

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 26776 OF 2023

*(Originating from the Probate Cause No. 294 of 2021 at the District Court of Temeke
at One Stop Centre-Temeke)*

ALOYCE MARTIN MHINAAPPELLANT

VERSUS

MARGARETH VICENT MHINARESPONDENT

JUDGMENT

15th May & 24th June, 2024

BARTHY, J.:

The above-named appellant, being aggrieved by the decision of the lower court, appealed to this court against the decision of the District Court of Temeke at the One Stop Judicial Centre on the following grounds:

- 1. That the Honourable Magistrate of the District Court erred in law by ruling out that the landed property part (sic) of the estates was wrongly portioned in favour of the respondent by ordering that (sic) the said property be shared by 50% each without regard (sic) that the appellant being a survivor is entitled by (sic) 100% of the property*



but by (sic) giving 25% of the property was a result of generosity.

2. That the Honourable Magistrate of the District Court erred in law and fact by holding that the right of survivorship does not apply to a land which is not held under the certificate of title (sic) while in essence the Residential License is as good as a title and the principals (sic) applicable in the right of survivorship apply to all properties; movable and immovable. (sic)

3. That the Honourable Magistrate of the District Court erred in Law by disregarding the cardinal principal of Stare Decisis to which the lower court is bound by the decision of the higher courts.

Wherefore, the appellant prays for the decision of the trial court to be set aside and for this court to uphold the accounts of the estate and order the appellant to proceed with the administration of the estate.

The background of this matter leading to this appeal is traced from 7th of August, 2021, when Magreth Vicent Mhina passed away intestate. Prompting her husband, Aloyce Martin Mhina (the appellant), to petitioned for and was granted letters of administration to manage his late wife's

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estate before the district court of Temeke at One Stop Judicial Centre (the trial court).

During his administration, the appellant filed accounts detailing the distribution of the estate by allocating 25% of the house in Kigogo and some household items to the deceased's mother (the respondent), while retaining 75% for himself.

However, this distribution was met with contention. The respondent challenged the proposed allocation in court, arguing for a more equitable division. The court subsequently ordered an equal division of the disputed house, granting 50% to the appellant and the respondent each. Dissatisfied with this ruling, the appellant has now brought the matter to appeal.

The hearing of this matter was by way of oral submission where the appellant enjoyed the services of Thomas Brash learned counsel. Submitting on the first ground of appeal he challenged the decision of the district court ruling that the house at Kigogo forming part of deceased estate was not properly distributed and the court ordered the house to be distributed equally between the appellant and the respondent. Disregarding the fact that the property was owned jointly, between spouses who is the deceased and the appellant. Hence, after the the death of one spouse, the surviving spouse was supposed to inherit the entire

property. Therefore, the district court's decision to order equal distribution of the said house was erroneous.

Mr. Brash further submitted that, the district court admitted there was joint ownership of the property, as seen on page 3, paragraph 3 of the judgment of the trial court. The appellant, in the course of administration of the deceased estate, despite being entitled to the entire house, decided to give the mother 25% of the house.

He referred to section 27 of the Indian Succession Act, Cap. 2002 (the Indian Succession Act), which provides that when a person dies without leaving children, their parents can inherit 50% of his/her estate, not the entire estate under joint ownership. In this matter, the deceased did not leave anything that could be considered a surviving possession. Even if she had left half of her share in the said house, her estate would only be 50%, as the other survivor still owned 50% of the house.

Therefore, the appellant, as the husband, was entitled to his 50% share and inherit from the share of the deceased. In that regard, the stated the district court arrived at an erroneous decision.

Submitting on second ground, Mr. Brash stated that, page 3 of the trial court's judgment it states that the house owned under residential licence is not recognized to have the title deed under the Land Act. Thus, hindering the appellant's right of survivorship under the Land Act, as he

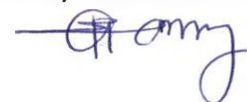
he employed the interpretation of section 159(1)(b) and (c) of the Land Act, Cap 113 R.E. 2019 (the Land Act) which deals with the right of occupancy and not residential license.

Mr. Brash further submitted that, the residential licenses were introduced to formalize ownership of land that was not formal. Hence, its ownership has the same legal status in the eyes of the law like title issued under section 23 and 179 of the Land Act, 1999.

He insisted joint ownership can be recognized even in informal land ownership under section 59(4)(b) and (c) of the Land Act, 1999. In that regard, the district court erroneously interpreted the law and reached into a wrong decision.

Regarding the third ground of appeal, he stated the district court is challenged and disregarded the decisions of higher courts. In addition to that, he stated the appellant before the trial court cited the case **Paulo Laurence v. Chausiku Alfan**, Misc. Civil Application No. 2 of 1995 as the reference. To conclude, he prayed for the decision of the trial court be quashed, and the appellant be allowed to proceed with the distribution of the estate as proposed.

Resisting the appeal, Mr. Kapufi, in respect of the first ground, contended that in this matter, the appellant had lost a wife, whereas the



respondent had lost a child. He also noted that the deceased was a Christian by faith, which is relevant for the administration of her estate.

He referred to Section 27 of the Indian Succession Act, which clearly states that when the deceased passes away and is survived by a spouse and parents without any children, the estate will be distributed equally between the parents and the spouse. This circumstance is applicable to this matter.

Mr. Kapufi further submitted that the respondent does not dispute the appellant's right to administer the estate of the deceased; the contest is about the distribution of the estate according to the law.

Regarding the reference made to the case of **Paul Lawrence**, he contended that the cited case was delivered in 1995, and the laws and circumstances have since changed. He, therefore, prayed the court to dismiss the appeal and uphold the decision of the district court without any order as to costs, considering the nature of the relationship between the parties in this matter.

In his rejoinder submission, Mr. Brash reinforced the points he made in his main submission, which will not be reproduced here.

In determining the grounds of appeal, I will address the first and second grounds together as they are connected, where the appellant is challenging the trial court's decision that both the appellant and the

respondent were each entitled to 50% of the house at Kigogo. The appellant claims to have the right of survivorship to the house at Kigogo.

Upon examining the trial court records, it is evident that the document relied upon is Residential Licence No. KND023468, which bears the names of Aloyce Martin Mhina and Magreth Aloyce Mhina. The couple were issued with residential licence No. KND/KGG/KAT1/156. In light of this, the trial court made the following observations;

"leseni ya Makaz Na. KND 023468 na eneo la ardhi Na. KND/KGG/KAT1/156 imebeba majina ya Aloyce Martin Mhina na Magreth Aloyce Mhina (marehemu). Umiliki wa aina hii unaashiria mali inamilikikwa Pamoja yaani joint ownership".

The law clearly states that for two or more individuals to co-own land, their title must specify the nature of their association, whether they are joint occupiers or occupiers in common. This requirement is outlined in Section 159(2) of the Land Act, which states;

Where, subject to the provisions of this Act, two or more persons not forming an association of persons under this Act or any other law which specifies the nature and content of the rights of the persons forming that association

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occupy land together under a right specified by this section, they may be either joint occupiers or occupiers in common.

Given the fact that it is commonly acknowledged that the house in question at Kigogo does not have a certificate of title issued under the Land Act, but rather they were issued with residential licence under Section 23(3)(a) of the Land Act, for clarity, this section is quoted below;

Subject to the provisions of this Act a residential licence may be granted by a local authority-

(a) to any person occupying land without official title or right within the area of jurisdiction of that local authority as his home.

It is clear that a residential permit issued under Section 23(3)(a) of the Land Act does not specify whether it was issued to joint occupiers or occupiers in common, making it difficult for the court to determine the exact share of the deceased in the estate.

However, considering that the residential permit for the disputed house in Kigogo includes the names of both the deceased and the appellant, it implies that the appellant has an interest or share in the house. Despite this, it cannot be determined to what extent his share is.



Additionally, the appellant, as the husband of the deceased, is entitled to a share of his wife's estate. In this matter, it is not in dispute that the estate of the deceased should be administered under the Indian Succession Act.

Section 27 of the Indian Succession Act clearly states that when the deceased passes away and is survived by a spouse and parents without any children, the estate will be distributed equally between the parents and the spouse.

In the circumstances of this case, I agree with the distribution proposed by the appellant for the following reasons: First, he had his own share in the ownership of the house at Kigogo, which should not be considered part of the deceased's estate. Second, as the spouse, he is entitled to inherit from his wife's estate under Section 27 of the Indian Succession Act.



The district court was not justified in considering the entire house to be the property of the deceased and subjecting it to a 50% distribution each to the appellant and the respondent as the beneficiaries. In these circumstances, I find that the trial court made erroneous findings and therefore reached an incorrect decision.



Consequently, I find that these grounds are sufficient to dispose of the entire appeal. For the reasons stated above, I quash and set aside the trial court's ruling regarding the distribution of the deceased's estate. I order the appellant, as the administrator of the deceased's estate, to proceed with the distribution in the manner presented before the trial court.

It is so ordered.

Dated at Dar es Salaam this 24th day of June, 2024.



G. N. BARTHY
JUDGE

Delivered in the presence of the appellant and Mr. Thomas Brash, learned advocate for the appellant; the respondent and Mr. Kapufi Yusuph Ally, learned advocate for the respondent; and RMA Ms. Bernadina.

SGD: G. N. BARTHY

JUDGE

24/06/2024