

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TEMEKE SUB-REGISTRY
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE

PC CIVIL APPEAL NO. 10 OF 2022

(Arising from the decision of District Court of Kinondoni at Kinondoni in Probate Appeal No. 32 of 2021 delivered by Hon. Jacob, SRM on 22nd November 2021)

ESSAH USWEGE MWAKITALIMA..... APPELLANT

VERSUS

SUZANA JUELA SIPU..... RESPONDENT

JUDGMENT

Date of last order: - 21/06/2022
Date of judgment: - 15/12/2022

OPIYO, J.

The appellant herein is aggrieved by the decision of the District Court of Kinondoni at Kinondoni in Probate Appeal No. 32 of 2021 delivered by Hon. Jacob, SRM on 22nd November 2021, appeals to this court on the following grounds;

1. That, the 1st appellate court erred in law and fact by revoking the letters of administration granted to the appellant and appointing the respondent as a sole administrator on the ground that the appellant failed to file the inventory and accounts while it was an obligation by both parties herein to file inventory and accounts as the administrator of the estate.



2. That, the first appellate court erred in law and fact by blessing the re-appointment of the respondent as a sole administrator without considering that the respondent has misappropriated the deceased estate and has hidden some of the deceased properties.
3. That the 1st appellate erred in law and fact by failing to take into account the existence of the deed of settlement filed by the parties herein during the hearing of appeal no. 10 of 2017 before Kinondoni District Court.

Wherefore the appellant prays for the appeal to be allowed and the decision of the appellate court to be quashed and set aside, the appointment of the respondent to be revoked and any other person to be appointed as administrator of the deceased estate.

The matter was disposed of by oral submission where the appellant enjoyed the service of counsel Leslie Koini and the respondent appeared in person. Submitting on the first ground, counsel Koini stated that, the court erred in revoking letters of administration for failure to file inventory while it was their joint responsibilities as co-administrators as they were appointed both at Sinza Primary Court. The clashes between them made the parties fail to discharge their duties as administrators, as the appellant was accusing the respondent for squandering the deceased estate as she used 17,000,000/= that was in the bank and she wrote a letter to the Magistrate in charge on 14/3/2017 which was received on 15/3/2017 demanding revocation of the respondent. On the other side the respondent was accusing the appellant for mortgaging Kyabakari house forming part of the estate. As a result appellant appointment was revoked. He then argued that, if at all they both failed



to file inventory as required by the law, they should have been punished equally.

She further stated that Primary Court has a mandate under rule 2(a) of MCA, Cap 11, R.E 2019, Third Schedule, to appoint any among the beneficiaries to administer the estate if the revocation is based on failure to discharge administrators obligation. But in this case it was wrong to appoint the respondent as she was hiding some of the deceased properties and spent 17,000,000/= Account no. 207250989 NMB for her own benefit revealing vivid dishonest. He cited the case of **Sekunda Mbwambo v Rose Ramadhani (2004) TLR 339-HC 443** to fortify his argument that an administrator should be a reasonable person and who is faithful.

Also, the counsel for the appellant stated that the court failed to consider the deed of settlement filed on 11/9/2017 before Kinondoni District court. This settlement led to the withdrawal of appeal no 10 of 2017 before Kinondoni District Court. Unfortunately, the court did not adopt the said deed contrary to rule 52 of the MCA, Civil Procedure in Primary Courts. He finally prayed for the appeal to be allowed by quashing and setting aside the decision of the District Court, the respondent's appointment is revoked and any other beneficiary be appointed.

Replying to the submission, the respondent stated that, they filed a petition at Sinza Primary Court and she won the case both at Primary Court and District Court hence this appeal. She argued that, the appellant has failed to consider that the children need school fees as she has been renting the deceased house without providing for the deceased



children. She has made her son Nicolaus Kang'ombe to benefit from deceased property instead of the deceased beneficiaries by occupying the Kyabakari house. That, she also wanted to mortgage and even sell the same house. She further stated that she is a housewife who is always made to be in court, how can she manage to live a life like that with the children as their aunt (appellant) does not help with anything?

Lastly, the respondent stated that she took 17,000,000/= for payment of school fees and the upkeep of three beneficiaries who are deceased children as all the children except Dorice (*who was grabbed by the appellant*) are about 18 years but are still at school, She prayed for the appeal to be dismissed.

In the rejoinder, counsel Koini stated that they agreed that, the Kyabakari house be given to the deceased mother, and it was not proper to take 17,000,000 million herself in the presence of 5 beneficiaries and they are two administrators she should have consulted the other administrator.

I have considered the submission of both sides and gone through the entire record. In disposing this appeal, I prefer to state with the third ground that the 1st appellate erred in law and fact by failing to take into account the existence of the deed of settlement filed by the parties herein during the hearing of appeal no. 10 of 2017 before Kinondoni District Court, for logical sequence. It is noted from the records that there was indeed a settlement agreement entered between the parties on 5/9/2017. This led to withdrawal of the Probate Appeal No. 10 of 2017 before Kinondoni District Court, Hon. Lihamwike RM on 11/9/2017. After that, both parties jointly notified the trial court of the outcome of



their appeal through a letter dated 19/9/2017 that was received by the trial court on 21/9/2017 enumerating the terms of their agreement. The existence of the said settlement on the distribution is reflected at page 11 of the typed proceedings of the trial court where it directed the distribution to be in accordance to the settlement in the following words:-

"Shauri limerudishwa toka Mahakama ya Wilaya ya Kinondoni baada rufaa ya Muomba rufaa kupigwa Chini/ Kuondolewa kwa sababu Mkata rufaa na mjibu rufaa kufikia kwenye Maamuzi ya kulimalizio sw hili au mgogoro kwamakubalianohayo yaliyofanyika nje ya Mahakome baadae kuyapeleka Mahakamani hapo, wawili hao walifanikiwa kugawa mali hizo za marehemu pamoja na pesa zilizoachwa na marehemu na wote wameridhia mgawanyo huo hakuna mwenye pingamizi lolote ...

Amri:

Kupitia makubaliano ya warithi wote hao hapo juu ya mgawanyo huo, mgawanyo unapitishwa na utekelezaji wa mgawanyo huo utafanyika kwa mjibu wa makubaliano hayo.

Washauri: 1. Saini

2. saini

W. kayombo- hakim

2/11/2017"

After the above confirmation and direction that the distribution be governed by their agreement, the parties were not seen until on **07/05/2021** before **Hon. Hamza, RM** where the respondent prayed for the appellant's appointment to be revoked. The appellant's



appointment was subsequently revoked leaving the respondent as a sole administrator.

From the facts above and upon perusal, the deed of settlement was entered between the appellant and the respondent as both were appointed as co-administrators who got into conflict on how to distribute the estate. On 5/9/2017 the parties agreed on the manner of distribution, but they never honoured their settlement. Rule 5 of the Magistrate's Courts Act, Cap 11, R.E 2019, Fifth Schedule puts the general duties on administrators as follows;

"An administrator appointed by a primary court shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration, and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court."

The parties herein by then were co-administrators and they had joint duty to collect and distribute the estate to legal heirs, but seemingly due to their misunderstanding they did not discharge their above duties properly after they failed to file accounts of the estate in accordance to their own settlement.

The issue that follows is whether, the court was right in revoking the appellant's appointment based on the complaint by the co- administrator

for failure to discharge her duties. This brings us to determination of the first ground where the appellant challenges her revocation alone leaving the other administrator, respondent herein. The appellant stated that, as they were co-administrators it was their duty to file the inventory and final accounts, and in case of revocation for failure to do so, then both were to be revoked. This made me sail to rule 10(1) of the Primary Courts (Administration of Estates) Rules GN. No 49 of 1971 which makes it a mandatory for the administrators to file an inventory within four months in Form V after they have been appointed in Primary Courts. In the case at hand, the parties were supposed to file their respective inventory in accordance with the law and later accounts of the estate in accordance to the deed of settlement in Form VI. Contrary to that, made a good ground for revocation, and in case of default the revocation has to be for both administratrix and not only the applicant as they were co-administratrix hence they have the same duty to discharge jointly.

Having said that, I find the appeal to have merit and hereby quash and set aside the judgement and decree of the District Court entered on 22/11/2021, I also set aside the ruling of Primary Court of 11/06/2021 revoking the appellant's appointment and hereby reinstate her. The matter be remitted back to the trial court for filling the inventory and accounts in accordance with the deed of settlement. Each party is to bear its own costs.



A handwritten signature in blue ink, appearing to read "M. P. Opiyo".

M. P. OPIYO,
JUDGE
15/12/2022