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

SUPREME NGULUBE,	D.C.J.,	COURT Gard	OURT GARDNER AND		MUWO, JJ.S		
6TH			TVEIC	THE	WOW	-	ARY,1986
(S.C.Z. JUDGMEN	T NO. 2 OF 1	.986)					
Flynote Estate Duty - Ren	nission of du	ty for surviving	spouse - Ra	te - Calculation	1		
Headnote This was an appearance Estate Duty Act, the surviving sporebate of half the this	Cap. 660 of use who inhom	the Laws. The erits property unble on the first	High Court J pon which e	Judge interpret state duty is p	ed the secayable is	tion to monly enti	nean that itled to a
Held: There is no authorized aggregation of it is		ification for th	ne fragmenta	ntion of the e	state for o	one purp	oose and
The rate of remis the	sion or rebat whole	e is calculated	at half the ra	ate payable in th	-	the agg	regate of estate.
Legislation refer	red to:						
Estate	Duty	Act,	Cap.	660,	,	S.	9
For the appellant: For the respondent: p6	•	irk, of Messrs El waba, Senior Sta					
Judgment NGULUBE,	D.C.J.:	delivered	the	judgment	of	the	court.
This is an appeal section 9 of the E section and it read	state Duty A		_		_		
"Where tl	ne Commiss	ioners are sati	sfied that e	state duty has	become	payable	on anv

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

kwacha

of

the

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

of

such

value

property."

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

**p**7

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