

**IN THE HIGH COURT OF TANZANIA**

**TANGA SUB REGISTRY**

**AT TANGA**

**MISC. CIVIL APPLICATION NO. 77 OF 2022**

**AGNESS TULO CHAHOLA** (Administratrix of the estate

of the late TULO HOSSEA CHAHOLA) ..... **APPLICANT**

**VERSUS**

**MVUNILWA ABEL SEMBE** ..... **RESPONDENT**

*(Originating from Probate and Administration Cause No. 06 of 2022 before  
Korogwe District Court at Korogwe)*

**RULING**

*14/05/2024 & 30/05/2024*

**NDESAMBURO, J.:**

The applicant has presented her application asking this court to call the record of the lower court and issue appropriate directions to the appointed administrator. This pertains to the estate of the late Tulo Hossea Chahola, encompassing both the assets solely acquired by him and those jointly acquired with the respondent during their marriage. The application is made by way of chamber summons filed under Sections 3 and 65 of the Probate and Administration of Estates Act,

Cap 352 R.E 2002 and is supported by an affidavit of the applicant. The application was countered by the respondent through the counter affidavit.

In paragraphs 2 to 8 of her affidavit, the applicant attested that she was duly appointed as the administratrix of the estate of the late Tulo Hossea Chahola. Despite the respondent's involvement in family meetings and the petition before the District Court, she has exhibited reluctance to cooperate in the collection and distribution of the deceased's estate. Specifically, the respondent contests that properties jointly acquired with the late Tulo Hossea are not part of his estate. Notably, the applicant specified two houses on Majengo Street in Korogwe Town, household items, and two residential properties on Bagamoyo Street in Korogwe Town. Furthermore, she noted that the respondent has refused to surrender essential documents. The applicant emphasizes the necessity of this court's intervention, as the District Court of Korogwe where the probate matter was filed seems to have no power and failed to compel the respondent to surrender the document, despite numerous requests.

In the counter-affidavit, the respondent contends, in paragraphs 4 to 9, that it is the applicant who disrupts the administration of the estate of the late Tulo Hossea Chahola by including properties that do not belong to his estates. She refutes the claim that the properties mentioned by the applicant were jointly acquired by the deceased and herself, asserting instead that they were obtained separately. Furthermore, she states that she has surrendered all the necessary documents on the deceased's estate. The respondent also maintains that the District Court's decision was correct, as the properties claimed by the applicant were independently acquired by her.

The matter was agreed to be heard by way of written submission and the applicant and the respondent filed their submissions within the scheduled time.

In her written submission, the applicant argues that the respondent and her late father entered into matrimony in 1975 and lived together until the father's passing in 2021. Throughout their marriage, they jointly acquired assets, including a residential property in Mtonga Korogwe, a private car, a house in Kwanduli Bagamoyo in

Korogwe, and a matrimonial home in Majengo ward, Korogwe. However, the respondent claims sole ownership of each of these properties, dismissing any rights that the former spouse may have had. She cites the Court of Appeal's decision in **Leticia Mtani Ihonde v Adventina Valentina Masonyi (Administratrix of the Estate of the late Buhacha Baltazari Kichinda)**, Civil Appeal No. 521 of 2021, which established that even after the demise of either spouse, the rights and interests in properties acquired jointly during their marriage persist and endure with the surviving legal heirs.

She further asserts that in instances of confusion and misunderstanding regarding the distribution of the deceased's assets, this court has the mandate to call and examine the records of the trial court and issue appropriate directions deemed fair and just. This contention is supported by the precedent set by this court in **Super Sami Limited and another v Administrator General and two others**, Misc. Civil Application No. 101 of 2023.

Building upon the above, she therefore urges this court to exercise its authority and grant the application.

In response to the applicant's submission, the respondent argued that all properties jointly acquired by herself and the late Tulo Hossea Chahola were designated for distribution to the heirs, except two houses situated at Kwanduli Bagamoyo and National Street in Majengo, both within the Korogwe District, which she individually owns. She referenced section 56 of the Law of Marriage Act, Cap 29 R.E 2019, (Cap 29) which confers the right to acquire, hold, and dispose of property. She also referred to section 60(a) of Cap 29 which establishes a rebuttable presumption that any property acquired in the name of either spouse belongs absolutely to that person, excluding the other spouse. Concluding that the two houses are solely owned by her, therefore, she prayed for this court to dismiss the application with costs.

In rejoinder, the applicant insisted that the two houses situated at Majengo National Housing were jointly acquired by the respondent and her late father. She admitted that the house at Kwanduli Korogwe is not part of her late father's estate. She urged this court to revise the

findings of the lower court and provide direction for the proper administration of the deceased's estate in the interest of justice.

After thoroughly reviewing the records and the submissions presented by both parties, this court, on the mentioned date, requested the parties to address the tenability of the application. This consideration is particularly important as the application has not been previously determined by the subordinate court.

In response to the above, the applicant submitted that the issue of directions to the administrator was raised before the District Court, which instructed the parties to settle the matter amicably as a family. Following this advice, the family members met and resolved the issue. However, the respondent refused to adhere to the agreed-upon resolution. Consequently, she decided to file the current application, seeking legal guidance from this court for the administrator.

On the part of the respondent, she submitted that the District Court did not address the issue of giving directions to the administrator. According to her recollection, the District Court

instructed the applicant to manage only the deceased's properties and to exclude any properties that did not belong to the deceased.

After reviewing the records and submissions made by both parties, I would like to address the question raised by the court first before I determine the application at hand if the need arises.

The powers of the High Court are indeed well-established, they include the original, appellate, review and revisional jurisdiction. However, for the High Court to entertain appellate or revisional matters, there must be a finding, order, or sentence passed by the subordinate court. In the current matter, the administratrix/applicant did not file any application before the District Court to request it to provide her with any general or special directions regarding the estate or its administration, as asserted by the applicant.

Since the matter was not determined by the District Court and has not been filed as an original matter, this court is not vested with the power to entertain the application lodged by the applicant. If the applicant believes that she requires any direction from the court, then

she has to approach the District Court where the Probate and Administration cause was lodged and is still pending.

Having so determined, I find that this matter has been immaturely lodged before this court and it is hereby struck out without costs.

It is so ordered



**DATED** at **TANGA** this 30<sup>th</sup> May 2024

A handwritten signature in blue ink, appearing to read 'H. P. NDESAMBURO'.

H. P. NDESAMBURO

**JUDGE**