**Zena v Rehani**

**Division:** Court of Appeal at Mwanza

**Date of judgment:** 7 August 1974

**Case Number:** 13/1974 (86/74)

**Before:** Sir William Duffus P, Mustafa and Musoke JJA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Tanzania – Jonathan, J

*[1] Muslim Law – Legitimacy – Acknowledgment of son – Principles discussed.*

**Judgment**

The following considered judgments were read. **Mustafa JA:** This is a third appeal, emanating from proceedings initiated in a primary court in Tanzania, and involves inheritance. One Afadhali Rehani, of

Mwanza, died intestate, and left a house at Uhuru Street, Mwanza. It was not clear from the proceedings in the courts below whether Afadhali was a Muslim, although the proceedings had been conducted on that assumption. On appeal before us it was made clear that the deceased, as well as the parties involved in the proceedings, were all Muslims. On the death of Afadhali, one Haruba Mussa was appointed administrator of his estate by a primary court at Mwanza. Haruba, in his capacity as such administrator, handed the house to Ahmed Afadhali Rehani who alleged that he was the son of the deceased. Zena Rehani, an elder sister of the deceased, objected and claimed that she was solely entitled to the inheritance. The deceased left no other issue, and it appears that his widow had duly received her share, and she was not a party to the dispute.

Zena Rehani sued the administrator in the Mwanza Primary Court, contending that she was the sole rightful heir to the estate of the deceased as she was the only surviving member of the deceased’s family.

She stated that she did not know Ahmed Afadhali Rehani. However there was evidence adduced which established that during his life time the deceased had publicly introduced Ahmed to a number of elders as his son. It seems that the deceased had taken Ahmed to a court and in the presence of a magistrate and court assessors pronounced that Ahmed was his son. It would seem to have been an official sort of announcement. The primary court magistrate and his assessors accepted the evidence adduced as to this open and public declaration and held that Ahmed was the son of the deceased and the rightful heir and dismissed Zena’s claim.

Zena appealed from that decision to the District Court of Mwanza. The district magistrate ordered the administrator Haruba Musa to produce a marriage certificate between the deceased and the mother of

Ahmed Afadhali Rehani. The administrator failed to do so. In a short judgment the district magistrate held that, presumably owing to the absence of a marriage certificate between the deceased and the mother of Ahmed, Ahmed’s mother was not the wife of the deceased and Ahmed therefore was not entitled to the inheritance. He therefore allowed Zena’s appeal and declared that she was entitled to the deceased’s estate.

From that decision Ahmed Afadhali Rehani appealed to the High Court. The judge stated *inter alia* in his judgment:

“I think he (the district magistrate) completely missed the point when he held in his brief judgment that as there was no certificate of marriage between the deceased and the mother of Ahmed, the latter was not entitled to inherit . . . Clearly these – paternity and marriage – are two distinct matters . . .

For Haruba . . . there was evidence . . . from witnesses . . . elders and neighbours . . . that . . . deceased who specifically introduced Ahmed as his son . . .

The trial court was well versed with the relevant rules of Islamic law . . .”.

The judge accordingly allowed Ahmed’s appeal and restored the finding of the primary court.

From that judgment Zena Rehani has appealed to this court.

It is clearly established, from answers to our questions at the hearing of the appeal that the deceased and the parties involved in this dispute all are Muslims. The matter will therefore have to be decided according to Muslim Law; in fact the matter was so dealt with in the courts below. According to Muslim

Law a man can acknowledge another as his legitimate child. In Wilson’s Anglo-Muhammedan Law 6th

Edn., section 85 reads:

*Presumption of paternity from acknowledgment, when conclusive.*

“85. If a man has acknowledged another as his legitimate child, the presumption of paternity arising therefrom can only be rebutted by:

( *a*) Disclaimer on the part of the person acknowledged, he or she being of an age to understand the transaction; or

( *b*) such proximity of age, or seniority of the acknowledgee, as would render the alleged relationship physically impossible; or

( *c*) proof that the acknowledgee is in fact the child of some other person; or by

( *d*) proof that the mother of the acknowledgee could not possibly have been the lawful wife of the acknowledger at any time when the acknowledgee could have been begotten.

*Explanation*. A mere casual acknowledgment of the fact of paternity, not intended to confer the status of legitimacy, will not have that effect.”

Similarly in Principles of Mohamedan Law by Mulla 13th Edn., s. 344 refers to conditions of valid acknowledgment, and is more or less in conformity with what is stated in Wilson’s Anglo-Muhammedan

Law. Indeed in Mulla, referring to *Fuzzelun Bebee v. Omdah Bebee* (1868), 10 W.R. 469 and cited with approval in subsequent cases, it is stated that acknowledgment as a son *prima facie* means acknowledgment as a legitimate son. All the conditions of a valid acknowledgment have been fulfilled by the deceased and Ahmed and none of the disabilities was proved against the acknowledgment. This principle of acknowledgment, as far as I am aware, is accepted by all the schools of Muslim Law, Shia and Sunni, including the Sunni Shafei sect to which presumably most of the African Muslims in

Tanzania belong. In my view there was ample credible evidence to show that the deceased in his life time had acknowledged Ahmed as his legitimate son. In the circumstances, since the deceased has left no other issue, Ahmed Afadhali is rightfully the sole heir, and Zena Rehani as an elder sister will be excluded from any inheritance. In fact Zena Rehani conceded as much; in the event Ahmed was the legitimate son of the deceased. In the circumstances, I would dismiss the appeal. Mr. Tukunjoba, appearing for the respondent, has indicated that in the event the appeal is dismissed, he would not ask for costs against the appellant. I would therefore not make any order as to costs.

**Sir William Duffus P:** I agree and as Musoke, J.A. also agrees, the appeal is dismissed. There will be no order as to costs.

**Musoke JA:** I agree with the Judgment of Mustafa, J.A., which I have read in draft and have nothing to add.

*Appeal dismissed.*

The appellant appeared in person.

For the respondent:

*SBM Tukunjoba*