

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

AT BUKOBA

PC PROBATE APPEAL NO. 5 OF 2022

(Arising from Karagwe District Court in Misc. Probate Application No. 05 of 2021 and Original Probate Cause No. 02 of 2021 at Mabira Primary Court)

ZAWAD FOCASAPPELLANT

VERSUS

MUSA JUMANNE..... RESPONDENT

JUDGMENT

Date of Judgment: 01.07.2022

Mwenda, J.

This appeal is against the decision of Karagwe District Court in Misc. Probate Cause No. 05 of 2021. The appellant Zawad Focas being aggrieved by the said decision preferred this appeal with three (3) grounds which reads as follows and I quote;

- 1) "That, the learned District Resident Magistrate erred in law when blessed discriminatory act of the respondent denying ladies inheritance of their father's estate which was the land given to the 4th wife who had sold her share as opposed to all males who were given their independent shares (sic)*
- 2) That the learned District Resident Magistrate erred in law when failed to note that the sold shamba was the only 4th wife's share which was sold*

on 11.11.2020, hence the 4th wife remained with the money as her share which wasn't even accounted for in the assets of the deceased by the respondent (sic)

3) That, the learned District Resident Magistrate erred in fact, by relying on the self -inventive issues which was very contradictory to the reality or the evidence on records to the trial Court and Inventory Records."

At the hearing of this appeal both parties appeared in person without legal representation.

When invited to submit in support of her appeal, the appellant informed the court that she was going to argue the grounds of appeal in sequence. With regard to the first ground of appeal the Appellant submitted that the trial court erred to uphold the distribution of the estate of their late father which denied them the right to inherit. She submitted that the land which deceased's female children were required to inherit was allocated to the deceased's 4th wife contrary to the wishes of their late father who wanted the same to be distributed to them (his daughters). She further submitted that the deceased's 4th wife sold her own land prior to their father's death in order to illegally inherit again after their father's death.

In regard to the last ground of appeal, the Appellant submitted that the Hon District's Resident Magistrate introduced new evidence as shown at page 9 of the typed proceedings when he was asking himself as to why the boys' heirs

are not claiming distribution of their father's estate. She submitted that the deceased's male children are not complaining over the said distribution because they inherited from their father's estate as opposed to them. She prayed this appeal to be allowed.

In reply to the submission by the Appellant, the respondent prayed this court to consider the records of appeal in determining the fate of the parties. He further said that he was appointed as administrator by the court following the conflict among the deceased's family members. He said in that conflict the family members were mistreating their father's 4th wife and their fathers even before his death. In regard to the discrimination to the deceased's female children he submitted that the District Court assessed the evidence and found it to be baseless.

He further submitted that it is true that the deceased's 4th wife was allocated the land in question. He said, this is so because sometimes back before the deceased's demise she sold her land which she was given by her late husband to carter for her late husband's treatment as other family members deserted him. He said during transfer process of the said land other family members were involved. Having sold her land, the deceased's 4th wife remained with nothing. He said other remaining deceased's wives were allocated lands which they were occupying before their husband's death. As for the only female child whom he allocated the land, the respondent submitted that he did so because she was shunned by her relatives for taking care her late father when he was

sick and there was no likelihood of her sharing land with her mother as it was possible for other female children. He then prayed this appeal to be dismissed.

In rejoinder the appellant submitted that it is not true that her late father was deserted by his family members. She said they were in good terms with him. She submitted that the respondent did not even list the female children as heirs in Form No. IV so to her this shows discrimination to female children.

Having gone through the submission by both parties and upon perusal of the court's records, the issue for determination is whether in the distribution of the estate of the late Fokas Nkomao Babisheka, female children were discriminated.

In this appeal, the appellant is complaining that her late father's female children were discriminated by the administrator of his estate. She said their late father's estate was distributed to only one female child and the deceased's 4th wife.

Under the Local Customary Law (Declaration Order) (No. 4) (GN) 436/1963, women are allowed to inherit land except for the clan Land. This position was put forward in the case of *FRAISKA A. RUGIMBANA & 9 OTHERS VS AUGUSTINE ANATORY RUGUMBANA & ANOTHER LAND CASE APPEAL NO. 73 OF 2018*. In that case, while citing with approval the case of *NDEWAWIOSIA NDEAMTZO V IMANUEL MALAZI (1968) HCD* the court made it clear that both daughters and sons of the deceased have the right to inherit on the deceased estate. The Court held inter alia that;

"It is quite clear that this tradition custom has outlined its usefulness. The age of discrimination based on sex is long gone and the world is now in the stage of full equality of all human beings irrespective of their sex, creed, race or colour. On ground of natural justice daughter like sons in every part of Tanzania should be allowed to inherit the property of their deceased father whatever its kind or origin based on equality."

In our case, the records show that at Mabira Primary Court (in Probate Cause No. 2 of 2020) Mr. Musa Jumanne the respondent herein, was appointed as administrator of the estate of the late Fokas Nkomao Babisheka. In carrying out his responsibilities as administrator he distributed the estate of the deceased to the heirs. Inventory named Mirathi ya marehemu Focus Nkomao dated 16/10/2020 was then prepared and was registered in court. In the said Inventory distribution appears as follows and I quote;

"Shamba la miti lenye urefu wa futi 360 kwa wajane wote wanne kwamba mke wa kwanza, wapili na wanne walipewa urefu wa futi 80 kwa kila mmoja na mke wa tatu futi 120 kwakuwa wake wengine wa marehemu walijengewa nyumba isipokuwa yeye.

Shamba la mibuni bi Anjelika Focus kwakuwa shamba alilokuwa analitumia liliuzwa na marehemu mume wake kwajili ya gharama za

matibabu. Pendo alipewa sehemu hiyo ya shamba la mibuni kwakuwa alikuwa analelewa na marehemu baada ya kuachika kwa mume wake.

Mgao kwa Watoto wa kike kwakuwa marehemu Focus Nkoma kwenye mgao alioufanya kwa Watoto wake wa kiume akiwa hai alikuwa anawagaia mashamba kutoka kwenye mgao wa mama zao hivyo na Watoto wa kike wa marehemu nao pia mgao wao waupate kutoka upande wa mama zao kwani wajane hao wameachiwa mashamba makubwa.”

From the contents of the inventory, the administrator distributed the deceased's estate to the deceased's widows and children (female and male). In the said distribution, female children, just like male children inherited their shares jointly with their respective mothers. According to the administrator their respective lands are the ones they were using before the deceased's death. In her complaint, the appellant's reference is on the land which was allocated to deceased's 4th wife and their sister one Pendo and not from other deceased's wives. This court asked itself as to why the appellant do not complain over the land allocated to other deceased's widows. Vide section 122 of the Evidence Act this court draw inference that she doesn't complain against other deceased's wives because she and other deceased's daughters inherited their lands jointly with their respective mother as seen in the inventory.

From the forgoing observations, since the inventory dated 6/10/2020 indicates that, just like for male heirs, female heirs were allocated land jointly with their respective mothers, then there was no discrimination.

In the upshot this court finds this appeal unmerited and it is hereby dismissed and the decision in Misc. Probate Application No. 04 of 2021 before Karagwe District Court is hereby upheld.

It is so ordered.




A.Y. Mwenda

Judge

01.07.2022

This judgment is delivered in chamber under the seal of this court in the presence of the appellant Ms. Zawad Focas and in the presence of the respondent Mr. Musa Jumanne.




A.Y. Mwenda

Judge

01.07.2022