

**IN THE HIGH COURT OF TANZANIA**  
**(DODOMA DISTRICT REGISTRY)**  
**AT DODOMA**

**LAND CASE APPEAL NO. 13 OF 2020**

*[Arising from the decision of the District Land and Housing Tribunal for DODOMA in  
Land Application No. 157 of 2019]*

**OSWALD NKISU @ MWAKASANGA ..... APPELLANT**

**VERSUS**

**JAMSON JONAS MWASAMBUNGU** *[Administrator of the Estate  
of the late Kisa Josam Mwakanosya]* ..... **RESPONDENT**

**JUDGEMENT**

*14<sup>th</sup> September, 2020 & 1<sup>st</sup> March, 2021*

**SIYANI, J:**

The appellant claims to be the husband of the late Kisa Jotham Mwakanosya, "the deceased". The deceased died intestate, and the respondent herein was appointed to be the administrator to administer her estate. The deceased was the owner of a house situate at Plot No. 80 Block BB Madeli Area in Dodoma Municipality. The appellant herein is in occupation of the suit premises and he was ordered by the District Land and Housing Tribunal in Land

- Application No. 157 of 2019 to yield vacant possession to the Administrator.

Aggrieved by the decision of the District Land and Housing Tribunal, the appellant has lodged the instant appeal raising five grounds of complaints as follows:

- 1. He was not given the right to be heard.*
- 2. The Trial Tribunal failed to recognize him as the husband of the deceased, since there was a presumption that the appellant and the deceased were husband and wife.*
- 3. The Trial Tribunal failed to examine the evidence.*
- 4. The Trial Tribunal erred in its decision for it considered the weak and contradictory evidence of the respondent.*
- 5. The Trial Tribunal did not consider the opinion of the assessors.*

By the order of the Court, the appeal was argued by way written submissions and this order was complied with. The appellant

abandoned grounds No 1 and ground No. 5 and submitted briefly on the remaining three grounds. Through his submission, the appellant claims that he was cohabiting with the late Kisa Josam Mwasambungu for more than two years, and under section 160 of the Law of Marriage Act, he was presumed to be the husband of the Late Kisa Josam Mwasambungu. He asserts that since he is the husband, he is entitled to inherit the house.

The respondent who was enjoying the services of Advocate Sosthenes Peter Mselingwa replied very briefly. He in fact argued that the issue whether the appellant is the husband of the late Kisa Josam Mwasambungu could well have been determined by the Probate Court had the appellant raised any caveat thereat. The Land Court cannot decide on an issue of who is the rightful heir of the deceased estate.

I have considered the rival submissions from both parties and perused the records. In essence, the appellant does not deny that the suit premises belong to the late Kisa Josam Mwasambungu. His

only claims are that he is the husband, and he is entitled to inherit the suit premises. As correctly argued by Counsel Mselingwa, the arguments by the appellant are misplaced. The appellant ought to have filed a caveat at the Probate Court in which the respondent herein was appointed the administrator of the estate of the late Kisa Josam Mwasambungu. It is only the Probate Court which has powers to decide whether the appellant was the husband of the deceased and whether he was entitled to be included as the heir.

The Probate and Administration Act provides that upon Grant of Letters of Administration all assets of the deceased (both real estate and personal property) vest in the Administrator (also known as the Legal Personal Representative). In this role as Administrator, he is charged with the important task of administering the assets and liabilities of the estate. The person with the highest right to administration is the spouse of the deceased, followed by the children, followed by a fit and competent person and then a creditor. Indeed, if the appellant was the husband and if indeed, he found the reputation of a husband since the marriage is only

presumed, he was the person of the highest rights to administer his wife's estate. But again, this issue cannot be determined in a land matter but by a probate Court which appointed the administrator. The appellant ought to have filed a caveat once the petition for probate was advertised or cited in a newspaper.

Along with calling in any assets held in the name of the deceased, it is also the responsibility of the Administrator to prosecute any claims the deceased may have against third parties, provided that the entitlement to pursue such did not cease upon the testator's (the deceased's) death (for instance the deceased may have loaned money to individuals which ought to be collected by the Administrator in accordance with the terms of the loan agreement. The Administrator must ensure that the assets of the estate are not wasted due to any action or inaction of the Administrator. Once the estate assets have been called in, it is the duty of the Administrator to pay the debts of the estate. Once the estate assets have been called in and debts paid the final duty of the Administrator is to

distribute the estate as directed by the Will, or where the Will does not dispose of assets, in accordance with the rules of intestacy.

The Trial Tribunal did not stumble to entrust the suit premises to the administrator and to order the appellant to yield vacant possession, since the administrator has the right under the law to call in the assets of the estate, to pay debts and finally to distribute the estate to the heirs.

The above said, I find the instant appeal bankruptcy of merits and the same is hereby dismissed with costs. Order accordingly.

**DATED at DODOMA this 1<sup>st</sup> March, 2021**



**M.M. SIYANI**  
**JUDGE**