

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL APPEAL NO.74 OF 2004
(Originating From D.C. Civil Revision No.50 of 2003 at
Kinondoni)

MWAJINA ABDUL MAGUNO.....APPELLANT
Versus
MWANAHAWA MAGUNO.....RESPONDENT

JUDGMENT

SHANGWA, J:

In this appeal, the appellant Mwijina Abdul Maguno is appealing against the ruling of the District Court of Kinondoni in Civil Revision No.50 of 2003 in which her application for revision of the decision of the Kinondoni Primary Court in Probate and Administration Cause No.140 of 1997 was dismissed by Makwandi, RM. In her memorandum of appeal, She raised three grounds of appeal to be considered by this court in which she states that the District Court erred in law and fact in dismissing it.

The errors complained of are that the District Court failed to determine the issues raised in the above mentioned application and that it failed to state reasons for its decision and to rule that the respondent failed or neglected to fulfill her duties as administratrix of the estate of the late Abdul Maguno which warranted the annulment of the letters of administration granted to her by the Kinondoni Primary Court.

Before I address myself to the appellant's complaints, I wish to point out here that the decision of the Kinondoni Primary Court which the District Court of Kinondoni was called upon to revise in Civil Revision No.50 of 2003 is not contained in Probate & Administration Cause No.140 of 1999 as indicated in both Parties written submissions. It is contained in the said Primary Court's Probate & Administration Cause No.140 of 1997.

In resolving the appellant's complaints, I had to go through the Chamber application and affidavit which was filed by the

appellant in the District Court of Kinondoni for revision of the Kinondoni Primary Court's Probate and Administration Cause No.140 of 1997 in order to find out the issues which the appellant wanted the said court to address itself and determine.

Upon doing so, I found that the District Court of Kinondoni was being asked by the appellant to address itself and determine the question as to whether the decision or orders of the Kinondoni Primary Court in Probate and Administration Cause No. 140 of 1997 were correct, legal and Proper.

Also, I went through the appellant's written submissions prepared and filed by Mr. Mniwasa, and found that the appellant was in actual fact asking the District Court of Kinondoni to intervene by way of revision in the appointment of the respondent as administratrix of the estate of the late Abdul Maguno on the following grounds: First, that she omitted to include a house of the deceased on Plot No. 85, Msasani

Mikoroshoni, Kinondoni District, Dar es Salaam Region in the list of the Property of the deceased. Second, that she falsely claimed that house No. 23, plot No.72, Block N, Nyamwezi Street, Ilala District, Dar es Salaam was joint property of the deceased and herself. Thirdly, that she was collecting and misappropriating half of the rentals from the tenants occupying that house. Fourthly, that since her appointment in 1997, she had not submitted any inventory showing the properties of the deceased.

Upon those grounds, the appellant wanted the District Court of Kinondoni to annul the appointment of the respondent as administratrix of the estate of the late Abdul Maguno and remit the case to the Kinondoni Primary Court for being heard de novo and before a different Magistrate.

In order to find out as to whether the District Court of Kinondoni did consider and determine the question of the correctness, legality and propriety of the decisions and or

orders of the Kinondoni Primary Court in Probate and Administration Cause No. 140 of 1997, I had to go through its ruling in Civil Revision No. 50 of 2003. While going through that ruling, I found that the said court did consider and determine the matter which was supposed to be considered and determined by it namely the correctness, legality or propriety of the decision of the Kinondoni Primary Court which appointed the respondent Mwanahawa Maguno as administratrix of the estate of the late Abdul Maguno. In doing so, the Kinondoni District Court found that the respondent's appointment as administratrix of the said estate was lawful because she was nominated and recommended by family members. I think this was the reason why the said court made its decision not to annul the respondent's appointment as administratrix of the said estate. This reason can clearly be seen in the court's ruling. Another point in this regard is that the Kinondoni Primary Court Probate and Administration Cause No. 140 of 1997 in which she was so appointed was Published in the Uhuru News Paper dated 2.6.1997.

However, it appears from Page two of the District Court's typed ruling that Makwandi, RM went wrong when he remarked that the respondent has been administering the deceased's estate in good faith while knowing that she had not filed the inventory of the deceased's properties since her appointment on 29.7.1997. Had she been administering the deceased's estate in good faith as remarked by him, she should not have omitted to file the said inventory which she filed six years and about eight months later after being ordered to do so by him in his ruling delivered on 25.3.2004. Filing the inventory with the Kinondoni Primary Court which appointed her to administer the deceased's estate was one of her duties which she failed to do.

In fact, I agree with Mr. Mniwasa for the appellant's submission that a failure by the administrator to show how much property has been collected and how the collected property has been distributed to the entitled heirs is a serious breach of the administrator's duties which may render his or her appointment to be annulled.

In his written submissions, Mr. Mniwasa has faulted the District Court of Kinondoni for not having annulled the appointment of the respondent as administratrix of the estate of the late Abdul Maguno on the grounds which were pointed out by him in his written submissions filed in that court which grounds have already been pointed out in this judgment, and for not having remitted the case to the Kinondoni Primary Court to be heard de novo and for not having quashed its decisions and or orders.

I think the District Court should not have been faulted as above mentioned because of the following reasons: Firstly, in the exercise of its revisional jurisdiction, the District Court could not entertain and resolve a complaint concerning the bad conduct of the respondent as administratrix of the deceased's estate which ought to have been raised in the Kinondoni Primary Court and which did not concern the correctness, legality or propriety of the Kinondoni Primary Court's decision and or orders. Secondly, there were no objection proceedings

which had been filed by the appellant in the Kinondoni Primary Court for revocation of the respondent's letters of administration when she started misapplying and misappropriating the deceased's estate as alleged against her. Thirdly, from what I have gathered from the said court's record, the respondent resigned from her appointment as administratrix of the deceased's estate a long time ago after experiencing some difficulties in administering the same. This can be read from her letter dated 21.1.2002 addressed to the Kinondoni Primary Court Magistrate which was received on the same day.

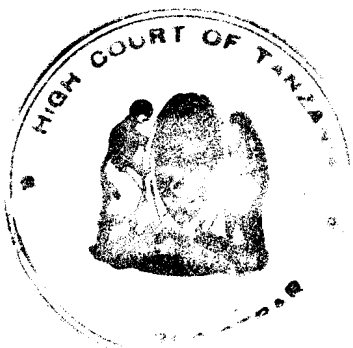
This means therefore that the Kinondoni District Court had nothing to annul and there was nothing to be heard de novo by the Kinondoni Primary Court. Actually, the District Court was wrong to order the respondent to file the inventory of the deceased's properties because after her resignation, she was no longer duty bound to do so.

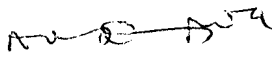
I have noted from the Kinondoni Primary Court's record that long after the appointment of the respondent as administratrix of the deceased's estate on 29.7.1997, and long after her resignation from the said appointment on 21.1.2002, one Maguno Abdu and five others who included the appellant and the respondent went to the said court on 10.10.2002 and Maguno Abdu told Mazora, SPCM that he was a new administrator of the deceased's estate with full support of other heirs who were present. He also told him that all of them had agreed that the deceased's properties should be sold and each heir should be given his or her share.

Sometimes later on 5.8.2003, the deceased's heirs went to the court and appeared once again before Mazora, SPCM who recorded in the case file on that day that the deceased's heirs were all present and that they wanted the deceased's estate to be distributed among themselves according to Islamic law. The deceased's estate was valued at a total sum of shs.152,666,666/= and Mazora, SPCM ordered that this

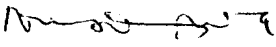
amount of money should be distributed among the heirs according to the said law. In his order, he did indicate as to how much money each heir should get.

That order is subject to appeal. The Kinondoni District Court was also faulted for not having revised it. But as that order is subject to appeal, the District Court of Kinondoni could not have interfered with it on revision. All in all, I dismiss this appeal and order that each Party should bear her own Costs.




A. Shangwa
JUDGE
16.2.2005

Delivered in open Court at Dar es Salaam this 16th day of February, 2005.


A. Shangwa
JUDGE
16.2.2005.