

IN THE HIGH COURT OF TANZANIA

(MWANZA DISTRICT REGISTRY)

AT MWANZA

PROBATE APPEAL No. 15 OF 2020

(Arising from Probate Appeal No. 08 of 2020 Before Hon. J. Jagadi – RM delivered on 15th day of May, 2020 originating from Mkuyuni Primary Court Probate Case No. 68 of 2018)

LEOPARD PROTAS MATOVU

(Administrator of the Estate of the late Protas Celestine Matovu)

APPELLANT

VERSUS

FLORIAN PROTAS MATOVU

RESPONDENT

JUDGMENT

23rd March & 31st May, 2021

TIGANGA, J.:

Protas Celestine Matovu died of sickness on 07/07/2018; he died intestate leaving surviving him six children, namely Leopard Protas Matovu, Emerensiana Protas Matovu, Anthony Protas Matovu, Boniface Protas Matovu, Hilda Protas Matovu and Florian Protas Matovu together with one wife Felister K. Matambo.



He also left four houses three at Buhongwa, in Nyamagana District, one Mwasonge Village and two motor vehicles. Out of six children, one was born out of wedlock, while others were born within the wedlock. He also owned a Bank account with CRDB Bank and PSPF money as well he had his claim with the City Council.

After the burial of the deceased, the family recommended Leopard Protas Matovu one of the sons of the deceased, who was appointed by the Mkuyuni Primary Court in Probate Case No. 68 of 2018 as Administrator of the estate of the deceased.

After being so appointed, the Administrator did his job and filed in court the summary of distribution of the estate among the heirs of the deceased. The distribution was disputed by Florian Protas Matovu, who happened to be a son of the deceased born out of wedlock. He filed objection proceedings not only to challenge the distribution of the deceased's estate especially the house which were given to the wife of the deceased for 100%, but also that he has not been involved in the administration process. The allegation that the objector was not called in the meeting which appointed the administrator to administer the estate of the deceased, was conceded by the administrator who said that, only five



children and their mother convened the meeting, but the objector and other family or relatives of the deceased were not involved.

However, although the court was satisfied that the objector was not involved in the meeting and subsequent administration process, yet it held that the non-involvement does not invalidate the clan meeting. This is because the objector though was not involved at the beginning but he was involved in the subsequent procedure, therefore the clan meeting was held to be valid.

Regarding the dissatisfaction resulting from the distribution of the estate, the Administrator was directed to sit with the beneficiaries or heirs and re-distribute the estate among all heirs in an equitable manner. That decision was made on 08/02/2019.

From the record, the Administrator complied with the order whereby on 01/04/2019 he filed in court the new distribution, but once again the objector disputed the distribution on the ground that he was given little simply because he is not begotten through the widow. The court on 24/05/2019 ordered the administrator to go and re-distribute in the manner that will display equality to the heirs. Yet still, even after such

directive the administrator did not effect equal distribution of the said estate. Following that state of affairs, the trial court advised the administrator to give the objector one house from the estate of the deceased.

Nevertheless, the objector was still dissatisfied by the distribution, he appealed to the District Court of Nyamagana filing three grounds of appeal raising the following complaints.

- (i) that the trial court erred when it advised the administrator to distribute to the appellant one house from among the estate of the late Protas Celestine Matovu without regarding the list of the properties left by the deceased.
- (ii) That the Trial Primary Court Magistrate erred when it failed to consider in capacity biasness and failure of the administrator to equally and fairly distribute the estate of the deceased hence failure to perform his responsibilities.
- (iii) That the Honourable Magistrate erred in law and fact by determining the matter leaving issues or/and quarries

unresolved on unevaluated evidence hence at unreasoned decision.

The appellant before the appellate District Court asked for the appeal to be allowed, the court revoke the appointment of the administrator and order the appointment of other administrator of the estate of the deceased.

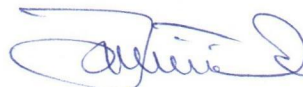
Also that the new appointed administrator be ordered to distribute the estate, equally and fairly among the heirs, and the costs of the appeal be born by the respondent in that appeal and any other relief as the Honourable Court may deem fit to grant.

The appellate District Court after considering the submissions made by the learned counsel for the parties, and the records of the trial Primary Court, it held that under the law citing **Section 27, 29 and 30 of the Indian Succession Act**, and after considering the undisputed facts that the widow was given 40% of the whole money while leaving 60% to be divided to the six children while three houses out of four estates or immovable properties being given to the widow 100% while leaving other heirs unconsidered, the appellate Magistrate held that the trial court correctly

made distribution of the assets of the deceased with the consent of the heirs. As it did so after considering the relevant factors, specifically the existing conflict between the respondent Florian Protas Matovu, and the other children of the deceased begotten from the widow as well as the widow herself. It was important that, the respondent be given separate house for him to live in, at other place/area distant from other heirs.

That decision aggrieved the appellant who happens to be the administrator of the estate, he appealed to this court by filing four grounds of appeal which reads as follows:-

1. That the trial Magistrate erred in law and fact to uphold ridiculous Judgment of the trial court which ordered the distribution of a house located at Mwasonge Village within Mwanza without considering that the relevant area is a very sensitive place for all family members including heirs left by Protas Celestine Matovu the deceased.
2. That the Honourable Magistrate erred in law and fact to distribute a house located at Mwasonge Village within Mwanza City to the respondent without taking into account that, the said area is used



by all family members for their joint activities special Burial activities.

3. That the Honourable Magistrate erred in law and fact to distribute the house located at Mwasonge Village within Mwanza City to the respondent without considering that the said house was already equally distributed to family members and respondent being amongst.
4. That the Honourable Magistrate erred in law and facts to distribute the house located at Mwasonge Village to the respondent without taking into account on the list of assets left and inventory in record adduced by the appellant at the trial court.

By the consent of the parties and leave of the court, the appeal was argued by way of written submissions. Parties filed their respective submissions as scheduled by the Court. Starting with the submission in chief filed by the counsel for the appellant that the appellate District Court erred in law and fact for allocating or distributing the house at Mwasonge village to the respondent, without considering the fact that the same is a family house located at a place where all family activities including burial



are carried out. Furthermore, he submitted that, the fact that, it has already been distributed to the heirs including the respondent. He submitted that, it was not proper to distribute it to respondent alone.

Further to that he submitted that considering the number of heirs which is six and comparing with the deceased's assets which is three houses, the appellate court giving the respondent one house which is within the family farm especially which is used by all family members for family issues did not meet the requirement of the law of equal distribution of the deceased's estate to the heirs. He submitted that, distributing one house out of three to one heir out of six is unequal distribution as the value of the house and farm does not match with the remaining five heirs.

In so doing he asked this court to embrace the mode of percentage distribution as articulated in the case of **John Ngomoi vs. Mohamed Ally Bofu** (1988) TLR 63 and **Ramuik Vagellaus Mahendra Vaghella** [2000] TLR 63.

Furthermore, he submitted that, the appellate Magistrate erred in law to consider the money in PSPF Account as there was no money at all, the



same having been spent by the deceased himself, the same with the CRDB Account. He is the end asked for the appeal to be allowed with costs.

In his reply to the submission in chief Mr. Deocles Rutahindurwa Advocate, submitted that the appellate Magistrate was correct when he ordered the house at Mwasonge Village to be distributed to the respondent. He submitted that the deceased left many houses (apartment) located at Nyamatala, Buhongwa which were distributed to the other heirs while the respondent was left in vain. Therefore basing on the reasons of the existing conflict between the respondent and the widow, these two could not co-exist; therefore it was correct for the appellate court to distribute the said house to the respondent. He submitted further that the fact that the house is allocated to the respondent does not prevent other family members to go there and do family activities thereat.

On the issue concerning the value of the house at Mwasonge Village, he submitted that, the same cannot be determined by hearsay evidence but by valuation report prepared by land valuer which report the appellant has never produced. The fact that there was no money in CRDB Bank Account and PSPF Account has not been substantiated by any evidence as

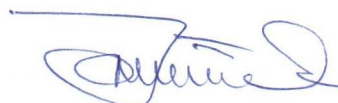


there was no bank statement produced to prove the same. He in the end asked the appeal to be dismissed for want of merits.

In rejoinder, the counsel for the appellant said nothing new, he reiterated what he submitted in chief. He prayed the appeal to be allowed with costs.

Looking at the grounds of appeal, the same single around the single complaint that the Hon. Appellate Magistrate erred when he ordered that the respondent be given from the estate of his late father a house located in Mwasonge Village. It is important to note that the District Court made such an order after the trial Primary Court had ordered the administrator of the estate three times to redistribute the estate equally, but whenever he was so directed, he came back almost with the same distribution which he was directed to rectify.

It was the third time, when the trial Magistrate and his assessors while aware that the duty to distribute the estate is vested in the administrator of the estate, they said while constraining themselves not to tread into the error of stepping into shoes of the administrator, they observed as follows:-



"Mahakama inaona hoja ya mpingaji ilikuwa na mashiko kwani kweli mali zisizohamishika ambazo amepewa mrithi mjane 100% yeye hakuweza kupata urithi wa mali hizo. Mahakama pia imeona baada ya kupitia shauri husika ni mara ya tatu wanabishania kufanya mgawanyo wa mali mbele ya Mahakama. Hivyo kuwarudisha kufanya mgawanyo mwingine ni kupoteza muda na kukuza mgogoro. Hivyo Mahakama kwa busara zake, imeona msimamizi atumie busara aweze kumpatia nyumba mojawapo katika nyumba zilizoachwa na marehemu. Washauri wamesema pingamizi lina mashiko, msimamizi ampatie nyumba mojawapo mpingaji. Naungana katika maoni waliyoyatoa".

From what is quoted herein above, I find it important to look at statutory duty (general and specific) of the Administrator of the estate appointed by the Primary Court.

Rule 5 of the 5th Schedule to the Magistrates Courts Act [Cap. 11 R.E 2019] provides for the general duty of the administrator of the estate in cases filed in Primary Courts as follows:-

"5. An administrator appointed by a Primary Court shall, with reasonable diligence,



- (a) collect the property of the deceased and debts that were due to him,*
- (b) pay the debt on the deceased, and the costs of administration,*
- (c) distribute the estate of the deceased to the person or for purposes entitled thereto,*
- (d) in carrying out its duties shall give effect to the directions of the Primary Court.*

Regarding the distribution duty, this rule must be read together with Rule 10 which also requires the administrator comply with the directives of the Primary Court.

When these two provisions are read together, they require the administrator of the estate to act and conduct himself in the following manner;

- (a) He must be honest to the court, heirs and beneficiaries or personal interested in the estate,
- (b) He must be transparent to the heir and the court by listing all the assets of the deceased with their actual value,
- (c) He must exhibit trust, good motive and unbiased conduct to the heirs, his action should not be actuated by malice,

- (d) He must be nonpartisan, and take on board all interest of the heirs, and other beneficiaries without discrimination,
- (e) He must be ready to follow the directives of the courts in his every action.

In this matter, from the conduct of the administrator, it is apparent that in his duty he has failed to observe these values. Having in mind the facts that the widower or widow is entitled to a bigger share of the estates than the other heirs in the estate of his spouse; he deserves not less than $\frac{1}{3}$ of the estate, while all other heirs deserves the distribution of $\frac{2}{3}$ of the remaining estates, and in such distribution, they deserve equal treatment and equal share among themselves.

In this case, according to the inventory dated on 29/03/2019, the properties listed therein are, the money in CRDB Bank Account (without amount mentioned), money from PSPF (without amount mentioned) and the money from City Council, arrears (without amount mentioned). All these were distributed as follows; the widow was given 40% which approximately $\frac{1}{3}$, while the rest six heirs getting 10% each. In respect of the real estate, four houses were listed.



- (i) One house on Plot No. 980 Block "E" (without its value mentioned).
- (ii) Two houses which are at Buhongwa at Plot No. 981 Block "E" and the other one on Plot No. 979 or the same Block (without their value mentioned).
- (iii) A house which is in Mwasonge Village where the deceased was born (without its value mentioned).

This means, the deceased left four houses, three are in the City of Mwanza while one is in the village. The Administrator allocated all three houses which are at Buhongwa in Mwanza City to the widow for 100%, the house at Mwasonge was distributed for 40% to the widow while the rest of the heirs were given 10% each, but they got nothing on the three houses which are at Buhongwa, which were all given to the widow.

Relying on the principle, that the widow is entitled to $\frac{1}{3}$, I wonder why the administrator distributed all three houses located at Buhongwa to the widow. In my considered view, the decision of the administrator skipped the element of equality among heirs. This can simply be so concluded because we look at the figure of the items, i.e three houses. The



administrator denied the court the most important information regarding the value of the estate. Had the administrator accompanied his inventory with the value of each house, it would have been easy for the trial and the appellate District Court to know and properly determine as to whether the distribution was fair or not.

By not giving value and reason as to why he decided to bequeath all three houses to the widow, leaving other heirs not benefiting, the administrator exhibit himself to be not transparent to the heirs and the court. It is also obvious that he has not been honest to other heirs as he decided to unreasonably disinherit them, and even after being directed by the court more than two times to go and equally redistribute the estate, he seems not to be ready to follow the directives of the court. This raises question as to whether he is a fit person to be administrator of the estate at hand.

That being the case, the next issue is whether the trial court was justified to hold that, the administrator give one house to the respondent, and so held by the appellate District Court. It must be borne in mind that the duty to collect and distribute the estate is bestowed to the administrator. It goes without saying that, even the trial court advised



blindly without knowing even the value of the houses when it advised the same to be given to the respondent, and equally so is the District Court, these two courts, without knowing the value of each house may have committed the error. That creates a danger of these two courts to commits the same mistakes of effecting unequal distribution.

To this end, I therefore find both orders of the trial and appellate District Court to be tainted, I thus under **Section 44 (1) of the Magistrates Court's Act [Cap. 11 R.E. 2019]** revise the order made by the District Court in Probate Appeal No. 08/2020, and in Mirathi No. 68/2018 dated 10/02/2020, and quash the decision and set their respective orders aside. In their place, I direct the following:-

- (i) The matter be returned to the Primary court for the administrator to comply with the orders herein after,
- (ii) The trial Primary Court directs the Administrator as soon as practicable, to conduct valuation of all the landed property of the deceased,
- (iii) Immediately thereafter he should file in court the new inventory attached with valuation report of each landed property,



- (iv) Distribute the property to the heirs in the following manner,
- (a) The widow be given $\frac{1}{3}$ of the estate,
 - (b) The rest $\frac{2}{3}$ be distributed equally to the rest of the heirs without discrimination,
- (v) The final account be filed in court as soon as practicable,
- (vi) Should the administrator fail to do so or refuse or unreasonably refuse to comply with directives, that will amount to failure to discharge the administrators duty, where the court will be required under Rule 2 of the 5th Schedule to the Magistrates Courts Act [Cap. 11 R.E. 2019] to;
- a) Revoke the appointment of the administrator, and
 - b) Appoint an officer of the court or some other reputable and impartial person able and willing to administer the estate of the in lieu of the administrator appointed in this case.

That in my considered view will meet the end of justice. It is accordingly ordered.

DATED at **MWANZA**, this 31st day of May, 2021.



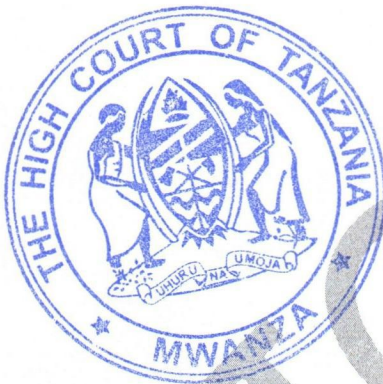


J.C. Tiganga

Judge

31/05/2021

Judgment delivered in open chambers in the presence of Mr. Mainde, counsel for the appellant, and Mr. Rutahindulwa for the respondent on line via audio teleconference. Right of Appeal explained and guaranteed.



J.C. TIGANGA

JUDGE

31/05/2021