

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC PROBATE APPEAL NO. 02 OF 2021

(Original Probate Appeal No 30/2020 at District Court of Sengerema and Probate Cause No. 02/2020 at Sengerema Urban Court)

TEDDY KASUSU WAYELA APPELLANT

VERSUS

EDWARD MATHIASRESPONDENT

JUDGMENT

09 & 22/04/2021

RUMANYIKA, J.:

The 2nd appeal is with respect to decision of Sengerema district court dated 27/11/2020 for the reason of denial of right to be heard having had on 14/3/2018 nullified the proceedings and set aside decision and orders of Busisi primary court (the probate court) with respect to estate of Kahangwa @ Ibrahim Edward (the deceased) according to the appellant died 18 years old which court granted the herein impugned letters of administration on 30/9/2020 to Teddy Kasusu Wayela (the appellant). It is also said that the appellant and Edward Mathias (the respondent) respectively were mother and father of the deceased.

When rephrased, the single ground of appeal would read that the 1st appeal court erred in law and fact not holding that by abandoning the objection, on that one the respondent had relinquished his right to be heard.

Mr. N.S. Chiwalo learned counsel appeared for the appellant. The respondent appeared in person.

Mr. N.S. Chiwalo learned counsel submitted that with regard to the probate proceedings, according to the records one having had registered his objection on 23/9/2020, but without cogent reasons defaulted on 28/9/2020 therefore the objection taken as good as the abandoned one, and for that reason by the court order the respondent's appearance dispensed with on the very 28/9/2020, pursuant to provisions of Rule 6 (1) of the Primary courts (Administration of the Estate Rules) G.N No.49 of 1971 the probate court did it rightly much as the appellant had a witness in court ready for hearing leave alone an undeniable fact that for so long the respondent had occupied and alone benefited from the estate therefore now only playing delaying tactics. That is all.

The respondent submitted that the appeal lacked merits as there was nothing to fault the 1st appeal court much as he fell sick therefore absent with notice to the probate court such that his appearance was wrongly dispensed with. That is it.

The central issue is whether the appellant was properly appointed and granted the letters of administration much as with Exhibit "P2" it was undeniable fact that the spouses had divorced say two (2) decades previously. However, from the purported matrimonial proceedings apparently instituted and concluded on the very 20/11/2002, the appellant's ex – husband respondent may have been a party thereto but it was not shown whether he muted or the matrimonial court simply chose to ignore his appearance and or submissions. Moreover, but even more strangely, like it was probate proceedings all the matrimonial property were given to the deceased son at the time the child. Unless one had relinquished the right, it is common knowledge that a share of matrimonial property did not go to children but to the parting company spouses. From its inception therefore, Exhibit "P2" was improperly procured and it is expunged from the record.

The respondent may have had boycotted the clan meeting yes, but unless the applicant had proved that they practiced matrilineal system which is not the case here, and the respondent is on record having had complained that contrary to the law and practice the applicant was not for such purposes proposed in a clan meeting, but if anything only by the deceased's mother, maternal aunt and uncles, appointment of the appellant was void ab'initio. Though for deferent reasons, like the 1st appeal court did, the decision and order granting her the letters of administration are quashed and set aside respectively. The appeal is dismissed. Each party shall bear their costs. The appellant may wish to start all over again. It is so ordered.

Right of appeal explained.



S. M. RUMANYIKA

JUDGE

18/04/2021

The judgment delivered under my hand and seal of the court in chambers this 22/4/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

22/04/2021