DONALD WILLIAM FLUCK v ATTORNEY-GENERAL (1986) Z.R. 5 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER AND MUWO, JJ.S.
6TH JANUARY,1986
(S.C.Z. JUDGMENT NO. 2 OF 1986)

Flynote
Estate Duty - Remission of duty for surviving spouse - Rate - Calculation

Headnote
This was an appeal from the decision of the High Court on the interpretation of section 9 of the Estate Duty Act, Cap. 660 of the Laws. The High Court Judge interpreted the section to mean that the surviving spouse who inherits property upon which estate duty is payable is only entitled to a rebate of half the duty chargeable on the first K50,000 of the value of the property so inherited, in this particular case 2 1/2%.

Held:
There is no authority or justification for the fragmentation of the estate for one purpose and aggregation of it for another.

The rate of remission or rebate is calculated at half the rate payable in respect of the aggregate of the whole of the estate.

Legislation referred to:
Estate Duty Act, Cap. 660, s. 9

For the appellant: D. F. Quirk, of Messrs Ellis & Co.
For the respondent: M. E. Mwaba, Senior State Advocate.

p6

Judgment
NGULUBE, D.C.J.: delivered the judgment of the court.

This is an appeal from a decision of the High Court at Lusaka concerning the interpretation of section 9 of the Estate Duty Act, chapter 660 of the Laws. For convenience we propose to quote the section and it reads:

> "Where the Commissioners are satisfied that estate duty has become payable on any property inherited by the surviving spouse of the deceased, they shall remit, or, if estate duty has been paid, shall repay, one-half of the duty chargeable on the first fifty thousand kwacha of the value of such property."

The facts of this case were not in dispute. It is common ground that, for purposes of calculating the estate duty, the Act requires that the property of the deceased person shall be aggregated and then, depending on the total value, there is a schedule which sets out the rate of duty to be paid. There

was no dispute in this case that the property as a whole attracted duty at the rate of 8%. The bone of contention was what should be the amount of the section 9 rebate in the case of the surviving spouse who inherited the estate in this case.

On behalf of the appellant, it was argued in the High Court and here that the rebate on the first K50,000 relates to one-half of the duty payable on the whole estate, in this case 8%, half of which is 4%. Mr Mwaba on behalf of the respondent has argued in support of the High Court decision to the effect that the reference to the first K50,000 of the value of the property means that the rebate must be at the rate of duty chargeable on an estate valued at K50,000 namely, 5% which means that only half of that, that is 2 1/2, is refundable.

We have considered this matter and we agree entirely with the observations of Mr Quirk that there appears to be no previous case authority in this country on this particular issue. We note that both the learned trial judge and Mr Mwaba seek to construe section 9, when it refers to duty chargeable on the first K50,000 for purposes of rebate, as if this were a reference to duty chargeable on an estate valued at K50,000 simpliciter or duty chargeable as if the estate were for K50,000. We do not read the section in this way. In our considered opinion, the section must mean, as it says, that the duty actually paid or chargeable attracts a refund relative to, or as it relates to, the first K50,000 of the total value of the estate for assessment. In our view, therefore this would mean 4% in this case. The respondent's argument could only be accepted and would only be valid if the total estate attracted duty in graduated segments such as 5% on the first K50,000 6% on the next so many thousands, 7% on the next lot of thousands and so on. But that is not what the schedule to the Act says, nor is it what sections 4 and 12 of the Act say should be done to the property. Section 4 provides for the making of a single charge of estate duty while section 12 requires the aggregation of all the deceased's property so as to form one estate upon which estate duty is payable at one, and one only, of the applicable rates set out in the schedule. We find that section 9 is clear in its terms. For example, when it refers to the commissioners

granting a rebate in the expression "they shall remit", payment will not have been made at 5% in this case as that is not the rate of duty chargeable on any part of the Zambian estate the whole of which falls to be charged at a single rate of 8%.

We agree entirely with Mr Quirk that there is no authority, and no justification, for the fragmentation of the estate for one purpose, and aggregation of it for another: that is, fragmentation for rebate and aggregation for fixing the appropriate rate. On the contrary section 12 specifically demands that the estate should be subject to aggregation and a single rate.

For the reasons given this appeal must be allowed. We reverse the decision of the High Court and enter judgment for the appellant. We award the costs both here and below to the successful appellant.
Appeal Allowed
