

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

DC CIVIL APPEAL NO. 32 OF 2022

(Arising from the ruling of the District Court of Kongwa at Kongwa in Misc.
Application No. 1 of 2022 dated 14th July, 2022)

ELIS MAEDAAPPELLANT

VERSUS

PIA SYLVESTER MPASA.....RESPONDENT

7/2/2023 & 21/2/2023

JUDGEMENT

MASAJU, J.

In the District Court of Kongwa, the Respondent, Pia Sylvester Mpasa, successfully applied for management and administration of the estate of his son, SLYVESTER JUMBE MPASA, who is mentally disordered. Aggrieved by the grant, the Appellant, Elis Maeda, wife to Sylvester Jumbe Mpasa and who testified as PW3 has come to the Court for an appeal.

Her Petition of Appeal contain three grounds of appeal which can be summarily merged into the complaint that, the trial Magistrate erred

in law and fact in appointing the Respondent the manager and administrator of the estates of Sylvester Jumbe Mpasa without considering that the Appellant is the legal wife who is taking care of two children and that she filed an objection against the Respondent's appointment.

The Respondent contests the appeal as she filed a Reply to the Petition of Appeal with a preliminary point of objection on the law, that the Appellant has no *locus standi* in the appeal.

When the appeal was heard in the Court on the 7th day of February, 2023 the Appellant was represented by Ms. Isabela Mwalulefu, the learned counsel while the layman Respondent appeared in person.

The Appellant submitted on the 1st and 3rd grounds of appeal in a consolidated manner that there was a certificate of marriage between the Appellant and Sylvester Jumbe Mpasa, birth certificates of their two issues who are taken care of by the Appellant thus she prayed the Court to grant her the right and power to administer Sylvester Jumbe Mpasa's account so that she can manage to raise their two children.

As regards the 2nd ground of appeal, the Appellant submitted that she objected to the appointment of the Respondent to administer the

account but the trial Court did not consider the said objection in its ruling. The Appellant prayed the Court to allow the appeal with costs.

The layman Respondent contested the appeal by adopting her Reply to the Petition of Appeal together with the preliminary point of objection therein to form her submissions against the appeal in the Court. The Respondent added that she is the one who is nursing and taking care of her serious sick son who is also the Appellant's husband. The Respondent prayed the Court to dismiss the appeal.

That was all by the parties for, and against the appeal in the Court.

The trial court record reveals that the Respondent's application was made *ex-parte* under to section 19 of the Mental Health Act, 2008 supported by an Affidavit sworn by the Respondent. Five witnesses testified thereto. The Appellant, though the wife to Sylvester Jumbe Mpasas, was none other than the only witness who testified against the appointment of the Respondent. Her objecting testimony could not therefore amount to an objection subject to determination by the trial court envisaged under section 24(7) of the Mental Health Act, 2008. Such an objection, if any, could have been filed by way of a Counter

Affidavit before the trial court. There is nowhere in the original record which reveals that the Appellant filed an objection as she alleges in the Petition of Appeal and her submissions in support of the appeal in the Court.

Furthermore, the law does not provide that only the spouses exclusively qualify for appointment of managers and administrators of estates of the mentally disordered persons. As a matter of law and fact, the Respondent, Pia Sylvester Mpsa, qualifies for appointment of the manager/administrator of the estate of her biological son, Sylvester Jumbe Mpsa, a mentally disordered person under section 19(1) of the Mental Health Act, 2008 which reads thus;

"19(1) Application for an order for the management and administration of the estate of a person with mental disorder may be made by a parent, a child who has attained the age of eighteen, friend, relative or any interested person under whose care or charge such person is."

The Respondent, besides of being a biological mother to Sylvester Jumbe Mpsa, a mentally disordered person, she was the one who was also taking care of him by the time the Application was made as so

testified uncontroverted before the trial court (PW1-PW5). The appeal was therefore devoid of merit.

The Respondent, however, shall manage and administer the estate of her biological son, who is mentally disordered person, Sylvester Jumbe Mpasa, in accordance with law, section 24(3) (5) and (6) of the Mental Health Act, 2008 in particular. This includes maintenance of Sylvester Jumbe Mpasa's two children: Norah and Stanslaus accordingly. In the event the property which belong to the estate is embezzled, misappropriated or used otherwise, any interested person may petition the court for remedy thereof pursuant to section 26 of the Mental Health Act, 2008.

That said, the Appellant had *locus standi* to file the appeal in the Court under section 15 of the Mental Health Act, 2008 save that this appeal is hereby dismissed for want of merit. The parties shall bear their own costs accordingly.




GEORGE M. MASAJU

JUDGE

21/2/2023