs. John Kadege** (supra) the issue was on revocation of the appointment of the respondent as administrator of the estate of the deceased on the ground that he had misapplied or subjected the estate to loss or damage. It was established on the evidence available that the administrator had underpriced some property sold and failed to account for the whereabouts of various other properties. It was held that:-

"The sale of property at below the market value and failure to account for the whereabouts of other properties in the custody of the administrator amounts to misapplication of the estate."

AND that:-

"an administrator who misapplies the estate of the deceased or subjects it to a loss or damage is liable to make good such loss or damage."

The above holding which I fully associate myself with, would also cover any administrator, the respondent inclusive, in case of proof that there is mismanagement, as alleged by the appellant, a fact which however, was not proved as there was no evidence to that effect.

That said, this court cannot nullify his appointment. The appeal stands dismissed with no order for costs.



**M. G. MZUNA,
JUDGE.
4. 12. 2020.**