

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

**PC PROBATE APPEAL NO. 01 OF 2021**

(Arising from Probate Appeal No. 06 of 2020 at Ilemela District Court,  
Original Probate Cause No. 66/2012 at Ilemela Primary Court )

**MABUMBA LAURENT (ADMINISTRATOR OF THE ESTATE  
OF THE LATE GAUDENCIA KATIBALO ..... APPELLANT**

**VERSUS**

**NORA LAURENT ..... RESPONDENT**

**JUDGMENT**

**8<sup>th</sup> & 13<sup>th</sup> April, 2021**

**RUMANYIKA, J.:**

The 2<sup>nd</sup> appeal is with respect to decisions of Ilemela Primary and district courts dated 27/07/2020 and 19/12/2020 respectively that the estate at issue namely House on Plot No. 39 Block B located at Kitangiri area and Squatter No. 009/033 of Nyamanoro area, pursuant to order of Ilemela Pc the estate being administered by Mabumba Laurent be sold and the proceeds be divided "half – half" to the said Maumba Laurent (the appellant) and Nora Laurent (the respondent) the sole heirs.

When the appeal was called on 08/04/2021 for hearing, by way of audio teleconferencing the parties were heard through mobile numbers 0784832840 and 0763988238 respectively.

It appears only basing on evaluation of the evidence on record the appellant argued the 6 (six) grounds of appeal together that contrary to the wishes and direction of their deceased mother with respect to the estate the two courts below shouldn't have ordered sale of the estate much as a ready the respondent had her share (the rooms) and she enjoyed it since.

The respondent submitted that the appeal lacked merits because for the previous nine (9) good years the appellant had grabbed 99% of the estate and converted all the respective rental collections into his own use irrespective of the court orders for selling the estate and between them half-half division of the proceeds. That is all.

The central issue is whether the two courts' concurrent orders of sale and between the parties half - half division of the proceeds were justified much as it is an undeniable fact; **(a)** that the parties a brother and sister were the sole heirs who survived the mother deceased's estate **(b)** that



each one was entitled half-half of the estate (c) that following the appellant's lion's share-based misunderstandings between them the respondent consistently demanded sale and division of the proceeds. According to records the deceased mother having had died intestate. Whether or not the respondent's request was against will and wishes of the deceased mother it is immaterial under the circumstances much as the latter had only assumed that between them, the children would have equitably and swiftly enjoyed the estate but now for the differences.

I think sale of the estates, more so where, if at all the deceased preferred not to, it should be the last resort. Now that on the part of the respondent the heirs' bond had turned bitter and, the deceased simply just assumed all things would remain equal, the latter may have had wished that the estate not be sold or otherwise disposed just like she could not have anticipated the kind of quarrels between the heirs, but as indivisible as the estate it was, until it was, by court order valued, sold and the proceeds divided between them. I would subscribe to the two courts' concurrent orders of sale. It follows therefore, the probate court shall, at the expenses incurred by the parties within twenty one (21) days of this judgment appoint an independent and competent valuation entity who

shall immediately do the needful so much so that pursuant to the resultant Valuation Report, and upon the sale the parties shall be entitled to equal 50% of the proceeds.

The records are, with immediate dispatch remitted to the lower court(s). It is so order.

Right of appeal explained.



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

**09/04/2021**

The judgment is delivered under my hand and seal of the court this 13/04/2021 in the absence of the parties.



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

**13/04/2021**