

IN THE HIGH COURT OF TANZANIA

AT SONGEA.

PROBATE & ADMIN. APPEAL NO. 1 OF 2009

SONGEA DISTRICT COURT CIVIL CASE NO. 2 OF 2009

(ORIGINAL M FARANYAKI PRIMARY COURT

CIVIL CASE NO. 1 OF 2009)

ADLUHAMAN M. LUAMBANO----- APPELLANT

VERSUS

IDEFONSE FUIME-----RESPONDENT

**21/9/2010/HEARING CONCLUDED
30/11/2010 /JUDGMENT DELIVERED**

JUDGMENT

Kalombola J,

This is an appeal originated from Mfaranyaki Primary Court in Probate and Administration of Estates of the late Maimuna Maulid.

In summary, the facts of this case are that, the Respondent and the late Maimuna Maulid lived together as husband and wife. They were blessed with two children Tulalola and Shida. Later one child, Tulalola died. The only living child is Shida. The couple built a house in **plot No. 398**, at Mwembe Chai, Matarawe, Songea. The couple lived together without contracting marriage because Maimuna`s father opposed the marriage for reason of Idefonce (herein after to be referred as respondent) being a christian .

Later, the appellant,(Maimuna) was not in good term with the respondent and the children. The respondent, wrote the name of his wife to appear in the title of the house they built so as to be the owner. The respondent did so in order to avoid any problem from the appellant to his wife and his children.

Afterwards, the respondent`s wife died. The respondent filed Probate cause at Mfaranyaki Primary Court (No. 24/1998) so as to

administer the Estate of his late wife. The respondent was appointed as an administrator despite objection before the court by the appellant. The appellant being the father of the wife, was awarded as benefit $12\frac{1}{2}$ or $1/8$ of the value of the house of her late daughter.

Following the above decision which was delivered on 15/12/1998, the appellant filed as different suit at Mfaranyaki Primary Court, Probate Cause No. 1/2009 objecting the said appointment. The Primary Court ruled out the matter was res-judicata.

The appellant being aggrieved by this decision, filed a revision before the District Court of Songea. The District Court decided, the matter was rejudicata and supported the appointment of the respondent as an administrator.

It is out of the decision by the District Court, the appellant is before this court for appeal.

Appellant in his petition of appeal raised three (3) grounds of appeal which can be summarised as follows:-

- Both Courts erred in Law and fact for treating the matter as res-judicata
- The District Court erred in Law and fact in its Judgment when reviewing the decision of Primary Court for holding that the appellant was time barred to object the respondent`s appointment. The District Court did so without directing its mind on when the cause of action against the respondent arose.
- Both courts erred in Law and fact when failed to rule out that the respondent was not properly appointed as before no family or clan meeting that was convened to appoint him.

For the reasons, his prayer is for this court to allow his appeal with costs.

In reply, the respondent strongly opposed this appeal, He supported the decision of the lower courts. He said, there is nowhere in the Judgment of the District court where it was said the matter was time barred. That he was properly appointed an administrator.

The arguments by both parties, and the record of this case have move this court to determine the following issues:-

- i) WHETHER IT WAS PROPER FOR THE DISTRICT COURT TO HOLD THAT THE MATTER WAS RES-JUDICATA
- ii) WHETHER THE APPEAL HAS MERIT.

Beginning with the first issue of res-judicata, it is clear that, appointment of the Respondent as an administrator was done by the Primary Court of Mfaranyaki in Probate Cause No. 24/1998, which probate decision was delivered on 15/12/1998.

The appellant instituted a different Probate cause No. 1/1999, before the same court. He was challenging the appointment of respondent and applying for being appointed. The Primary Court decided this Probate cause res-judicata. This decision was upheld by the District court on revision.

It is the view of this court that the District court which supported the decision of the Primary Court was correct. Section 9 of the Civil Procedure Act cap 33 R.E 2002, covers the doctrine of resjudicata, which doctrine was discussed in the case of **NELSON MREMA AND 413 OTHERS VS KILIMANJARO TEXTILE CORPORATION (LART as the liquidator) and Minister for Labour and Youth (Development). Civil Appeal NO 22 of 2002 (CAT – DSM)** Unreported) at pages 8 and 9, the Court said:-

As provided for under section 9 of the Civil Procedure Code, a suit is res-judicata if

(a) **It involves the same parties litigating under the same title;**

(b) **The issue are directly and substantially the same.**

(c) The action has been finally heard and decided; and

(d) The suit has been determined by a court of competent jurisdiction

In the present appeal, the record show, the appellant filed the suit to the Primary Court of the same facts and issues in which the matter had already been determined by a competent Court with jurisdiction, i.e the Primary Court of Mfaranyaki.

The remedy which was available to the appellant was to appeal to the District Court against a decision made by the Primary Court of Mfaranyaki in Probate Cause No. 24/1998 which appointed the respondent as an administrator.

It is from the above reasons that this Court supports the decisions reached by the Lower Court that the Probate Cause filed by the appellant was res-judicata.

As regards to the second issue on merit of this appeal, it is the view of this Court that this appeal has no merit. It has no merit because the appellant opted wrong forum to persue his griviances.

In the circumstances this Court finds the decision by District Court which supported that of the Primary Court, correct , it is been upheld. The appeal is dismissed with costs.

Ordered accordingly.

H.H. KALOMBOLA,

JUDGE,

30/11/2010.

30/11/2010

Coram:- Hon. H.H. Kalombola,J.

Appellant:- Present in person.

Respondent:- present in person

C/C:- S. Ndunguru.

Courts:- Judgment read today 30th day of November, 2010 in the presence of both parties.


**H.H. KALOMBOLA,
JUDGE,
30/11/2010.**

Right of Appeal explained.


**H.H. KALOMBOLA,
JUDGE,
30/11/2010.**