

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

PC. CIVIL APPEAL NO. 14 OF 2022

*(Originating from Masasi District Court in Administration of Estate
Appeal No.10 of 2022 and Probate and Administration Cause No.61 of
2022 from Lisekese Primary Court)*

MARIJANI SELEMANI @MROPE APPELLANT

VERSUS

KASSIM MANZI MILLANZI..... RESPONDENT

JUDGEMENT

4/10/2022 &15/12/2022

LALTAIKA, J.

The appellant herein **MARIJANI SELEMANI @MROPE** and the respondent **KASSIM MANZI MILLANZI** are senior citizens “wazee” in their own right. They would normally not be in the court corridors. Intriguingly, what brings them to this court is disagreement over administration of estates of the late **Zaituni Kassim Manzi Millanzi**, daughter to the respondent and his late wife **Bimwana Maulidi Nakohi Mama Zaituni** who passed away in 1995.

The “petition of appeal” aimed at moving this court carries five grounds which are full of grammatical errors and at times expressions that suggest



direct translation from Kiswahili. For reasons that will become obvious later, I choose to endure the pain to reproduce them as follows:

- 1. That, both lower courts erred in law and in fact for holding that, the probate was conducted under Islamic faith the one the deceased Zaituni Kassim Milanzi professed to*
- 2. That both lower Courts erred in law and in fact for distributing deceased's estate to beneficiaries basing on Islamic rites while the Respondent never married the deceased Zaituni Kassim Millanzi's mother nor did the BAKWATA involved when the matter was at the trial Court.*
- 3. That both lower courts erred in law and in fact for denying Asha Maulid Nakohi right to inherit the deceased Zaituni Kassim Milanzi's estate for she cared her from when she aged three (3) years till her death.*
- 4. That the trial Magistrate and so the Appellate Magistrate erred in law and in fact for not casting full light to the totality of deceased Zaituni Kassim Milanzi's lifetime and how the respondent abandoned the deceased and the status of involvement of Asha Maulid Nakohi to the sustainability of the late Zaituni Kassim Milanzi.*
- 5. That this Honourable Court vide its judgement in PC Civil Appeal No 8 of 2019 recognizes Asha Maulidi Nakohi, a lawful heir. Therefore, both that Trial and Appellate Courts erred in law and fact by insubordinating (sic!) this Honourable Court.*

Briefly the factual backdrop to put the above grounds and subsequent deliberations in the proper context is as follows: The late Zaituni as passionately described by her father (the respondent) was an intelligent, hard working person with disability (PWD) and a civil servant employed by Masasi District Council. The deceased died intestate on 16/6/2018 whereupon a family meeting appointed two administrators namely **Rashidi Ally Mbweso** and **Marijani Selemani Mrope** (the current appellant). It is on records that the deceased left behind, among other properties, two

houses one situated at Mkomaindo Avenue in Masasi Town and another in Songambebe Village, a business stall at Sokosela Area, a piece of land at Songambebe, bank accounts and the National Micro-finance Bank and Cooperative Rural Development Bank CRDB.

Upon being granted letters of administration of estate by **LISEKESE PRIMARY COURT** (the trial court) on 27/07/2018 the dual could not get along. Frequent disagreements (including, allegedly, physical fights) between the administrators made it difficult for them to carryout their duties as required by law.

Consequently, the respondent instituted proceedings at the trial court praying for revocation of both administrators. The complainant raised another issue namely that the second administrator was fraudulently trying to include the deceased's aunt (mama mkubwa) Asha Maulidi Nakohi among heirs contrary to the dictates of Islamic Law of Succession. As for the first issue, the learned trial magistrate (**Hon. E.J. LUTALEMBA**) decided, plausibly I would say, to revoke letters of administration of the first administrator Rashidi Ally Mbweso on the account that he had since travelled to a neighbouring country without any signs that he would be able to discharge his duties effectively. The learned trial Magistrate directed the second administrator to proceed with his duties.

On the complaint about attempts to include Asha Maulidi Nakohi among the heirs, it appears to me, with due respect, the learned Magistrate took it very lightly. The trial court's judgement reads in part:

"Nne mleta maombi anasema msimamizi wa mirathi no.2 atenguliwe kwakuwa amemwingiza Asha Maulidi Nakohi kwenye mirathi wakati siyo mrithi wa wa marehemu...kwa bahati nzuri uamuzi wa mahakama ya mwanzo katika ukurasa wa mwisho umeeleza pia sheria inayopaswa kutumika kugawa mirathi kuwa niya kiislamu...Sheria ya kiislamu imeeleza wazi nani mrithi na nani siyo mrithi wa marehemu, hivyo msimamizi wa mirathi akigawa mali za marehemu kwa mtu asiyestahili, mleta maombi au mtu yeyote ambaye ni mnufaika wa mirathi anaweza kupinga mgao uliofanywa na wasimamizi wa mirathi na siyo kuomba kumtengua msimamizi."

That part of the trial court's decision, in my opinion, lacked boldness. It left things to chance. It is true that the judgement referred to (*Uamuzi wa Mahakama ya Mwanzo katika ukurasa wake wa tano*) had clearly stated that the estate was under Islamic law. Nevertheless, it was an opportune moment for the trial court to issue directives and remind the administrator to abide by the book. For the interest of preventing endless litigation, judgements need to be not only clear but also bold.

As expected, the respondent was dissatisfied with the decision of the trial court. He appealed to the District Court whereupon **Hon. R. YUNUS, RM** partly allowed the appeal. In addition to upholding the decision of the trial court of retaining the second administrator in his position, the Learned Magistrate confronted head-on the complaint on inclusion of Asha Maulidi Nakohi among the heirs, contrary to the dictates of Islamic Law of Succession.

In her 7 page meticulously written judgement, Hon. **R. YUNUS, RM**, having cited leading authorities in the area stated;

"For a person to be bequeathed in deceased estate that person must be related to the deceased by either blood or marriage...The aunt (mama mkubwa) will only be called to inherit were (sic!) there will be residue left in the deceased's estates other than that she is not entitled to claim for anything."

Dissatisfied with that decision of the District Court, the appellant has knocked the doors of this court armed with the five grounds of appeal reproduced hereinabove.

When the appeal was called on for hearing, parties appeared in person, unrepresented. As usual when parties appear unrepresented, this court uses the story telling approach to understand the depth of the matter from the horse's mouth. That was done successfully, then parties started reacting to the grounds of appeal as read out and explained by the court in Kiswahili.

Arguing on the first ground of appeal, the appellant stated that he agreed that the late Zaituni Kassim Milanzi professed the Islamic Religion. However, argued the appellant, when they (the family) went to court, they did not go for Islamic law. Their aim was to access the law as it applied to everyone else. The appellant opined that the trial court was not right in deciding that the probate was to be administered as per Islamic law. He added that the same case as a surprise because he was not aware of the Sheikh who had advised the court accordingly. He, allegedly, requested to be shown a copy of the ruling of the sheikh but in vain.

The respondent, on his part, averred that when the court decided that Islamic law would apply it was at Lisekese Primary Court before a Magistrate called Goroi who had since then been transferred to Temeke District Court.

The Magistrate had consulted the sheiks averred the respondent adding that he invited sheiks in court, but the appellant did not turn up. The respondent stated further that the sheiks wrote down their explanation on the position of the law in Islam, and he had a copy of their document with him. The respondent averred further that he believed that even the District Court decided that the estate be administered under Islamic Law based on what had transpired at the trial court.

The District Court Magistrate was called Rehema Yunus, recalled the respondent, adding that [the magistrate] had pronounced that Asha Maulidi should not be allowed to interfere with the matter because Asha was not the biological mother of the deceased hence she had no connection to the estate of the late Zaituni Millanzi, averred the respondent, as she was a sister to Mama Zaituni who had passed away in 1995. He prayed that the ground of appeal be dismissed.

Arguing on the second ground of appeal, the appellant contended that the respondent never married Bimwana Maulid (mother to the late Zaituni Kassim). He averred that if that was not the case, he dared the respondent to produce a marriage certificate. The respondent, on his part, was enraged. He stated that the appellant was a hypocrite because he (the respondent) had already explained to this court that he married the mother of the deceased by Islamic rites on 30/10/1970. The respondent emphasized that in those days there were no marriage certificates. He explained that his late wife was called Bimwana Maulidi Nakohi and the late Zaituni was her first and their only child.

On the third ground, the appellant averred that the lower courts had erred in denying Asha Maulidi Nakohi a part in inheriting the estate of the late Zaituni. The appellant averred that Asha Maulidi Nakohi had taken care of the late Zaituni since she was three and was the one who took her to school. The appellant emphasized that Zaituni's father was there, but he was never seen anywhere in the life of Zaituni.

The respondent on his part, reminded this court that in the previous appearance he had explained in front of the respondent, everything about the life of her late daughter. He emphasized that the late Zaituni was born on 6/12/1971 and his wife and him took care of her till her mother was promoted to glory in 1995. The appellant, trying very hard to control his anger, wanted to know when exactly Asha took care of the late Zaituni. He explained that when her mother passed away in 1995 their daughter was already working with the water department [of Masasi District Council].

Having calmed down, the respondent recalled that when the late Zaituni started studying at Primary School in 1981, he went to work with Mount Camel Rubber Factory in the City of Dar es Salaam and whenever he got the money he sent it home using the then Posta na Simu services. When the late Zaituni was working with Masasi District Council, averred the respondent, she got a fiancée. The fiancée wrote him (the respondent) a letter to introduce himself and he wondered how the fiancée could write to him if he was not in good terms with his daughter.

On the fourth ground, the appellant threw more blows accusing the respondent of never having been involved in the life of the deceased. He

emphasized that the respondent just found the deceased at her at work. The appellant averred that the late Zaituni lived with Asha Maulidi throughout her life when her father was not there. When the deceased passed away, the appellant asserted, the family sat together and decided to appoint Asha Maulidi, but she was later removed because of potential financial benefits. The appellant emphasized that his desire was that directives of the court are adhered too. He wondered whether he was in the Court of Appeal.

The respondent, on his part, was extraordinarily calm this time around. He stated assuringly that he had shared documents showing how he took care of her late daughter. He recalled that he went to the College for People with Disability got a position and managed to take her there for 2 years where she studied Typing and Clerkship. Upon completion, stated the respondent with a sense of pride, she got a certificate. The respondent averred that he had a copy of the certificate of her late daughter with him right there in court and dared the appellant to tell the court whether such efforts of taking his daughter to college were done by Asha Maulidi. He wondered if Asha could even tell where that college was located.

On the fifth ground, it became way too obvious that the appellant was speaking from a script and was somehow trying to pull the leg of the judge. He averred that the lower courts were misdirected and did not show respect to the High Court. He begged to ask if there was anyone (in the lower courts) more than a judge. The judge had already decided that he distributes the estate to two hers namely Asha Maulidi and Kassim Milanzi, averred the appellant adding that as the administrator was getting nothing.

The respondent calmly reacted that in his opinion, the lower courts had not shown any insubordination. He insisted that the appellant and a fellow administrator were ordered to proceed from where they ended in distributing the estate and they had filled a form to prove that the only heir was Kassim Manzi Millanzi. No court has been ignored; the respondent stated thoughtfully.

This court took the liberty, after the parties had finished submitting on the grounds of appeal, to invite them for any final comments. Gates of hell were let loose. It was a golden opportunity to the respondent. The appellant on his part prayed rather impatiently, (displaying a sense of pride and entitlement) that this court allows him to go back and fulfil his duties. He also prayed that the court looks closely on the rights of Asha Maulid on inheriting the estate. He insisted that there were two heirs Asha Maulidi and the respondent.

The respondent on his part, on hearing the last sentence of the appellant, almost cried out. I must say that from the moment the respondent started speaking his words were heartfelt. It did not require one to be a police detective to realize he was connecting dots to one of the "evilest" plots one can imagine. He lamented that the appellant had been disturbing him for five years and he had all the court summonses served to him throughout that half decade. He mentioned names of so many people **who had ganged up to rob him of his daughter's estate**. I will spare the names and positions here purposely to respect their right to be heard. However, the respondent was bold enough to mention that one of the persons who had

been disturbing him all along to the extent of appointing himself a court server to bring him summonses **was right there in court.**

To my utter astonishment, it turned out, that person was a local real estate agent known in Kiswahili as **Dalali (name withheld)**. He was shamelessly in my chamber seated next to the appellant all along. Upon being asked what had brought him in court while he was not a practicing advocate, **he almost collapsed.** It must have been a nerve wrecking moment to the Dalali from Masasi. Needless to say, he was immediately arrested and, as I pen down this judgement, criminal charges against him are being explored. Some civil servants were also implicated but I leave that to relevant processes. I choose not to be derailed from this judgement, at least for now.

Having dispassionately considered rival submissions, grounds of appeal and lower court records, I must say that I am amazed at how far people can go just to try to use courts of law to fulfil their thuggery, selfish and evil plots. This appeal is a classic example on how innocent, semi-illiterate folks can be used, sometimes unknowingly, to justify daylight robbery. I will go straight to the grounds of appeal.

On the first ground, I have painfully gone through the lower court records, and I am fortified that the choice of **Islamic Law of Succession** for administration of estate of the late Zaituni Millanzi was arrived at both procedurally and justly. The appellant was appointed one of the administrators of estate. The role of administrators of estate in our jurisdiction is too well known. It appears to me, however, that along the

way, the appellant was influenced and the plot for thievery started. A group of thieves was not ready to see Mzee Milanzi benefit from correct interpretation of the law. As articulated by the learned appellate court magistrate, Islamic Law of Succession recognizes only people who are related to the deceased by blood or marriage. (See **Shambaa Juma and Others V. Rashid Juma (1973)** E.A.L.R. 174 and **Sofia Said and Yusuf Mohamed Musa v. Awadh Ahmed Abeid and three Others** [1992] TLR 29 as cited by Hon. Yunus, RM.)

Since the deceased was not married, had no children of her own, nor siblings and her mother had also passed away, the one and only heir as per Islamic Law of Succession happened to be her father Mzee Millanzi. Looters were not ready to see this happening and had ganged up for five years causing untold suffering to poor Mzee Millanzi. Unfortunately, this court is not ready to bless such outright robbery no matter who is involved behind the scenes. I can only add to whoever is involved in the thuggery that the writing is in the wall. This ground of appeal is hereby dismissed.

On the second ground, I must say there is no limit to what someone with some little knowledge in law can do to create havoc in court. It becomes even worse if that person is determined to use that little knowledge to rob the poor. Creating confusion on validity of marriage that took place in 1970 to a spouse who had since then passed away (as far back as 1995) because of lack of a valid certificate of marriage irritates my ears. Luckily, I could observe the demeanor of the appellant and there was no doubt that he was coached. He was properly instructed by some evil men and women hiding somewhere to cause trouble. He could hardly utter certain expressions

without long breaks and meandering. What if I did not take that approach to allow story telling?

Many are times (and I do not say this to discredit some fantastic legal aid providers out there) the anonymous "drafters" of terrible "Petitions of Appeal" like the present one, would insist that hearing of the appeal proceeds by way of written submission. Lo and behold, woe to the trees from whose materials papers are made and to the ink and the printers. Things that get printed out and submitted to court to support such claims would cry out for mercy if they could.

The practice of law, I would suggest, should be left to the trained, qualified and (if I may add) enrolled men and women in our country whose number has surpassed twelve thousand and counting. At the very least, some disciplinary actions can be taken against them. I am not aware of any mechanism in place at the moment to punish "bush lawyers" (as they are often called) whose names do not appear anywhere in the "pleadings" submitted to court. I see no merit on this ground and it is hereby dismissed. The third and fourth grounds of appeal are on the same subject and lack merit they are dismissed outright.

As for the fifth ground, the appellant is fully aware that the same was on disagreement between the administrators and cannot in anyway be interpreted as endorsing any particular form of administration of estate. As correctly stated by the respondent, this Court merely ordered the parties to proceed from where they ended in distributing the estate according to law. I can only add, albeit in passing, so much water has flown under the bridge

since then. **Applicability of Islamic Law of Succession is no longer an issue.** Asha Maulidi Nakohi, the aunt to the deceased might have contributed to the upbringing of the deceased Zaituni. There is no doubt about that. In our country, children deserve attention of the entire community. Whoever does anything to show kindness and hospitality to a child, does it because it is the right thing to do.

No one expects to be paid back for their kindness to children who are considered "Angles of God" (Malaika wa Mungu) in Tanzanian culture. Showing kindness and mercy to children is a duty we owe to the next generation and humanity in general. If that is what is expected of a stranger, what about one's own aunt? We are all admonished to refrain from entertaining any thoughts of expecting to be paid back for our kindness. In Kiswahili they say "Tenda Wema Nenda Zako" (Do kindness and leave!)

Now what is the way forward? As indicated, both the trial and first appellate courts see no need of revoking letters of administration of the appellant. This court does not normally interfere with concurrent findings of its lower courts unless they are manifestly erroneous. It is in the above spirit of consistence that I hesitate to revoke the appellant's letters of administration of estate *suo motto* even though, after the above discussion especially suspicious relationship with the *Dalali* awaiting criminal investigation, he can hardly be trusted. Nevertheless, I choose to go by the wisdom of the learned magistrates.

In the upshot, this appeal is dismissed in its entirety for lack of merit. The appellant who is the administrator, is ordered to proceed with

distribution of estate to the sole heir **KASSIM MANZI MILLANZI** as per Islamic Law of Succession forthwith and finalize the same within four months from the date of this judgement. The administrator should account to LISEKESSE PRIMARY COURT. Each party to bear its own costs.

It is so ordered.



Court

E.I. LALTAIKA

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**JUDGE
15.12.2022**

This judgement is delivered **this 15th day of December 2022** in the presence of both parties who have appeared unrepresented.



Court

E.I. LALTAIKA

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**JUDGE
15.12.2022**

The right to appeal to the court of appeal fully explained.



E.I. LALTAIKA

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**JUDGE
15.12.2022**

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