

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC. CIVIL APPEAL NO. 05 OF 2021

**(C/F Civil Appeal No. 74 of 2020 in the District Court of Arusha at Arusha, Originated
from Administration Cause No. 250 of 2020 at Arusha Urban Primary Court)**

FARIDA ALLY MOLLEL (An Administratrix

Of the Estate of the Late ALLY IDD MOLLEL.....APPELLANT

VERSUS

JAMAL IDDI MOLLEL.....RESPONDENT

JUDGMENT

05/07/2022 & 16/08/2022

GWAE, J

This is the second appeal; It has its origin from a Probate Cause No. 250 of 2020 filed in the Arusha Urban Primary Court ("the trial court") where the appellant petitioned for grant of letters of administration of the estate of her late husband Ally Iddi Mollel (deceased). As the appellant filed her petition, the respondent shortly lodged a caveat objecting the appointment of the appellant on a reason that, the appellant has included the respondent's properties in the list of the deceased person's properties.

The trial court finally determined the objection and the same was overruled, consequently the appellant was appointed as an administratrix of the estate of her late husband. The respondent was dissatisfied with the decision of the trial court, he therefore appealed to the district court challenging the appointment of the appellant. At the District Court at Arusha (1st appellate court), the respondent alleged that the properties listed by the appellant are his properties which he was bequeathed by his late father. The said properties are; tractor with registration number T. 411 ALX MF 135, a house with six rooms located at kwa Iddi, a mud house located at kwa Idd and houses located at Sakina Silent. The respondent wanted the said properties to be excluded from the properties of the deceased.

After hearing of the appeal, the first appellate court made a finding that, the alleged properties be excluded from the list of the deceased properties and the parties to file a suit on the rightful owner of the properties in a court of competent jurisdiction and further ordered that other trial court's orders to remain undisturbed.

The appellant being aggrieved by this decision has filed this appeal on the following grounds;

1. That, the first appellate court magistrate erred in law and in fact to order that the status quo be maintained while it has no jurisdiction to do so.
2. That, the first appellate court magistrate erred in law and in fact by contradicting herself, hence made vague decision partly in favour of the respondent.
3. That, the first appellate court magistrate erred in law and in fact to partly made wrong decision in favour of the respondent without carefully considering the pertinent issue that was before the trial court which was for appointment of an administratrix of the late Ally Iddi Mollel and not ownership of the properties listed under paragraph 4 of the respondent's objection hence, made incorrect decision.
4. That, the first appellate court magistrate erred both in law and in fact by making findings that the respondent was not given the right to prove his claims by providing evidence in respect of the objection before the trial court.

At the hearing, the appellant was represented by Mr. Dismass Philipo Lume, the learned counsel whereas the respondent was represented by Ms. Jane Johnson Ayo. With leave of the court the appeal was disposed

by way of written submissions which I shall consider while disposing the appeal.

From the parties' submissions together with the records of the appeal, the question to be determined is whether the 1st appellate court was justified to order an exclusion of the properties in dispute from the list of the deceased's properties.

It is undisputed fact that, the caveat filed by the respondent was raised before the appointment of an administratrix, and the main reason for objecting the appointment was that the properties listed belonged to the respondent and were not among the deceased person's properties. The appellant's submission is such that, the respondent's objection was prematurely raised as the administratrix by then had not been appointed and therefore she had not collected the properties and even the inventory was yet to filed in court.

I fully agree with the appellant's learned counsel that, at the stage of appointment of an administrator the court will always dwell into the fitness or unfitness of the petitioner to administer an estate of a deceased. As revealed by the record especially contentious issues involved in the objection proceedings, it was too early for the trial court to entertain an objection with regard to the properties deemed or thought by the

deceased's wife to be of the deceased person as the petitioner had not yet assumed the office of an administrator. I subscribe my holding from the decision of my learned brother Rutakangwa, J as he then was in the case of **Sekunda Mbwambo v Rose Mbwambo** [2004] TLR 439 it was held that:

"An administrator may be widow/widows, parent or child of the deceased or any other close relative, if such person is not available or if they are found to be unfit in one way or another, the Court has the power to appoint any other fit person or authority to discharge this duty".

In the instant case, the respondent objected the appointment of the appellant on the main reason that, the listed properties belong to him and not on the basis of undesirability or unfitness on the party of the appellant. Legally and without any explanations to the contrary, the appellant being a wife of the deceased is a fit person to administer the estate of her late husband for her own benefits as a beneficiary together with her four children.

Therefore, it my considered opinion, that at the stage of appointment of an administrator the preliminary objection regarding ownership of the properties so enlisted ought not to have been entertained by the trial court except to the main case on the competence or suitability of the appellant,

the issue on whether the estate is the lawful property of the deceased or not should have been raised after the grant of letters of administration particularly when an administrator starts collecting the estate and debts intended to be administered it is when a legal proceeding may commence a right court forum regarding contentious ownership can be commenced by either the respondent or appellant. Meanwhile close of the Probate and Administration file may wait determination of the ownership of properties in dispute.

The listed properties in Form No. 1, to my considered view, are yet to be certainly considered to be the among the estate of the deceased person for administration, they are just a mere list of properties deemed to be the estate of the deceased. It is until the administrator has collected the properties and endorsed the inventory in the court when the objector can raise an objection that his/her properties have been included in the list of the deceased's properties. After presentation of the inventory to the trial court by an administratrix or administrator, as the case may be, it is when the trial court may issue proper directions to the administrator including but not limited, to have issues of ownership heard and determined by a proper court forum.

With the above observation, the 1st appellate court is found to have misdirected by excluding properties from the list of properties listed in Form No. 1, as the same. The proper procedure is, filing a suit in a proper court forum or the appellant in her capacity of being an administratrix of the estate of her late husband may file a suit against the respondent if he claims to be rightful owner of such properties subject to the administration of the deceased's estate.

Given the above findings, the appellant's appeal is allowed to the extent that, the trial court's proceedings, judgment and order as well as those of the 1st appellate court regarding the respondent's caveat based on the listed properties in the Form No. 1, are quashed and set aside. Hearing and determination of Probate and Administration Cause No.250 of 2020 shall proceed where it ended. Given the nature of the dispute and the relationship of the parties, I abstain from making an order as to the costs of this appeal and those at the courts below.

It is so ordered.




M. R. GWAE
JUDGE
16/08/2022