

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**PC. CIVIL APPEAL NO. 181 OF 2020**

*(Arising from Civil Revision No. 23 of 2019 Kinondoni District Court; Originating from Probate and Administration Cause No. 261 of 2018 Kawe Primary Court)*

**FRED DAVID KATEMBO.....APPELLANT**

**VERSUS**

**JUDITH DAVID KATEMBO.....1<sup>st</sup> RESPONDENT**

**JUDITH DAVID KATEMBO (Administratrix  
of the estate of the late David**

**Chrispine Katembo).....2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

*Date of Last Order: 09/09/2021*

*Date of Judgment: 30/05/2022*

**S.M. KULITA, J.**

This is an appeal from Kinondoni District Court. The Appellant and the 2<sup>nd</sup> Respondent herein were appointed the Administrators of estates for the deceased, late DAVID C. KATEMBO who had passed away at Sumbawanga Hospital on 08/06/2018 at the age of 64 according to the death certificate. That, the Appellant, **FRED**

**DAVID KATEMBO** is a son to the deceased while the 2<sup>nd</sup> Respondent, **JUDITH DAVID KATEMBO**, apart from standing as the 1<sup>st</sup> Administratrix, she also stands as the deceased's wife in her position as the 1<sup>st</sup> Respondent in this case. That the said Appellant and 2<sup>nd</sup> Respondent were appointed by the trial court, Kawe Primary Court on 22/02/2019 as the administrators No. 2 and No. 1 respectively.

While the process of administration was underway the 2<sup>nd</sup> Administrator (Appellant herein) submitted the objection at the trial court that Judith David Katembo had refused to include the Motor vehicle with Registration No. T 463 DLX make Toyota Harrier in the deceased's estates while it was among the properties that the deceased had left before he passed away.

The Appellant also raised a concern that the remaining sum of money amounting Tsh. 12,417,000/= that the deceased's employer had provided for transportation of the deceased's personal effects should be top up into the deceased's estates. He alleged that out of Tsh. 14,417,000/= that had been provided though the 1<sup>st</sup> Respondent, only Tsh. 2,000,000/= had been used.

The Primary Court attended those two disputes concerning the Motor vehicle with Registration No. T 463 DLX make Toyota

Harrier, and the said money, Tsh. 12,417,000/= in which it regarded the same as condolences, hence not part of the deceased's estates. Thus, the decision was against the Appellant. Aggrieved with the decision of Primary Court, the said Appellant lodged an appeal at the District Court of Kinondoni via Civil Appeal No. 23 of 2019 in vein. Hence, this second bite appeal in which the Appellant relied on the following two grounds;

1. That the District Court erred in law and facts for failing to interpret the concept of deceased estate as it applies in Tanzania to include Tsh. 12,417,000/= which was in dispute, instead, the court interpreted the same as condolences (rambirambi), giving unjust benefit to a single person, the Respondent.
2. That the District Court erred in law and facts for failing to apply the law of sale of goods applicable in Tanzania to find that there was no valid motor vehicle sale agreement and that there was no valid motor vehicle registration card, instead there were fabricated instruments to perpetrate fraud.

The appeal was argued by way of written submissions. The Appellant is represented by Prof. Cyriacus Binamungu, Learned Advocate from CSB Law Chambers, while the Respondent enjoys

the legal services of Mr. Dedi Isaka Mabondo, Learned Advocate from Mabondo & Company Advocates.

In his written submission in respect of the 1<sup>st</sup> ground of appeal, Advocate for the Appellant, Prof. Cyriacus Binamungu stated that the laws have not defined the concept of “deceased estate”. He submitted that the interpretation of the concept of *costs for transportation of the family and personal effects* by the lower courts to mean rambirambi (condolences) was narrow and improper. He said that the sum of Tsh. 14,417,000/= which were provided by the deceased’s employer for that purposes, accrued by virtue of the deceased’s employment, hence cannot be regarded as condolences. The counsel stated that that gave a free ride to the 1<sup>st</sup> Respondent to pocket the money.

The Counsel further submitted that only Tsh. 2,000,000/= out of Tsh. 14,417,000/= had been spent for transportation of the deceased’s personal effects including his family, which means that the 1<sup>st</sup> Respondent is in possession of the balance of Tsh. 12,417,000/=. He said that the said balance falls under the estates of the deceased and should be shared among the heirs as part of the deceased’s estate. Prof. Binamungu asserted that the said money balance should not be enjoyed by one person (1<sup>st</sup> Respondent) alone as if she was named as the only beneficiary for

the deceased. He said that since the 1<sup>st</sup> Respondent is the one who had received the money from the deceased's employer, she was obliged to make the balance available to the administrators of the estate

He concluded submitting on the 1<sup>st</sup> ground by stating that the 1<sup>st</sup> appellate court erred in law in interpreting the concept of "deceased estate" in a very narrow sense, as a result giving unfair advantage to the 1<sup>st</sup> Respondent.

Submitting on the 2<sup>nd</sup> ground of appeal the Appellant's Counsel, Prof. Binamungu sought for this court to reiterate what was submitted at the District Court. Having gone through the said submissions I have noted it stating that the Motor Vehicle with registration No. T 463 DLX is the property of the deceased. It was purchased by the deceased from Renida Peter Kipangula, the one whose name is read in the Registration Card. Unfortunately, the Appellant's father (deceased) passed away before the ownership had been transferred into his name. The Appellant's Counsel challenged that it doesn't make sense that the Motor vehicle has been sold to the 1<sup>st</sup> Respondent (Judith D. Katembo) by one Steven Peter Kitangula while its registration card shows that the owner of the vehicle is somebody else, namely Renida Peter Kipangula.

In his reply in respect of the 1<sup>st</sup> ground of appeal the Respondent's Counsel, Mr. Dedi Isaka Mabondo submitted that the disputed money from the Ports Authority claimed by the Appellant was for fare and transportation of the deceased's personal effects, the amount which were fully calculated and issued for the purposes indicated. He said that the Appellant claims that the transportation expenses were Tsh. 2,000,000/= without any proof. The counsel further submitted that the deceased left a widow (1<sup>st</sup> Respondent) and children, some of them were still depending on him. He added that the deceased's working station was at Kigoma. After his death the deceased and his family, as well as his luggages were to be transported to his domicile, located at Mahenge (Uchindire) in Morogoro region which is a distant place from Kigoma. He submitted that the said Mahenge (Uchindire) is a place where the deceased was buried. The counsel said that the said money were actually spent for the intended purposes which touch the deceased's family and his other personal effects.

Mr. Mabondo, Advocate closed his submission in respect of this ground of appeal by stating that it was right for the lower courts to regard the said money as condolence, hence not part of the deceased's estates.

Replying the 2<sup>nd</sup> ground of appeal, Mr. Mabondo also prayed for his submission that he had made at the District Court to be adopted as his submission in respect of the 2<sup>nd</sup> ground of appeal. The said record transpire that the Counsel had submitted to the effect that the lower courts were right to declare that the Motor vehicle with Registration No. T 463 DLX make Toyota Harrier was the property of Renida Peter Kitengule who then sold it to the 1<sup>st</sup> Respondent, Judith D. Katembo through her brother namely Steven Peter Kitangula. He said that the contract of sale (exhibit J.) that was tendered at the trial court transpires that situation. He averred that the Appellant's allegation that his late father (deceased) is the one who had purchased that said vehicle has not been supported with any evidence.

Having gone through the submissions and the lower court records, here is my analysis;

There is no dispute that the previous owner of the Motor Vehicle No. T 463 DLX make Toyota Harrier is Renida Peter Kitengule. The issue is, to whom one that said vehicle was subsequently sold, the deceased or the 1<sup>st</sup> Respondent? While the Appellant alleges that the said Renida Peter Kitengule sold it to his father (deceased), the 1<sup>st</sup> Respondent said that Renida Peter Kitengule sold it to her, through her brother namely Stephen Peter Kitengule.

According to the records, the said Motor Vehicle with Registration No. T 463 DLX make Toyota Harrier was not there in a list of the deceased's properties. This can be noticed in the Primary Court records including Form No. 1 which is used for making application for the appointment as the administrator of the deceased's estates. Among the things that are used to be filled in that said form is the list of properties that the deceased has left. The fact that the said vehicle is not listed, it is a rebuttable presumption that the said vehicle was not a property of the deceased.

At the trial court the Appellant asserted that the said vehicle is the property of the deceased, but this allegation has not been supported with any evidence apart from his mere allegation that it is the information that he has. The Appellant asserted that he had been communicating with his father (deceased) in respect of that said vehicle while he was in progress to purchase the same. He tendered to court the photos and text messages for the communication that he used to make with the deceased. However, upon going through the said texts I have noted that neither of them shows that the deceased is the one who had provided money for the purchase of that said vehicle.

On the other hand, the 1<sup>st</sup> Respondent submitted the contract of sale for that said vehicle (exhibit J) which shows that she had



purchased it from one Renida Peter Kipangula on 24/03/2018 through her brother namely Stephen Peter Kipangula at the tune of Tsh. 25,000,000/=. By that time the deceased was still alive. He passed away on 08/06/2018.

The issue of validity on that said business between the seller and the 1<sup>st</sup> Respondent as a purchaser is irrelevant to be discussed in this matter. If the Appellant finds any illegality in that business, he can report it to the relevant authorities for their necessary actions, if he is so interested. For the matter at hand there was no evidence adduced at the trial court which proves that the said vehicle was owned by the deceased.

As for the claim of Tsh. 12,417,000/= the records, including the Respondent's submission made at the trial court, as well as paragraph 4 of the Applicant's affidavit filed at the District Court and its annexure dated 28<sup>th</sup> June, 2018, transpire that on that date the Port Administration for Kigoma, a working place for the deceased at which he was attached, issued a letter headed *COST OF TRANSPORTING PERSONAL EFFECTS OF LATE DAVID C. KATEMBO C/NO. 90955 FROM KIGOMA TO MAHENGE (UCHINDIRE)* amounting Tsh. 13,974,000/=. The wordings in the said document are very clear that the office in which the Deceased was working provided the said sum of money for transportation of

the deceased's personal effects in a breakdown that has been specified in that said document.

The Appellant alleged that it was wrong for the lower courts to regard the said money as condolence. In my view the said money has a nature/element of condolence though it doesn't expressly states so. The reason behind it being called ***costs for transporting the deceased's personal effects*** instead of ***condolence*** might be the fact that it is from the employer, not from individuals.

The term condolence means expression of sympathy, especially on the occasion of death of a person's relative or close friend. It can be offered to a widow for the death of her husband. In this matter, whether the said money are from the office or individuals, they can generally be called condolences as they were issued during the burial ceremony by the office to the widow so as to comfort the deceased's survivors including the said widow during the burial ceremony.

As it is for the money from the individuals, which we basically call them rambirambi (condolences), this money can also be used to support any other burial expenses as they are basically issued for funeral matters. In this case the Deceased's employer provided the

said money to the Deceased's Wife/Widow (Respondent) to support the funeral in general. As long as the said money is for supporting the burial expenses, they can be termed condolences, hence not subject to the deceased's estates.

All in all whether the said money is regarded the condolences or not, it cannot form part of the deceased's estates. Not only that but also the fact that the said money had been provided to the 1<sup>st</sup> Respondent as the deceased's wife (widow) and not the Administrators of estates, they cannot form part of the deceased's estates.

Further, I would like to clarify that, the deceased's estates are the properties which the deceased has been holding before he had passed away. Those properties are the ones which are subject to distribution to the legal heirs. I therefore agree with the observation of the lower courts that the said money that the deceased's employer had provided to the 1<sup>st</sup> Respondent cannot be regarded the deceased's estate as it was not among the properties that he was holding. Therefore, even if it is proved to exist, the said money having a nature of condolence cannot subject to distribution to heirs.

Generally, this appeal must fail due to the following observations; **First**, I can agree with the submission of the Respondent's Counsel that the grant of those money to the 1<sup>st</sup> Respondent as the Deceased's wife was done by virtue of the deceased's employment. Even the contents of that said document transpire that position. **Secondly**, the Appellant provided no evidence that only Tsh. 2,000,000/= had been spent for transporting the personal effects of the deceased from Kigoma to Mahenge (Uchindire). As the one who alleges, the Appellant ought to have proven his allegation. That is a position of the law as per sections 110(1) and 112 of Tanzania Evidence Act [Cap 6 RE 2019]. **Thirdly**, the fact that there is no claim that something went wrong in that task of transporting the deceased's personal effects, it means the said programme was fully effected by the 1<sup>st</sup> Respondent as required.

Be it noted that the said money had been specifically calculated for that purpose. It led to the transportation of not only the deceased's body and luggages but also the deceased's family members to Mahenge (Uchindire) in Morogoro where the deceased was buried.

In that sense, I find it hopeless for the Appellant to claim for the balance from the said provided sum of money which was given to

the 1<sup>st</sup> Respondent as a deceased's wife for the purpose which were actually executed as required.

In upshot, I find the appeal with no merit, hence dismissed. As the issue involves order as to costs.



**S.M. KULITA**

**JUDGE**

**30/05/2022**

