

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

PC. CIVIL APPEAL NO. 7 OF 2022

(Originating from District Court of Kilwa Probate Appeal Case No. 2 of 2021)

JUDITH ALFRED BIGIRWA..... APPELLANT

VERSUS

VICTOR KINGSON BARONGO..... RESPONDENT

JUDGMENT

Muruke, J.

Judith Alfred Bigirwa being aggrieved by the decision of Kilwa District Court in Probate Appeal No. 02 of 2021 preferred present appeal raising three grounds, articulated in the petition of appeal. On the date for hearing, both parties appeared in persons. By consent court ordered appeal to be disposed by way of written submission in which both parties adhered to the order of the court. On first ground, appellant argued that, no one knew better than the appellant, about the estate of the late Aurelia John Simeo, but still both lower courts granted the respondent right to administer the estate. All neighbors were ready to testify but the trial court denied the appellant right to be heard by calling witnesses to prove the case about the life of the deceased. She was of the view that the findings of lower court that respondent is fit to administer the estates of the late Aurelia John Simeon, deprives other heirs right to inherit the deceased estates.

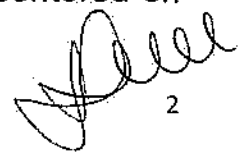


On second ground appellant submitted that, the source of the lower courts to honour dubious clan minutes was respondent, who convinced the one Henerico John Simeo to attend the meeting and nominated the respondent to be administrator. Ground three she submitted that, appellant has taken care of the deceased Aurelia John Simeo in all human needs since 2004 until when she passed away on 31st January, 2021. All the time no one appeared except at the funeral and later demanded the deceased estate. Respondent was granted ownership of the suit land simply because of long stay in the land and the improvement extended without any problem from the late Yusufu Athumani Sunduva when he was alive.

In reply, on ground one respondent submitted that, there is no any procedure violated by the district court. Appellant was given opportunity to file her appeal at the district court by way of written submission, and district court considered all her rights. On second ground Respondent submitted that, this ground has no merits, appellant received two documents from respondent. It should be noted that since the beginning of this dispute, appellant has the habit of not attending the hearing. Moreso, she had all the information about this dispute.

On last ground, Respondent submitted that, taking care of someone, does not give a person the right to inherit or own the property of deceased. Looking after, bringing up or nursing someone does not give the person the right to inherit if there was no agreement, that after performing those duties there is payments or reward, bearing in mind that, the deceased was her grandmother.

Having careful read in details written submissions filed by the parties, trial court records and first appellate records, this appeal is centered on



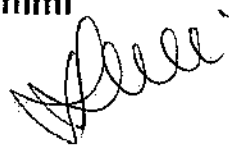
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the issue of ownership. As this is the second appellate court, had a duty to review all the records of the lower court to see if the procedures of determining the dispute was properly followed. This court in the case of **Fitina Nampwenge Vs. Somoe Hamisi Manyenga & Another, Land Appeal No. 29 of 2021**(unreported) at Mtwara when quoting the decision of the Court of Appeal in the case of **Leonard Mwanashoka Vs. R, Criminal Appeal No. 226 of 2014**(unreported) held that: -

"The first appellate court should have treated evidence as a whole to afresh and exhaustive scrutiny which the appellant was entitled to expect. It was therefore, expected of the first appellate court, to not only summarize but also to objectively evaluate the gist and value of the defense, and weight it against the prosecution case. This is what evaluation is all about."

Respondent complained that, among the deceased properties is the house located at Kilwa Masoko, which also appellant alleges that the said house is her property, thus it is not among of the deceased properties. At page 14 of the typed proceedings of the trial court appellant is recorded to have said:-

Simtaki kwa sababu hahusiani na mali za marehemu, kwa sababu toka ametoka 2003 hajaonekana hadi leo hii, pia simwamini kuwa msimamizi wa mali za marehemu. Ninaye husika ni mimi tu peke yangu ndio mrithi halali wa mali za marehemu, marehemu alikua nazo mali ziko bukoba tu basi. "Hii mali ya kilwa ni yangu." Mali ya Bukoba alichuma yeye mwenyewe marehemu, naona mimi ndiye mrithi peke yake kwa sababu.



It is undisputed facts that, the circumstance of this case requires to determine who is the owner of a house allocated at Kilwa Masoko. That cannot be done in the probate proceedings case. Legally once administrator has been appointed, any party claiming any right on the deceased property has to sue administrator to recover the same. Equally so, appellant who is claiming ownership of the house at Kilwa, should file Land case in a proper forum to ascertain ownership, because this court cannot ascertain ownership in the proceedings emanated from probate cause. Appeal dismissed. Each party to bear own costs as appellant and respondent are related.




Z.G. Muruke

Judge

31/10/2022

Judgement delivered in the presence of Immaculate Kingson (respondent mother) and appellant in person.




Z.G. Muruke

Judge

31/10/2022