

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

PC. PRABOTE APPEAL NO. 13 OF 2021

(Arising from judgment of Misungwi District Court at Misungwi dated 21/06/2021 in probate appeal No. 3 of 2021. Original Misungwi Primary Court Probate Cause No. 9/2019)

GWESANDILI SONGOMA.....APPELLANT

versus

JACKSON MATEMELA MPUMALE.....RESPONDENT

JUDGMENT

13th & 18th October, 2021

RUMANYIKA, J:.

The 2nd appeal is with respect to judgment and decree of Misungwi district court dated 21/06/2021 arising from a decision of Misungwi urban primary court with respect to estate of Matemela Mpumale Shibito (the deceased) the lower court having had dismissed the objection, therefore confirmed appointment and letters therein between, for some reasons revoked from him and now once again granted to Jackson Matemela @ Mpumule (the respondent). The aggrieved Gwesandili Songoma @ Mpumule (the appellant) had two grounds of appeal which revolved around one

point essentially; that as for the appellant's failure to present inventory the learned senior resident magistrate improperly evaluated the evidence and the letters of administration.

When the appeal was, by way of audio teleconference called on 13/10/2021 for hearing, Mr. J. Mugabe learned counsel appeared for the appellant. The respondent appeared in person. I heard them through mobile numbers 0767 888 933 and 0768 132 527 respectively.

Mr. J. Mugabe learned counsel submitted **(a)** that with respect to the estate the appellant may have had failed within time to file inventory yes, but according to records only the respondent was a stumbling block as the latter had never been cooperative much as the two only shared the father such that with all fairness the respondent should not have been appointed the sole administrator of the estate **(b)** that the probate court also erred by engaging the local village Executive Officer who also defaulted and caused the delays **(c)** that alternatively as they had different mothers the parties jointly administer the estate.

Questioned by court for clarity, the learned counsel submitted that despite several invitations to the family meetings the respondent defaulted he only attended court sessions.

In reply, the respondent submitted that there was nothing upon which to fault the lower court because not only the appellant had distributed the estate unequally, but also only for personal ends the latter had concealed part of the estate and, even when he was ordered to re divide the estate he just refused much as the appellant was appointed in 2019, the deceased father died in 1997 and the former was in full control of the estate since.

Having had looked at the historical back ground of the matter, be it for the reason of one being greedy or only sharing the father, for the last two (2) years now of the probate cause the estate had been held in ransom leave alone 24 years since the deceased passed in 1997. Whether or not one of the beneficiaries was the deceased's biological child (survivor of the deceased) the issue should not have been raised by the parties in the first place. It would have been a different scenario if the point was raised, say by head of the clan or a representative thereof unless the court had a DNA analysis and report which is not subject of this judgment. Who knows if really the deceased was the biological father of the objector or the beneficiaries generally!


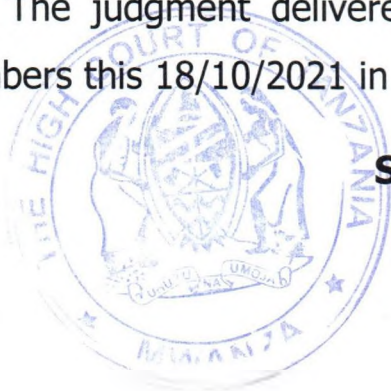
Whereas no court of law encouraged endless probate proceedings, unless, for immediate action this court had appointed a neutral party to administer the estate, the appeal is partly dismissed and partly allowed so much so that the decision and orders of the lower court is quashed/set aside and substituted with, **one;** that with equal powers the appellant, the respondent and the local Ward Executive Officer are now appointed co-administrators of the estate **two;** that the newly appointed administrators shall, without delay or fail within forty days (45) days of this judgment file a joint inventory in the probate court then, as soon as practicable the latter do the needful and mark the back log probate cause closed. It is so ordered.

Right of appeal explained.



S.M. RUMANYIKA
JUDGE
15/10/2021

The judgment delivered under my hand and seal of the court in chambers this 18/10/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
18/10/2021