

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

AT DAR ES SALAAM

(PC) CIVIL APPEAL NO. 54 OF 2019

TUNU RAMADHANI ABU 1ST APPELLANT

MALILO ABU BAKARI.....2ND APPELLANT

ALLY ABU RAMADHANI.....3RD APPELLANT

VERSUS

**HANIFA RAMADHANI ABU
SULTAN..... 1ST RESPONDENT**

JOYCE MAIGE ABU.....2ND RESPONDENT

*(Arising from Misc. Civil Application No. 134 of 2017 Kinondoni
District Court; Origin Probate & Administration Cause No. 274
of 2010 Kinondoni Primary Court)*

JUDGMENT

Date of last order:5/12/2019

Date of Ruling: 31/03/2020

S.M. KULITA, J.

This is the second appeal by **APPELLANTS** who were dissatisfied with the decision of the Kinondoni District Misc. Court in Civil Application No. 134 of 2017, originating from the

Probate and Administration Cause No. 274 of 2010, Kinondoni Primary Court.

This matter originates from the Decision of the Kinondoni Primary Court where letters of administration were granted to **JOYCE KABULA ABU (JOYCE MAIGE ABU** as per this appeal) the administratrix of the estate of the Late Ramadhan Ally Abu. Later on the respondent sought declaration to Kinondoni District court that the said probate cause was finally closed before filing of the inventory in which the District court gave declaration to that effect.

The appellants lodged his appeal with two grounds of appeal, however in my view I can see only one ground for determination as hereunder mentioned;

That the District Court erred in law and facts for declaring that the Probate and Administration Cause No. 274 of 2010 of Kinondoni Primary Court closed while there are still disputes among the legal heirs of the estate of the deceased.

The parties preferred to argue this appeal by way of written submissions whereby the appellants in their joint written submission stated that the probate cause is said to be closed before the inventory being filed at the court by the administrator and the court satisfied itself that the inventory

has been fully exhibited by showing distribution to the rightful heirs. The appellants claim that the inventory have not been filed or they are not aware if there is any inventory filed to court subject to the provisions of section 107(1) of the Probate and Administration of Estates Act [Cap 352 RE 2002] as they were not summoned to the court to that effect.

In reply to the appellants' submissions the first respondent submitted through her advocate, Margareth J. R. Ngasami that she was appointed as the co-administratrix upon prayer by the second respondent to the court as she was not healthy fit to administer the deceased estate alone. She further said that the distribution of the deceased estate was complete hence the remained duty of the administrator was to file the inventory which was then filed at Kinondoni Primary Court on 03rd August, 2016. She further submitted that it is not true that the appellants are not aware of the filed inventory hence the provisions of section 107 (1) of the Act were complied. She added that the applicants' idea to file the Misc. Civil Application No. 134 of 2017 then this appeal is an afterthought. It was for the purpose of seeking the court order to sell the house located on plot No. 590 Block 10 Mwananyamala, Dar es Salaam and distribute the earnings to all heirs. The Respondent's counsel stated that it was agreed in the family meeting conducted on

the 7/9/2014 that the said residential house left by the deceased to be used as the residential premise for the deceased's wife one Joyce Maige Abu @ Joyce Kabula Abu who is not the biological mother for the applicants. The counsel further submitted that what was left was the filing of the inventory and accounts of which the administratrix executed it on the 12/7/2016.

Upon going through the submission of both parties and upon going through the records of Kinondoni Primary Court I have noticed that the 1st applicant was appointed as the administrator for the deceased's estates on the 13/06/2014 and she did file the inventory on the 12/7/2016. The appellants claim that the inventory have not been filed or they are not aware if there is any inventory filed to court subject to the provisions of section 107(1) of the Probate and Administration of Estates Act. That allegation does not make sense as the inventory was subject to filing within a period of 6 months after the appointment of the administrator which was done by the Primary court on that 23/6/2014. The said Inventory as well as the Accounts were all filed by the administratrix (Hanifa Ramadhan Abu Sultan) who is the 1st respondent on the 12/7/2016. Had the Applicants been unaware of the filing the inventory and accounts they could have taken legal action

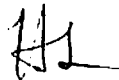
against the respondents immediately after the lapse of the prescribed period of 12 months from the grant of the letters of administration. They could even apply for revocation of the grant of the letters of administration before the same court if they were not in trust with the administratrix. Raising the accusations against the respondents at the appellate level is unjustifiable.

Furthermore, as rightly submitted by the respondent's counsel the records transpire that the family meeting was actually conducted in the presence of the appellants, respondents and other family members on the 7/9/2014 and it was agreed that the properties left by the deceased be distributed to all heirs save for the house located on plot no. 590 block 10 Kijitonyama, Dar es Salaam which was bequeathed to the deceased's wife for her to reside.

The fact that subsequently the applicants filed the said application no. 134 of 2017 at the district court alleging that it was wrong for the Primary Court to close the Probate & Administration Cause no. 274 of 2010 Kinondoni Primary Court, it carries no legal weight. Be it known that filing of the inventory, the act which leads to the closure of the probate matter by the court, is the sole duty of the administrator after the division of the deceased's estates. According to the records

and submissions of the respondent's counsel the family meeting was through with the division as it can be seen in the summary of the family meeting that was conducted on that 7/9/2014 whose copy has been filed in the Primary Court case file.

Having so said, I hereby dismiss this appeal for having no merits. The matter being of family nature I make no orders as to costs.



S.M. KULITA

JUDGE

31/03/2020