



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



ELIAHU LONYAMALI v. MOSSES LONYAMALI

COURT OF APPEAL OF TANZANIA

AT ARUSHA

(Sehel, J.A., Makungu, J.A., and Feleshi, J.A)

CIVIL APPEAL NO. 269 OF 2023

(From the judgment and decree of the High Court of Tanzania at Arusha, Robert, J. dated the 26th of November, 2020 in PC Civil Appeal No. 39 of 2018)

Probate law – production and tendering of Wills in primary courts – applicable rule pre-amendment (G.N No.49 of 1971) – retrospective effect of procedural amendments (G.N No.428 of 2025) – admissibility and authenticity of Wills – court’s power to decide unpleaded issues when parties leave issue for determination

The dispute concerns the estate of the late Lonyamali Abraham Laizer, who allegedly died testate. He had 28 children and multiple wives, leading to family disputes over estate administration. The Appellant, Eliahu Lonyamali, was initially appointed sole administrator by the Arusha Urban Primary Court after presenting a will. That decision was nullified for lack of territorial jurisdiction, and the matter was refiled in a competent Primary Court. The will had already been submitted earlier and transferred administratively to the trial court. The trial court: Appointed the Appellant and 1st Respondent as co-administrators and held the will valid and ordered the estate to be administered according to it.

On appeal the District Court (1st Appellate Court) declared the will void for several irregularities. The High Court (2nd Appellate Court) agreed with the outcome but held the will was not tendered in evidence. The Appellant filed a third appeal to the Court of Appeal.

Held:

- i. As a general rule, in Civil matters, the trial court is required to base its decision on framed issues which arose from the parties’ pleadings. However, there are



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exceptions to that general rule. A court may base its decision on an unpleaded issue if it appears from the course followed at the trial that the issue has been left to the court for decision.

- ii. The trial court was right in determining the issue of validity of the will which was left for its determination although it was not objected by the respondents and never framed as an issue.
- iii. The second appellate court erred in finding that the will was not tendered in evidence. The will had been properly produced and was before the court.
- iv. The trial court was entitled to determine the validity of the will even though it was not formally pleaded as an issue.

Appeal partly allowed. Judgment of the High Court quashed and decision of the District Court upheld.

Statutory provisions referred to:

Primary Courts (Administration of Estates) Rules, G.N. No. 49 of 1971 (Rule 3: and Rule 4)

Case Laws

- i. Odd Jobs v. Mubia [1970] 1 E.A. 476 and
- ii. Agro Industries Ltd v. Attorney General [1994] T.L.R. 43

Ms. Fatuma Amiri & Fransisca Gasper for Appellant

Mr. Elibariki Maeda for Respondent