

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**CIVIL REVISION NO. 02 OF 2021**

(Arising from the decision of DC Probate Appeal No. 10 of 2020 at Nyamagana District Court)

**AMINA JOSEPHAT MUGANDA ..... APPLICANT**

**VERSUS**

**ZAINABU JUMA MASOUD** (Administratrix of the  
estate of the late Hashim Jawadu Zubail ..... **RESPONDENT**

**RULING**

**17<sup>th</sup> & 26<sup>th</sup> February, 2021**

**RUMANYIKA, J.:**

The application is mainly with respect to order of sale of a residential house at Bulale (part of the estate of the late Hashim Jawadu Zubail) whose administration is at issue, through the impugned decision of 11/12/2020 Nyamagana district court having had upheld the decision and order(s) of Mkuyuni primary court (the probate court). The application is brought under Sections 95(1)(c) and 31(1) (2) of the Magistrate's Court Act and Civil Procedure Code Chapters 11 and 33 R.E. 2019 respectively it is supported by affidavit of Amina Josephat Muganda (the applicant) whose contents Mr. Hassan Galyatano learned counsel for the applicant adopted



hearing. Mr. S. Kitale learned counsel appeared for Zainabu Juma Masoud (the respondent).

Mr. Hassan Galayatano learned counsel essentially but in a nutshell he submitted: **(a)** that although the respondent's personal claims of shs. 22.0 million against the estate it was neither genuine nor substantiated yet the two courts ordered the deduction from proceeds of the estate **(b)** that instead of the court ordering sale of the house, and for best interest of the 1<sup>1/2</sup> years infant, with respect to home the applicant should have been ordered to buy off the other heirs and she was ready. That is all.

Having adopted contents of the respondent's counter affidavit, Mr. S. Kitale learned counsel essentially he submitted: **(a)** that if anything, the applicant should have gone back and apply for revocation of the respondent's letters of administration much as even without beneficiaries' consent administrators had powers to sell the estates at issue (case of **Mohamedi Hassan V. Mayasa Mzee and Another** (1994) TLR 225 (Hc) **(b)** that with 50% share given to it, clearly that one also took the best interest of the child on board **(c)** that among others, whatever the breach and irregularity might be, it occasioned no injustice on the parties **(d)** that



initially the applicant had acceded to the respondent's debt of shs. 22.0 million therefore she should not have at this late stage disputed it.

The central issues are; **(i)** whether the application is tenable at law **(ii)** whether the order of sale of the widow's/applicant's home was proper.

With regard to the tenability of the application, though in passing the applicant may have had questioned appointment of the respondent administratrix of the estate yes, but looking at her 3 grounds of revision in the district court, the complaint did not feature anywhere save for the order of sale of the house (ground (c) to be specific) leave alone the probate court having had been overwhelmed by suggestions in the letter of even date of Nyamagana BAKWATA district Sheikh Othman Ndaki not a party to the impugned proceedings against which the applicant couldn't have appealed. In other words with all intents and purposes the application is properly before the court therefore tenable.

As for the issue of the court having ordered sale of the applicant's home, therefore possibly causing her and the 1<sup>1</sup>/<sub>2</sub> years old infant homeless, not only that one it couldn't have been the deceased's mission but also it is dictates both of logic and common sense that sale of the heirs'



homes was made only where the court had to. At least it is undeniable fact that before he died intestate the deceased husband and the applicant lived in the house it sounds like to innocent infant and herself selling the house meant double loss i.e. both the **husband** and **home**. It is very unfortunate that on that one, the lady learned resident magistrate did not also consider best interest of the widow. I think in order to let the deceased rest happily, if, in administrator of deceased estates the widow/widower's homes were left untouched so much the better unless under peculiar circumstances which is not the case here, namely by doing so the survivor spouse would benefit from his own wrongs. The deceased's parents they had their homes intact probably they wouldn't have minded if the widow and half orphan infant became homeless who knows? There is no wonder at times the respondent questioned the infant's fatherhood so much so that by court order dated 12/12/2019 the newly born girl underwent a DNA examination. In fact 50% share given to the infant it depicted no best interest of the child enshrined under the Law of the Child Cap 13 RE 2019 but simply the Islamic formulae.

Whereas I would agree with the learned counsel that the primary role of administrators of the deceased estates was to save interests of the



leisure and without consent of the beneficiaries they dispose of the estates.

I don't think therefore that the persuasive rule in the case of **Mohamed Hassan** (supra) with greatest respect it presupposed in all cases that all beneficiaries were infants or lunatics, for the reason of age or mental ill health incapable of making rational decisions on their property. It is for this reason that I shall part company with my brother judge.

With regard to the respondent's claims of shs. 15.0 million the claim may, or may have not been genuine having gone through it twice and thrice I did not see where and when as a wife, the equally interested applicant witnessed the purported loan agreement(s) between the deceased and the mother (the respondent) actually only on that basis the respondent shouldn't have been appointed administratrix of the estate given kind of interest she had in the estate. Whether or not the applicant did not question it before it was immaterial after all she is nowhere on record having had blessed or in away admitted genuineness of the claim. With respect to the other claims arising from burial ceremonies and rites I suppose over and above the alleged shs. 15.0 million, in order the court not to embrace **kufa kufaana** syndrome, unless expressly one had anticipated a refund and the beneficiaries approved it before, or seeking and obtaining the beneficiaries

anticipated a refund and the beneficiaries approved it before, or seeking and obtaining the beneficiaries it was impracticable under the circumstances, it shall be unlawful for the probate court to just order refunds from the deceased's estate.

In the upshot the meritorious application is granted. With respect to the house at Bulale area, Buhongwa ward Nyamagana district and the respondent's claim of shs. 15.0 million, the orders of sale and refund are reversed and set aside respectively. The house and home shall always go to the applicant with regard to shs. 15.0 million claims the respondent may wish to sue administrator of the estate if any. It is so ordered.

Right of appeal explained.

  
**S. M. RUMANYIKA**  
**JUDGE**

**22/02/2021**

The judgment is delivered under my hand and seal of the court in chambers this 26/02/2021 in the absence of the parties.



  
**S. M. RUMANYIKA**  
**JUDGE**

**26/02/2021**