

IN THE COURT OF APPEAL OF TANZANIA

AT MOSHI

(CORAM: NDIKA, J.A., KITUSI, J.A., And MAKUNGU, J.A.)

CIVIL APPEAL NO. 82 OF 2021

SWALEHE JUMA SANGAWE (As administrator of
the Estate of the Late **JUMA SWALEHE SANGAWE**) **FIRST APPELLANT**
HUSSEIN SWALEHE SANGAWE **SECOND APPELLANT**

VERSUS

HALIMA SWALEHE SANGAWE **RESPONDENT**

(Appeal from the Judgment of the High Court of Tanzania at Moshi)

(Mwenempazi, J.)

dated the 1st day of December, 2020

in

Land Case No. 29 of 2017

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JUDGMENT OF THE COURT

28th September & 4th October, 2022

NDIKA, J.A.:

The protagonists in this dispute, Juma Swalehe Sangawe, Hussein Swalehe Sangawe and Halima Swalehe Sangawe, are allegedly full siblings sharing the same parents. Their supposed father, Swalehe Mlashi, died intestate on 21st December, 1967. Halima ("the respondent") successfully sued her brothers in the High Court of Tanzania at Moshi mainly for declaratory reliefs and certain orders over landed properties claimed to be part of the estate of their deceased father. In this appeal, Swalehe Juma Sangawe (acting as the administrator of the late Juma who passed away

on 10th July, 2018) and Hussein, the first and second appellants respectively, challenge the trial court's judgment on three grounds.

The respondent's claim was that her brothers had intermeddled with two landed properties falling within their deceased father's estate: one, a residential house described as Plot No. 3 Block X, Section III in Moshi Municipality registered in the deceased's name; and two, a ten-acre farmland situated at Rau village in Moshi District. It was claimed that while the first appellant fraudulently transferred title to the residential property to himself and had it registered in his name, the second appellant subdivided the farmland into pieces of land which he offered for sale to unknown persons without sharing the proceeds thereof with other heirs. On that basis, the respondent mainly sought the following reliefs, apart from interest (on rental income and proceeds of sales of land) and costs of the suit:

1. A declaration that the residential property was part of the estate of deceased and that the transfer of title thereto to the first appellant was a nullity.
2. An order that the residential property be distributed to the beneficiaries of the deceased's estate and that the first appellant

be ordered to account for rental income from the property collected from 2011.

3. The second appellant be ordered to account for the proceeds of sales of pieces of land carved out of the farmland and that said proceeds be distributed to the respondent as a beneficiary.
4. The remainder of the farmland be divided and distributed to the respondent as a beneficiary.

Although in their defence the appellants denied having a blood relationship with the respondent, they admitted that the deceased passed away on 21st December, 1967. However, they asserted that since then nobody had been appointed to administer the deceased's estate. It was asserted that the first appellant was the owner of the residential property and that it was not part of the deceased's estate. As regards the alleged farmland, the appellants claimed that the deceased did not own any such land in Rau village.

Besides their denial of the claim, the appellants demurred that the suit was time-barred, that it was lodged in a wrong forum and that the respondent lacked *locus standi* or legal standing to sue in the matter. Having heard the parties on the threshold points, the trial court (Fikirini, J., as she then was) was unimpressed; it overruled them all. In the

aftermath, a trial ensued before Mwenempazi, J., culminating in the verdict in the respondent's favour, as hinted earlier. The learned judge granted the declaratory reliefs and other orders prayed for except for orders on interest and costs of the suit.

When the appeal came up for hearing, we prompted the parties to address us on the three grounds of appeal lodged by the appellants as well as the question whether the respondent had legal standing to sue on her own or on behalf of the deceased's estate in the matter, an issue that was addressed and determined by the trial court. As it shall become clear shortly, the appeal turns on this threshold issue.

Ms. Faygrace Sadallah, learned counsel for the appellants, answered the above question in the negative. She contended that only an administrator of an estate of a deceased person or an executor of a will who has been granted probate can sue in respect of all surviving or ensuing causes of action on behalf of the deceased's estate. It is on record, she added, that nobody was ever appointed to administer the deceased's estate in the instant case and that the respondent, not being an administrator or executor, could not sue his siblings to recover the properties in dispute she claimed to be part of the deceased's estate.

The respondent, who was self-represented, had no definitive position on the matter, quite understandably so. She conceded that nobody had ever been appointed to administer the estate since the decedent's passing on 21st December, 1967.

We have indicated earlier that the High Court dealt with the point but overruled it. The court reasoned as follows:

"Turning to the 3^d point of locus standi, since neither the plaintiff nor the defendants have letters of administration pertaining to the deceased's estate none can claim right of administering the estate over the other. For the plaintiff, as she has letters of administration whereas for the defendants there was no proof of their claim that they were bequeathed before their late father passed away. The defendants' act of distributing the deceased's estate without proof that they had validly been appointed administrators of the deceased's estate could be illegal. The point is equally overruled."

The above extract shows that while the learned judge was cognizant that the respondent (then the plaintiff) was not an administrator of the deceased's estate, she still allowed her to maintain the suit on the allegation that the appellants (the defendants at the time), who were

themselves not administrators of the estate, illegally intermeddled with the estate and distributed part of it to themselves. Was the learned judge correct in her holding?

We should begin our deliberations on the issue at hand by noting the provisions of section 16 of the Probate and Administration of Estates Act, Cap. 352 R.E. 2002 ("the Act"):

"A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong:

Provided that—

(a) intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property; or

(b) dealing in the ordinary course of business with goods of the deceased received from another; or

(c) action by an administrative officer under section 14 of the Administrator-General (Powers and Functions) Act;

(d) action by a receiver appointed under section 10,

does not make an executor of his own wrong."

The above section protects an estate of any person after his or her death while there is no rightful executor or administrator in existence. In doing so, it bars any person from intermeddling with the estate of a deceased person, subject to provisos (a) to (d) to section 16, while there is no duly appointed executor or administrator. Any such intermeddler acting without authority is legally known as "executor of his own wrong." In terms of section 17 of the Act, such an intermeddler is answerable to the rightful executor or administrator, or to any legatee or creditor of the deceased for his acts detrimental to the deceased's estate. At this point, we can deduct from section 17 that it is an executor or administrator of the estate, apart from a legatee or a creditor of the deceased, who can institute an action against such an intermeddler.

Furthermore, section 71 of the Act provides that it is the grantee alone of probate or letters of administration that is entitled to act for and on behalf of the deceased's estate:

"After any grant of probate or letters of administration, no person other than the person

to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been revoked or annulled.”

The above provision gives legal standing to sue or being sued, for or on behalf of an estate of a deceased person, to an executor or administrator of a deceased’s estate – see also **Omary Yusuph v. Albert Munuo**, Civil Appeal No. 12 of 2018 (unreported).

In the instant case, the respondent conceded that she was not an administrator of the deceased’s estate and that nobody had ever been appointed to administer the estate. In our view, it is only an administrator of the deceased’s estate, once appointed, who could sue on the cause of action as presented by the respondent against the alleged interlopers. Moreover, the respondent obviously did not sue as a creditor of the deceased. Nor was she a legatee, that is, a person inheriting property based upon a person’s will, as the instant matter concerned intestacy. It is, therefore, our finding that she had no standing to institute the proceedings in the trial court. The trial court obviously slipped into error by allowing her to maintain her action in her own name and entertaining it. The suit ought to have been struck out.

Based on the foregoing analysis, we nullify the trial court's proceedings and the judgment thereon pursuant to our revisional powers under section 4 (2) of the Appellate Jurisdiction Act. We are compelled to step into the shoes of the trial court and proceed to strike out the suit. Each party to bear its own costs.

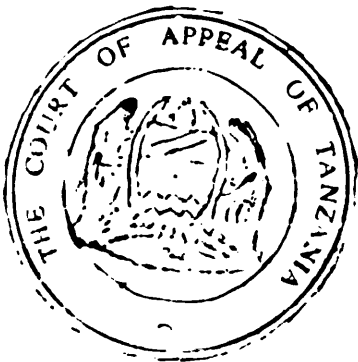
DATED at **MOSHI** this 3rd day of October, 2022.

G. A. M. NDIKA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Judgment delivered this 4th day of October, 2022 in the presence Ms. Faygrace Sadala, learned counsel for the Appellants and Respondent present in person unrepresented, is hereby certified as a true copy of the original.



C. M. Magesa
C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL