

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY AT KIGOMA)

(APPELLATE JURISDICTION)

(PC) CIVIL APPEAL NO 2 OF 2021

(Arising from Civil Appeal No 12/2020 of Kasulu District Court, before C.A. Mushi – RM,
Original Probate and Administration Cause No. 44 of 2020 of Kasulu Urban Primary
Court, before R.I. Shineneko – RM)

JACKSON S/O LUMENYELA..... APPELLANT

VERSUS

VUMILIA D/O SADOCK LUGATA..... RESPONDENT

JUDGMENT

8th & 17th February, 2021

I.C. MUGETA, J.

The appellant petitioned at the Primary Court for letters of administration of the estate of the late Grace Lumenyera Gwiha who died intestate. In the petition he listed the properties forming the deceased's estate as a corrugated house at Heru Juu and two shambas measuring two acres each. The location of the shambas is undisclosed. The respondent raised a caveat based on three grounds. Firstly, that no family meeting was convened to elect the appellant to petition for the letters of administration. Secondly,



that the properties listed for administration had been disposed of by the deceased and thirdly, that the house listed belongs to her.

The caveat was upheld and the petition was dismissed. Aggrieved, the appellant unsuccessfully appealed to the district court, hence, this appeal which is premised on two grounds of appeal.

1. That the trial lower court erred in law and in fact for sustaining the objection of the respondent without concrete reasons.

2. That the trial lower court erred in law and in fact for refusing to grant letters of administration of the estate while the appellant followed the procedure.

The appellant is a brother to the deceased not as siblings but as member of same clan. The respondent is the deceased's daughter. She appeared in person while the appellant enjoyed the service of Hamis Kimilomilo, learned advocate.

The lower courts reached a concurrent finding that there are no properties of the deceased to administer and the appellant is not a fit person to administer the estate as he is dishonest. Here on appeal, counsel for the

appellant has submitted that there were no substantial reasons upon which letters of administration were refused. On ownership of the properties, the learned counsel submitted that the listed properties belong to the deceased. The respondent, being a lay person just insisted that there is no property to administer and the appellant is dishonest.

During hearing of the appeal, I wished to confirm the honest of the appellant based on the information he filed with the trial court in his petition for letters of administration after the respondent complained that the administrator had listed as heirs people not related to the deceased, namely, Winifrida Ntayobo and Staphord Nkayamba. In terms of rule 14 of the **Civil Procedure (Appeals in Proceedings Originating in Primary Court) Rules, GN 312/1964**, I summoned the appellant to give additional evidence under oath. He conceded that the named persons are unrelated to the deceased and that he also omitted to name the respondent and one Consolanta as heirs because they refused to attend the family meeting. This confirmed the finding of the lower courts that the appellant is dishonest. He does not deserve to be appointed as administrator of the deceased estate. I uphold the finding.

A handwritten signature in blue ink, appearing to read 'Hgete'.

However, on the ownership of property which is land, the lower courts went into error. A primary court has no jurisdiction over land matters when ownership is disputed being in civil or probate and administration matters. When such disputes arise, a probate court ought to confine itself to appointing the administrator who thereafter can sue or be sued in a court of competent jurisdiction and the dispute property shall be dealt with in the probate and administration cause once the court of competent jurisdiction declares it to be property of the deceased. Therefore, it was an error for the trial court to declare that there is no properties of the deceased to be administered while the dispute involved land matters. This finding entitles me to interfere with the concurrent findings of the lower court as it is based on misapprehension of the fact and misapplication of the law. Consequently, I dismiss the appeal and pass the following orders:-

(i) *The appellant is disqualified from applying for letters of administration as he is adjudged to be dishonest.*

(ii) *Any other person with interest in the deceased estate may wish to file a fresh petition for appointment*

as administrator of the deceased estate.

(iii) *In case of dispute of ownership of land allegedly forming part of the deceased estate, the same to be referred to a court of competent jurisdiction.*

As the parties are relatives, I give no orders to costs.



I.C. Mugeta
I.C. Mugeta

Judge

17/2/2021

Court: Judgment delivered in chambers in presence of the respondent and in the absent of the appellant and Fitina Charles Rulaseza who said she follows up the case on behalf of the appellant who is sick.

Sgd: I.C. Mugeta

Judge

17/2/2021