

**IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM**

**PC CIVIL APPEAL NO. 22 OF 2005  
(Bagamoyo District Court Civil Estate Appeal No.33/2004  
Estate File no28/2004 at Mwambao Primary Court  
Bagamoyo)**

**SALEHE MKILA HEMED..... APPELLANT**

**VERSUS**

**HABIBU SHAIBU YUSUFU..... RESPONDENT**

**JUDGMENT**

**Date of last Order: 10/11/06  
Date of Judgment: 4/12/2006**

**MANENTO, JK:**

This is a second appeal by the appellant Salehe Mkila Hemed. His appeal is against the decision of the Bagamoyo District appellate court confirming the decision of the Mwambao primary court, which court ruled against the appellant's objection for the grant of some estate to the heirs of one Kessy Mkila, her sister.

The respondent Habibu Yusufu had applied and been appointed an administrator of his late mothers estate, the late Kessy d/o Mkila. The appellant and Kessy Mkila were relatives, being a brother and a sister. After the death of Kessy Mkila, on 10/3/2003, her only son, Habibu Shaibu

Yusufu petitioned for letters of administration in the estate of his mother. Among the estate he registered, were one plot No.283, a house built of bricks on unsurveyed area situated at Maungani area in Bagamoyo and a piece of land measuring about 1<sup>1</sup>/<sub>2</sub> acres at a place called Matimbwa. Kessy Mkila had several bank accounts. She had been working with the Bank Institute at Iringa.

After the respondent had filed his petition for the administration of that estate, the appellant objected for the inclusion of the plot No.283 Old Bagamoyo and the residential house at Kiungani area, saying that the plot belonged to his late father Mkila Hemed and the six roomed house belonged to his late mother, one Mwanamhando. The primary court did properly direct its mind in dealing with the objection first before the appointment of the respondent. The primary Court after hearing the evidence, it came to the conclusion that Kessy Mkila, the mother of the respondent had bought the plot No.283 Old Bagamoyo from the family after the death of their father. The appellant was not present at the clan meeting, yet he was informed later on. He never raised his eye brows. The right of occupancy was therefore given to her. Secondly, on the basis of the evidence, the trial court found that the fact that Kessy Mkila was not married, she built the six roomed house at Kiugnani Bagamoyo. The old mud house had fallen down and she

did built the modern house for herself and her mother. The building of the house was supervised by their mother one Mwanamhando. Kessy Mkila financed the whole construction. The appellant who had not objected to that finding, urged that the respondent should take the house of his late mother, Kessy Mkila and give vacant plot to him.

On hearing that evidence, the trial court found as a fact that though plot No.283 Old Bagamoyo belonged to the late father of both the appellant and Kessy d/o Mkila, yet the family which jointly owned it after the death of Mkila Salehe, had sold it to Kessy Mkila. The none transferring of the right of occupancy to her name till when she died was immaterial. As regard to the house in issue, the trial court ruled that the fact that the late Mwanamhando, the mother of both the appellant and Kessy Mkila allowed Kessy Mkila to build that permanent house, could mean that she had transferred it to Kessy Mkila. The appellant had never challenged that fact too during the life time of his sister Kessy Mkila or his mother Mwanamhando. Now that they are all dead, he wanted to dispose the respondent of them all. The primary court dismissed the objections, it appointed the respondent the administrator of the estate of Kessy Mkila and objected properties were lawfully announced to be part of the estate of the late Kessy Mkila.

The appellant appealed to the district appellate court. The appeal was dismissed. The decision of the primary court was affirmed. The appellant was further aggrieved hence this appeal.

The appellant raised three grounds of appeal, namely that:

1. The trial magistrates erred in law and facts by issuing an order which gave the right to the respondent to inherit plot No.283 Old town, which is the property of Mkila Hemed. He attached a photocopy of the right of occupancy as annexure 'A'
2. That the trial magistrates erred in law and facts by neglecting the strong evidence adduced by the appellant, that the house situated at Maungani area at Bagamoyo be divided equally, due to the facts that respondent's mother, Kessy d/o Mkila and his mother one Mwanamhando d/o Salum contributed by half in construction of the house.
3. That there were irregularities in the two judgments which led to the in proper decisions.

It be known that during the hearing of the appeal, Habibu Shaibu Yusufu had died there had never been any person who had applied and granted letters of administration for the estate of the late Habibu Shaibu

Yusufu. The appellant requested the Court to summon the father of the late Habibu, one Shaibu Yusufu to hear him in case there was any letters of administration applied for. The court obliged and summonses were issued to Shaibu Yusufu. It was returned unserved with a note from the Ward executive officer of that Shaibu Yusufu refused to accept the summonses. That was on 31/7/2006. Then I decided to proceed with the hearing of the appeal *ex parte*.

In his submission, the appellant said that his late father died on 19/12/1990. The plot remained in his name and there was no transfer to Kessy Mkila contrary to section No.39 of Act No.4.1999 which insists on transfer if there is a sale of any land. He objected that there were no sale or at all otherwise there would have been a sale agreement. Reacting to the witness's evidence, he said that they were pre arranged witnesses. Thus Plot No. 283 Old town still belonged to Mkila Hemed his father and therefore, they are the properties of his beneficiaries, being one of them.

As regard to the house at Maungani Street, he submitted that her mother Mwanamhando d/o Salum had bought the plot for shs.300 from one Abdallah Saidi. That her mother built the house with the assistance of relatives, including Kessy d/o Mkila, her sister. He did not say that he also contributed anything towards the building of the said house. Kessy Mkila

died on 10/3/2001 while her mother died a year later, on 10/2/2002. He also said that his sister Kessy Mkila was an employee of the Government Stores and that after her death, she left her mother living in the very house she contributed towards its building. That Habibu, the respondent was the only child of Kessy Mkila. He finally concluded his submissions by saying that the fact that her sister Kessy Mkila helped to build the house for their mother, yet it remained a family house. He so prayed for judgment as per his petition of appeal in that plot No.283 Old town be declared family property too.

Both the appellant and his brother Salehe Mkila had objected for inclusion of the house at Maungani and the plot in Old Town Bagamoyo. They said that those properties were not the properties of the late Kessy Mkila, the mother of the respondent. However, there are other witnesses who were or are not beneficiaries in anyway, that is to say, Ally Issa, Kombo Lila and Jina d/o Shida all supported the respondent's evidence for his appointment as an administrator and the properties he claimed to be owned by her later mother, Kessy d/o Mkila. Ally Issa had told the trial court that Issa Mkila was not present when the family meeting decided to sell the plot to Kessy d/o Mkila. However, he was informed of the transaction.

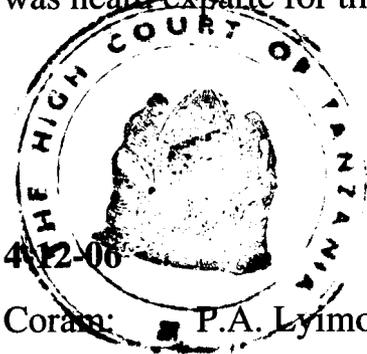
Taking into account the fact that the late Kessy d/o Mkila was an employee, a single parent of the respondent, that she was staying with her

mother one Mwanamhando, the court believed that the late Kessy d/o Mkila was given the plot by her mother at Maungani. She gave her mother some money to build the house, the subject matter of the objection. The courts belief was based on the fact that the appellant just generally said that the house was a family property because the members of the family contributed towards its construction, without even naming any member of the family who contributed any sum of money. He himself and his brother Salehe Mkila did not contribute any money for the building of the said house. It is true that Mwanamhando did supervise the construction of the house because she had also an interest. She would get a good place to stay in. Thus, I agree with the decision of the two subordinate courts on their finding of fact that the house in contest was built by the respondent's mother on a plot given to her by her mother, Mwanamhando.

Secondly, there was an overwhelming evidence that the late Kessy d/o Mkila had bought the plot No.283 situated at Old town Bagamoyo from the family members who were beneficiaries . The appellant knowing that her sister had bought the plot, and that she had been handed over the right of occupancy for the plot No.283 could not petition for letters of administration in the estate of Mkila Hemed because he knew that there was no estate to administer. He waited until after the death of his sister Kessy Mkila and his

mother Mwanamhando when the respondent included the plot in the estate of his mother that he raised his eye brows, objecting the inclusion of plot No283 in the estate. I agree with the lower courts that none registering of the plot No.283 by the late Kessy d/o Mkila in her name per se does not disentitle her from owning the plot. Having taken other evidence into consideration, it believed that the family had disposed the plot to one of them, namely Kessy d/o Mkila. I therefore come to the conclusion that no way can this court fault the finding of facts and the conclusion they reached.

On the reasons stated, the appeal is dismissed. No order for costs since the respondent's beneficiaries never made an appearance. The appeal was heard *exparte* for the reasons stated.



*A.R. Manento*  
**A.R. Manento**  
**JAJI KIONGOZI.**

Coram: P.A. Lyimo DR-DSM

For the Appellant – Present

For the Respondent - Present

Delivered in court this 4<sup>th</sup> December 2006 in the presence of the Appellant and on the absence of the Respondent.

**P.A. Lyimo**  
**DISTRICT REGISTRAR – DSM**  
**4/12/2006**