IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA SUB – REGISTRY)

AT KIGOMA

PC. PROBATE APPEAL NO. 01 OF 2023

REHEMA AHMAD KADUDUYE..... APPELLANT

VERSUS

ADAMU ALLY LWAZIONDA..... RESPONDENT

Appeal from the District Court of Kigoma at Kigoma

(Mushi-SRM)

Dated 23rd January, 2023

in

Probate Appeal No. 11 of 2022

JUDGMENT

10th November 2023 & 9th February 2024

Rwizile, J

Zainabu Rutungulu died intestate at 92 years on 14th January 2015. Five years later, on 11th April 2020, the family meeting proposed Adam Ally Lwazilonda to administer her estate. The respondent applied for letters of administration at Ujiji Primary Court in Probate Cause No. 43 of 2020, which she was successfully appointed by the court without questions on 17th August 2020. Upon appointment, she was directed to file an inventory and exhibit true accounts on or before 17th September 2020 and 17th December 2020 respectively.

Sometimes later, an application for his revocation was filed by the appellant. It was found baseless and dismissed. She was however not

satisfied and so preferred an appeal before the District Court, where she was as well not successful. This therefore is the second appeal.

The following grounds of appeal were advanced: -

i. The learned magistrate erred in law and fact as, cleanly, seeing that, even the judgment of the primary court has mentioned Kahambi Iddi Shimiye that, he represented Rehema Ahmad Kaduduye (Appellant) in the primary court, but, on purpose, the magistrate decided to say that, she did not see any record which shows that Kahambi Iddi Shimiye represent the appellant

ii. The learned magistrate erred in law and fact, as the question of the appellant being given an invitation (to the claimant of the Respondent) or not. Being invited, (by the claimant of the Appellant) to attend a family meeting to find the administrator of the late Zainabu Lutungulu, that issue has been the core of this crisis, but Hon. Mushi did not want to analyze it legally, she was wrong to continue to support primary court easily. So, the Appellant asks this honourable court to look into the laws of evidence if that one can bring anyone before the court and just say that he told someone and he/she was allegedly told he/she was against it, now, without bringing something that proves that the act was done. Is such evidence admissible in the court?

iii. The learned magistrate erred in law and fact as in 2nd ground of appeal Hon. Mushi did not want to take into consideration, the complaint of the appellant about why the house which is the relevant inheritance was sold by someone who is not the

administrator of Zainabu Lutungulu and the money is with the seller, and still the time is long without valid reasons. But the magistrate decided to dismiss this ground allegedly that the appellant prolonged this case since 2020. This is not true, because there is no evidence, showing that before 2022 there was an inheritance dispute involving the appellant, not only that, the inheritance is only one house and he ended by selling it, the respondent asked for an extension of time for what?

iv. That, the learned magistrate erred in law and fact by showing surprise with the 3rd ground of appeal for the appellant not knowing the amount of which the house was sold while seeing a big controversy if the appellant was invited to an inheritance session. In addition, the appellant has requested to peruse the file to satisfy himself before the appeal but has been refused (the letter for request is attached). Other details will be provided during the hearing of the appeal.

During the hearing of this appeal, both the appellant and the respondent were present unrepresented. As laypersons, had nothing material to submit. It is therefore opportune to go through the memo of appeal and proceed to decide on the merits of the matter.

As the grounds of appeal have been argued generally, I will also follow the same trend, and the issue for determination is whether the appeal has merit or not. Considering the core prayer of the appellant is to revoke the appointment of the respondent.

The reasons put forward by the appellant are that no family meeting about the estate of the deceased was held. The appellant is not aware of the

selling of the house and lastly, the appellant alleged was not given her shares.

The essence of the family meeting was discussed in many cases including the case of **Flora Augustine Mmbando v Abdul Daud Chang'a,** (HC), Civil Appeal No. 243 of 2021, on page 12, the court stated that; -

> *"...submission of family/clan meeting in court in probate and administration causes is not a mandatory requirement of the law but a good and cherished practice. Therefore, non-conduction or absence of the said meeting does not invalidate trial court proceedings or be the reason for revocation of the party's appointment to administer the estate ...* "

It is clear therefore, that failure to hold the meeting has been held to be an irregularity which may not invalidate the proceedings. In my view, therefore, that should not be taken as a standalone reason for revocation. After all, there is evidence that the meeting was held but the appellant absented herself for no apparent reason.

Regarding the fact that the appellant was not aware of the selling of the house, it can be stated that consultation is not as well a legal requirement. This was stated in the case of **Mohamed Hassani v. Mayasa Mzee and Mwanahawa Mzee** 1994 TLR, 225 (CA), Civil Appeal No. 20 of 1994, at page 229;

> **"***With regard to the question of whether the consent of all the heirs should have been sought before selling the house, firstly, it was impossible to obtain such consent from the two hostile groups. Secondly, the administrator was not legally required to obtain such consent".*

From the above, the administrator is alleged to have sold the house of the deceased without informing the appellant is not a good reason for the revocation of the administrator.

Lastly, it was that the appellant was not given her share, this was disputed by the respondent. It was stated that it was the appellant who refused to collect her share which was with the administrator. There is no evidence that the administrator without reasonable cause refused to give her share. Going through the record, it seems there is also a misunderstanding between the appellant and the respondent. It is reflected on page 20 of the trial court proceedings thus;

> *"SM1 and SU1 wanagombana mahakamani. Hivyo shauri linahairishwa ili wakajipange watasikilizwa siku nyingine".*

The parties, therefore, cannot be cooked in the same pot. Due to such misunderstanding, it is difficult to believe that the administrator refused to give the appellant his share. The submission by the respondent that the appellant refused to take her share has weight. Under this situation, this ground has no merit. Based on the above analysis, I find no merit in this appeal. I proceed to dismiss it with no order as to costs.

ACK. Rwizle

JUDGE

09.02.2024