

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA

PC. CIVIL APPEAL CASE NO. 08 OF 2021

(Arising from Probate Appeal No. 5 of 2021 from District Court of Geita, originating from Probate Cause No. 60 of 2017 from Nyankumbu Primary Court)

ESTER PAULO *(Administratrix of the Estate of the late Charles Faida Lunsalya)*..... **APPELLANT**

VERSUS

JUDITH STEVEN & ANOTHER **RESPONDENT**

RULING

21st June, 2022

KAHYOZA. J.:

Ester Paulo lost a battle in suit before the Primary Court against **Judith Steven** and another person not mentioned anywhere. **Ester Paulo**, the administratrix of the Estate of her late husband, Charles Faida Lunsalya protested **Judith Steven's** child born out of wedlock to inherit. The primary court decided that the child born out of wedlock had a right to inherit. She appealed to the District Court and lost the appeal.

Still displeased, she appealed to this court raising one ground of appeal that;-

*1. That, both the trial and 1st Appellate courts erred in law to hold that, the children who were born outside the wedlock between the 1st Respondent, one Judith Steven and the late Charles Faida Lunsalya **were not entitled** to inherit from the deceased Estate.*

I examined the judgment of the District Court and found that the District Court held that children born outside the wedlock are entitled to inherit. I called upon the parties to address me whether the appeal has any merit.

Mr. Steven, the appellant's advocate contended that the memorandum of appeal is not properly worded, as he erroneously included the word "not". He stated that given the nature of the appeal before the District Court, it is obvious that the word "not" in the ground of appeal was misplaced.

On his part, Mr. Paulo Rwechungura, the respondent's advocate contended that this Court cannot entertain the prayer to amend the memorandum of appeal after he had filed his reply that there is no court that held that children born out of wedlock are not allowed to inherit. He prayed the appeal to be dismissed. He also complained that the appellant was disposing the deceased estate in disobedience to the lawful order.

Having heard the submissions, it is obvious that the first appellate court and the trial court held that children born out of wedlock are entitled to inherit their deceased father's estate. Thus, the ground of appeal that the court erred to decide that children born out of wedlock are not allowed to inherit is misplaced. It has no ground to stand on, hence it cannot stand.

The appellant's advocate prayed to amend the memorandum of appeal to omit the word "not" in the ground of appeal. The respondent objected to the prayer as it had been raised after he replied to the memorandum of appeal. I am aware of that fact that the respondent is not bound in law to file a reply to the memorandum of appeal. However, where a respondent files a reply to the memorandum of appeal, an appellate court must consider it.

I, therefore, take cognizance of the fact that the appellant prays to amend the memorandum of appeal after where the respondent pointed out identified the irregularity in the ground of appeal. Not only that but also the appellant's prayer came after the Court invited parties' advocate to address the incongruity in the memorandum of appeal.

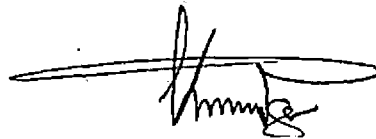
I do not find it just to allow the appellant to amend the ground of appeal. The appellant's advocate was required to be diligent when discharging his duties. An advocate cannot discharge his duties negligently

expecting to pray for amendment to rectify the irregularity. Litigation is costly and a torture to litigants, it must be careful and properly conducted.

I am not convinced that the appellant be allowed to amend the memorandum of appeal at a stage where the respondent and the court have demonstrated the irregularity in the memorandum of appeal. I find the appeal incompetent as the ground of appeal does not raise any issue for this Court to consider. Consequently, I strike it out with costs.

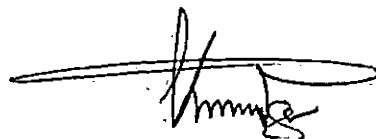
It is ordered accordingly.

Dated at Mwanza, this day of 21st June, 2022



J. R. Kahyoza
JUDGE

Court : Ruling delivered in the presence of the parties and their advocates Mr. Ndege (JLA) present.



J.R. Kahoza
Judge
21/06/2022