

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

PC CIVIL APPEAL NO. 60 OF 2022

MAISALAH DACHI ABDALLAH.....APPELLANT

VERSUS

DAUDI DACHI ABDALLAH..... RESPONDENT

(Arising from the decision of the District Court of Temeke, One Stop Judicial Centre
at Temeke)

(Jacob- RM)

dated 28th July 2022

In

Probate Cause No.12 of 2022

=====

JUDGMENT

22nd September & 20th October 2023

Rwizile, J.

It was probate cause No. 56 of 2018 at the primary court of Kariakoo where the appellant was appointed to administer the estate of the deceased Dachi Abdalah Dachi who died testate. The judgment was pronounced on 8th February 2019. The following were the orders of the court;

- i. Mwombaji ameteuliwa kuwa msimamizi wa mirathi hii kuanzia tarehe 8.2.2019.*
- ii. Hati ya usimamizi itolewe mara baada ya uteuzi huo.*
- iii. Mchanganuo wa ugawaji wa mali kwa warithi uwasilishwe mahakamani.*

It seems the administratrix did not comply with the order of the court. The complaint was lodged at the primary court which appointed her to administer the estate. The court again directed the following;

Kwa kuwa mirathi hii ni ya muda mrefu,msimamizi anapewa muda wa wiki nne kukamilisha zoezi la ugawaji mali na aje kufunga mirathi tarehe 13.10.2021.

After the directions above, it was also ordered that;

- i. Msimamizi agawe mirathi kwa warithi na alete mchanganuo wa mgawanyo wake.*
- ii. Kuleta mrejesho wa amri ya kwanza, pamoja na hesabu na mgawanyo wa mirathi na kufunga mirathi ndani ya mwezi mmoja yaani tarehe 13.10.2021.*

The administratrix again did not comply with the order of the court. It was on this occasion when her appointment was revoked by the same court, it was on 4.2.2022 and it was ordered that;

- i. Msimamizi Maisala Abdallah Dachi ametenguliwa kuanzia leo tarehe 4.2.2022 si msimamizi tena wa mirathi ya Dachi Abdala Dachi.*
- ii. Familia ikae kikao na kumpendekeza msimamizi mpya ndani ya siku 14 ili aweze kuteuliwa na mahakama na kuweza kugawa mali kwa warithi na kufunga mirathi hii(sic) kwa wakati.*

The revocation order as above aggrieved her, she decided to appeal to the district court. Her appeal, however, was dismissed, and has now appealed to this court on three grounds.

However, at the hearing, the first ground was dropped, two grounds that were prosecuted are as follows;

- i. That the court erred in law and facts by failure to properly determine and consider the position of Islamic law in relation to the 1st respondent's omission from the testator's will.*
- ii. That the court erred both in law and fact by failure to properly consider and evaluate the evidence on record.*

The appellant was under the service of Mr. Frank Mposa, a learned advocate, while the respondent was present unrepresented. The hearing was by written submission.

Submitting on the first ground, Mr. Frank Mposa mostly based on who are the proper heirs. In his submission, he alleged Daudi Dachi Abdallah should not be one of the heirs of the estate due to a change of religion. He said, since he moved from Islam to Christianity, he does not qualify. He made reference to a Holy Quran insisting on non-Muslims to inherit from a Muslim.

Submitting on the second ground on failure to evaluate the evidence, the learned advocate submitted that the first appellate court failed to evaluate the evidence and came to its own conclusion. He argued the decision of the trial court contains misdirection on evidence. The lower court, according to him, misapprehended the substance, nature, and quality of evidence. To put strength into his submission, he cited the case of **Peters vs. Sunday Post Ltd.** [1958] E.A 424.

He further submitted on the right to inherit between people of different religious beliefs and asked this court to allow this appeal.

Opposing the appeal, it was submitted by the respondent that the appeal was just an approach to prevent him from proceeding with the main case at the primary court. Further, it was his submission that the respondent being the son of the deceased is entitled to inherit, and the appellant failed to prove that the respondent has changed his religion.

On the other ground, it was argued that the district court evaluated the evidence and reached the right decision. It is the strong evidence that wins the case, he cited the case of **Hemed said vs. Mohamed Mbilu**, [1984] TLR 113 and section 112 of Evidence Act [Cap 6. R.E. 2019]. It was then submitted that the burden of proof lies on the person who wants the court to decide in his favour. He finally prayed this appeal be dismissed.

Having gone through the submissions, it can be said that the root of this appeal is on acts of the administratrix. She did not attend her obligation on the estate of the late Dachi Abdallah Dachi. There were several court directives before her revocation which she did not comply with. She was to file the inventory which she did not.

The records of this appeal show that the appellant was appointed to administer the estate on 8th February 2019. She was revoked on 4th February 2022, which is almost three years from the date of appointment. He had not filed an inventory or sought for extension to do so.

The task of the administrator after appointment includes collection of the estate, dividing it among the lawful heirs and submitting to the court how the estate has been administered. In actual fact, she ought to have filed an inventory describing the estate that fell into her hands, at a given time and then filed a statement of accounts.

None of the above was filed according to the record. In the case of **Suzana S. Waryoba vs. Shija Dalawa**, (CAT), Civil Appeal No. 44 of 2017 on pages 8-9, it was provided that,

"... according to The Primary Courts (Administration of Estates) Rules, 1971 - GN No. 49 of 1971, a time frame has been provided within which an administrator is mandatorily supposed to submit to the Primary Court a statement in a prescribed form on how the estate has been administered..."

As extracted from the above, the administratrix was required to submit to the trial court how the estate was divided among the heirs. In the case at hand, almost more than three years following her appointment, she had done nothing despite court directives to that effect.

Having said so, it is my view that the lower courts properly evaluated the facts and findings that the appellant failed to hold the office of the administrator. She advanced no good reasons for failure to do her duty. Before the trial court, her testimony was that she lived at Tabora which is far from the estate to be administered. After considering submissions of the parties, and the evidence, I find no merit in this appeal. In the circumstances, the appeal is dismissed. I order no cost.



A handwritten signature in black ink, appearing to be "ACK. RWIZILE", written over a horizontal line.

ACK. RWIZILE
JUDGE
20.10.2023