

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

PROBATE APPEAL NO. 6 OF 2021

(Originating from Civil Revision No. 1/2021 of Singida District Court and Probate Cause No. 36/2015 of Utemini)

**DAUDI MAKOLO.....1ST APPELLANT
MAUREEN KITANGE2ND APPELLANT**

VERSUS

SHABANI LYANGA.....RESPONDENT

JUDGMENT

14/02/2022 & 25/04/2022

KAGOMBA, J

DAUDI MAKOLO and MAUREEN KITANGE have appealed to this Court basically to challenge the decision of the District Court of Singida made in favour of SHABANI LYANGA (the respondent) who, being the administrator of the estate of the late MOHAMED MAMBO, stopped paying the appellants their due share of rent collected from the deceased's property (under administration).

It is not disputed that the deceased MOHAMED MAMBO was survived with four (4) issues the late HAMISI MOHAMED MAMBO (2nd appellant's father) being one of them. It has not been disputed that there was an agreement by the heirs and beneficiaries of the late MOHAMED MAMBO that the rents collected from the said deceased's property on Plot No. 27, Block J Ipembe area in Singida, were to be divided to the heirs and beneficiaries

of the late MOHAMED MAMBO. It is not disputed that the respondent as the administrator had been giving the appellant their share of rent but stopped doing so for a reason that the 2nd appellant's father (also deceased) claimed title over the same house on plot 27 Ipembe leading to the filing of land application No. 35 of 2017 which was pending in Singida DLHT.

It is not disputed that the appellants were the administrators of the estate of the late HAMISI MOHAMED MAMBO.

From the foregoing undisputed facts, the issue for determination is whether the decision of the District Court of Singida in Civil Revision No. 1/2021 to quash and set aside the Utemini Primary Court (trial Court) order, which required the tenants of the suit house to submit rent to the trial Court for division to the appellants, was legally justifiable and tenable.

To determine the above main issue, it is the view of this Court that since the appellants are the joint administrators of the estate of the late HAMIS MOHAMED MAMBO and since the respondent has been acknowledging the existence of the appellants' right to a share of rent and was disbursing the same to them before stopping, the act of stopping paying such share of rent to the appellants on pretext that they filed a claim over ownership of the house in the pending Land Application No. 35 of 2017 is legally wrong and the District Court should not have supported that decision of the administrator but should have supported the order of the trial Court.

I hold so based on the following reasons;

1. The late HAMISI MOHAMED MAMBO had unfettered right to inherit his deceased's father property and to benefit from rent collectable, irrespective of whether or not he has a good claim of ownership over the same. Likewise, the appellants, being administrators of the estate of the late HAMIS MOHAMED MAMBO have unfattered right to collect whatever is due from the rent payable, in respect of shares of the late HAMIS MOHAMED MAMBO.

2. The complaints forwarded by the appellants to the trial Court were only based on denial by the respondent to disburse to the appellants their due share of rent. The appellants did not go to the trial Court to claim ownership of the said property. As such the District Court Magistrate should have noticed this clear difference in the issue raised and should have found that the trial Court, which appointed the respondent to be the administrator of the estate of MOHAMED MAMBO, had proper jurisdiction to order proper management of the estate's rent proceeds to the heirs and beneficiaries, under section 18(1)(a)(i) of the Magistrates Courts Act [Cap 11 R. E 2019 since the matter is governed by Islamic law.

3. It is admitted the respondent that the 2nd appellant is as a daughter of HAMISI MOHAMED MAMBO and a granddaughter of the late MAHAMED MAMBO. With such an admission of this fact, it follows under Islamic law that being a daughter of the late HAMIS MOHAMED MAMBO, the 2nd appellant has her inherent right to benefit from her fathers share of rent, whether or not her father has a title over the said property.

As regard, the 1st appellant who the respondent describes as a stranger,

he is also entitled to receive the rent proceeds not as a family/clan member but as undisputed co-administrator of the estate of the late HAMIS MOHAMED MAMBO.

For the above stated reasons, the Court finds merit in this appeal and allows the appeal.

As a consequence, the Ruling and Drawn Order of the District Court of Singida in Civil Revision No. 1/2021 is quashed and set aside. The order of the Utemini Primary Court is upheld. For clarity and for avoidance of doubts, the respondent is hereby ordered to pay the appellants all the unpaid rent shares of the late HAMIS MOHAMED MAMBO and the appellants shall receive any lawful proceeds for the said house being a legitimate share of the HAMISI MOHAMED MAMBO for the benefit of his heirs and beneficiaries.

As the matter involves relatives each part to share his own costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read 'Abdi S. Kagomba'.

ABDI S. KAGOMBA

JUDGE

25/04/2022