

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**(PC) CIVIL APPEAL No. 46 OF 2020**

*(Arising from Civil Appeal No. 19/2019 of Muleba District Court; Originating from Probate Case No. 08/2016 of Nyamilanda Primary Court)*

**FARAJI ABBAKARY .....APPEALLANT**

***VERSUS***

**ALLY ABBAKARY**

*(As Administrator of the Estate of the late Abbakary).....RESPONDENT*

**JUDGMENT**

*30<sup>th</sup> July & 13<sup>th</sup> August 2021*

***Kilekamajenga, J.***

The record of this case shows that, the validity of the will of the late Abbubakary Ally was determined by this Court in 2013. In PC civil appeal number 07 of 2013, Hon. Mwangesi, J. (as he then was) nullified the will of the deceased. The High Court further ordered the clan meeting to convene and appoint or propose someone to be appointed as an administrator of estate. In 2016, the respondent applied before Nyamilanda Primary Court to be appointed the administrator of the estate. However, his appointment was objected by Arafa Abubakary and five others. Despite the objection, the respondent, Gervas Shilingi and the WEO were appointed the administrators of estate. Thereafter, the administrators of estates delayed to file the inventory until other heirs complained. Sometimes in April 2019, the administrators filed the inventory before the Primary Court. The distribution of the estate was objected by the appellant. The appellant's objection was dismissed. Aggrieved with the decision of the Primary Court on the

distribution of the estate, the appellant appealed to the District Court. He was armed with six grounds of appeal. Again, the District Court dismissed his appeal for want of merit. The appellant finally approached this Court of justice. As usual, the memorandum of appeal contained six grounds of appeal. However, I take the discretion not to reproduce the grounds of appeal for the reasons that I will state later.

When the case was called for hearing, the appellant was present and represented by the learned advocate, Mr. Derick Zephine whereas the learned advocate, Mr. Remidius Mbekomize appeared for the respondent. In the oral submission, the counsel for the appellant argued that the respondent failed to perform his duties fairly because he included in the distribution, persons who are not lawful heirs. Furthermore, the respondent included in the distribution some of the properties that the deceased had distributed before his death. Some of the estates were misappropriated by the respondent for his own interest. The respondent has demonstrated bias by favouring his own mother while the deceased was married to seven wives. Five wives are still alive and some of the widows have received nothing from the deceased's estates.

Furthermore, one of the administrators (WEO) was appointed on his official capacity but he was immediately retrenched therefore lacked the prerequisite qualifications. The WEO never even participated in the administration of the estate. Mr. Zephine further argued that the respondent was not approved by the

clan members. He only applied for the administration without the approval of the clan. He invited the Court to allow the appeal and set aside the decision of the Primary Court and District Court and an impartial person should be appointed to administer the estates.

The counsel for the respondent objected the allegation that the respondent distributed the estate to non-heirs and deceased's wives. He further insisted that the WEO was appointed as a neutral person and participated in the distribution of the estate. He blamed the counsel for failing to show how the heirs were affected with the distribution of the estate. Mr. Mbekomize urged the Court to dismiss the appeal.

When re-joining, Mr. Zephrine insisted that the deceased had seven wives but the inventory only shows three wives. Also, the respondent was not supposed to redistribute the estates that the deceased distributed before his death.

In disposing of this appeal, a further background gleaned from the records of the case may be apposite. There is no doubt that the deceased was married to seven wives. One wife died without leaving behind any issue. At the time of the deceased's death, three wives were still alive and he was also survived with thirty children. The appellant and respondent are also among the deceased's children albeit from different mothers. When this dispute was tabled before this Court in 2013 vide (PC) Civil Appeal No. 07 of 2013, the judge nullified the

deceased's will but retained the order of the Primary Court that urged clan members to convene and appoint another person to administer the estate. For clarity and better understanding, I wish to reproduce an excerpt from that judgment thus:

*"It has as well been noted that, after the Primary Court had upheld the validity of the will, it did proceed to **order the clan members** to go and appoint one among them, to apply to the Court to be appointed administer the estate of the deceased. I am made to understand and believe that, the order made by the Court because there was no executor named in the alleged will of the late Abubakar Ally Lyamzito. The said **Order remains to be valid** the nullification of the will notwithstanding in that, in the absence of the will makes the deceased to have died intestate. An administrator is therefore, needed to administer his estate according to the laws of the country. To that end, I would allow the appeal by the appellant by quashing the decision of the two lower Courts **save the order for appointing someone to apply in Court to be appointed to administer the estate of the late Abubakar Lyamzito.**" (emphasis added).*

After the above order of the Court, the respondent went back to the Primary Court, without involving the clan members and him together with other two persons were appointed as administrators. Without putting colours on this matter, the respondent approached the Primary Court behind doors because he

had no approval from clan members. In a dispute involving more than 30 heirs from different families or wives, the approval from the clan meeting was so vital. No wonder the respondent is being accused of bias because clan members with interest in this case did not approve him. Generally, the respondent failed to obey the order of this Court and this Court, being jealous of its own orders, the contravention had an impact in the subsequent decisions.

Moreover, it is doubtful how the WEO who introduced the respondent before the Primary Court also ended-up being an administrator of estate. I carefully observed the scale of the dispute and I have no hesitation to insist that the administrator(s) in this case should be approved by clan members. Where necessary, he/she should be an independent person apart from the heirs. Failure to follow the orders of the court in this case may generate more conflicts and endless litigations. Based on the above reasons stated above, I hereby allow the appeal, I set aside the decision of the Primary Court and District Court and further order the clan to convene in order to propose administrator(s) of estate. No order as to costs. It is so ordered.



  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**05/08/2021**

**Court:**

Judgment delivered this 13<sup>th</sup> August 2021 in the presence of the parties and the learned advocate for the appellant, Mr. Derick Zephrene. Right of appeal explained.



  
**Ntemi N. Kilekamajenga**

**JUDGE**

**05/08/2021**