

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**PC PROBATE APPEAL NO. 07 OF 2020**

(Arising from Probate Appeal NO. 11 of 2019, in the District Court of Nyamagana at Nyamagana)

**JOHNSTON MATHEW NKINI** (Administrator of the  
Estate of the Late **NGENESAE MATHEW NKINI**) ..... **APPELLANT**

**VERSUS**

**MARIAM JAMES** ..... **RESPONDENT**

**JUDGMENT**

14 & 27/05/2020

**RUMANYIKA, J.:**

The 2<sup>nd</sup> appeal is against judgment and decree of 16<sup>th</sup> November, 2019 of Nyamagana district court (the DC) the latter having had overruled objection of Mariam James (herein the respondent) with respect to the estate of Ngenesael Mathew Nkini (the deceased) to grant of letters of administration to Johnson Mathew Nkini (herein the appellant).

The six (6) grounds of appeal essentially revolve around 5 points as under:-

1. That the DC erroneously handled the probate case as a matrimonial dispute.

2. That the DC erroneously appointed the respondent by all intents and purposes a stranger to the estate at issue.
3. That without reasons the DC erroneously nullified the deceased's will.
4. That as between the respondent and the deceased, the DC improperly invoked presumption of marriage.
5. That the DC's judgment was contradictory and impossible to execute.

The appellant appeared in person. Mr. Frank Kabula learned counsel appeared for the respondent.

When the appeal was called on 14/05/2020 for hearing, but following the global outbreak of the Coronavirus Pandemic and pursuant to my order of 16/04/2020 the parties were online (mobile numbers 0752907893 and 0755472252) respectively they were heard accordingly.

The appellant had nothing material additional to his petition of appeal.

Mr. F. Kabula learned counsel essentially submitted; **(1)** that the case was of probate nature and the DC ordered and determined it as such pending its finalization, in the interim the respondent the widow only having been entrusted the house as initially the appellant he intended to marginalize her **(2)** that if anything, with respect to the estate at issue the appellant had forged minutes of the clan meeting.

In reply, the appellant submitted; **(i)** that the respondent was improperly appointed co-administrator of the estate **(ii)** that the house belonged to him as the deceased purchased it in 2009 in the appellant's name **(iii)** that with the DC's order and therefore the house having gone to the respondent no estate was left for him to administer.



Questioned by court for more clarification, the appellant submitted that the respondent and the deceased had stayed under the roof since 2012.

Very brief as it is the undisputed evidence on record run; **(a)** that with respect to the deceased's estate the appellant and the respondent were co-administrators **(b)** according to the appellant, the deceased and the respondent had lived as husband and wife say for twelve (12) years but they were not blessed with children **(c)** the deceased died in testate (see also undisputed evidence of SM2 one Tuguro Kinyeti) **(d)** the clan members sat and appointed the appellant in absence of the widow respondent **(e)** the respondent was only in the interim entrusted the house.

The central issue therefore was not whether the parties or one of them was improperly appointed co-administrator but rather whether they would administer the estate smoothly and successfully. The answer is in the negative for three (3) main reasons:- **(1)** Contrary to what the DC had in mind, the parties no longer trusted each other **(2)** the appellant claims sole title over the house in question his non disclosure at the earliest possible opportune of the claims leaves much to be desired however this is not material subject of this appeal. **(3)** It is trite law also common sense that in order to maintain sobriety and impartiality an individual having personal interests in the estate cannot be appointed administrator of the estate.

Now that administration by the respondent of the estate (inclusive of submitting in court of the inventory and closure of it is being awaited) the

appellant, not only he had no trust in the respondent but also the former claimed title over the estate, one may now wish to disqualify himself as co-administrator and, if he wished the appellant sue the respondent in a competent land tribunal for recovery of the house. The appellant is accordingly advised. The appeal is dismissed in its entirety. Each party shall bear their costs. It is ordered accordingly.

Right of appeal of appeal explained.

  
**S. M. RUMANYIKA**

**JUDGE**

**27/05/2020**

Delivered under my hand and seal of the court in chambers this 27/05/2020 in absence of the parties with notice.



  
**S. M. RUMANYIKA**

**JUDGE**

**27/05/2020**