

**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**(CORAM: MUSSA, J.A., KOROSSO, J.A., and KITUSI, J.A.)**

**CIVIL APPLICATION NO. 9/05 OF 2017**

**REVENATHA ELIAWONY MEENA .....APPELLANT**

**VERSUS**

**ALBERT ELIAWONY MEENA .....RESPONDENT**

**(Application for review of the decision of the High Court of Tanzania  
at Moshi)**

**(Munisi, and Fikirini JJ)**

**Dated the 17<sup>th</sup> day of March, 2017 to 14<sup>th</sup> day of September 2016  
in**

**Probate and Administration Case No. 3 of 2015**

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**RULING OF THE COURT**

2<sup>nd</sup> & 12<sup>th</sup> December, 2019

**KOROSSO, J.A.:**

Before the Court is an application seeking revisional orders of the proceedings of the High Court of Tanzania at Moshi (Munisi and Fikirini JJ) between 17<sup>th</sup> July, 2015 to 14<sup>th</sup> September, 2016 in Probate and Administration Cause No. 3 of 2015 brought under Section 4(3) of the Appellate Jurisdiction Act, 1979 as Amended by Act No. 17 of 1993 (The AJA). The sought relief is for the application to be granted and costs to

abide by the result of the application for the intended revision. The application is grounded on the following:

- i) There exist serious substantive and procedural irregularities of Probate laws and Rules that amount to exceptional circumstances in the conduct of the High Court proceedings in Probate and Administration Cause No. 3 of 2015 which call for the immediate intervention of the Court of Appeal of Tanzania before justice is irretrievably hijacked.*
- ii) The High Court of Tanzania at Moshi cannot be seized with jurisdiction to proceed hearing of Probate and Administration Cause No. 3 of 2015 ex-parte which was opened out of the jurisdiction of the deceased place of domicile contrary to section 53 of the Probate and Administration of Estate Act, Cap 354 R.E 2002 and the petition was not accompanied by affidavit as to the deceased's domicile as required by Rule 64 the Probate Rules GN 369 of 1963.*

- iii) *The Probate and Administration Cause No. 3 of 2015 started and proceeded on the wrong footing of law whereby on 17<sup>th</sup> July, 2015 Madam Judge A. A. Munisi, J. upon reading the petition ordered usual citation be issued without the petition being annexed with the WILL of the deceased Eliawony Kristonsia Meena and proper CONSENT as per requirement of sections 55(1), 78(2) Probate and Administration of Estate Act, Cap 354 R.E. 2002 and Rule 40, 39(f) and Rule 71 of the Probate Rules GN 369 of 1963.*
- iv) *The High Court cannot proceed with hearing of petition ex-parte without due consideration of Preliminary objections raised by the applicant/caveator against the position. The Preliminary objections were filed by the applicant/caveator along with the Caveat on 12<sup>th</sup> November, 2015.*
- v) *That, High Court cannot proceed with hearing of the petition ex-parte knowingly that, the*

*applicant/caveator was not issued with CITATION by the petitioner to enable the applicant/caveator to make appearance as per requirement of section 59(2) of the Probate and Administration of Estate, Cap 354 R.E 2002 and Rule 82(2) and (3) GN 369 of 1963.*

*vi) That, it was improper, uncorrect and irregular for the High Court to consider the caveat filed by the applicant/caveator withdrawn and proceeded to fix a date of hearing of the petition before it/exparte on 10<sup>th</sup> August, 2016 and 9<sup>th</sup> November without due consideration of the requirements of Rule 82(2A) and (2B) of the Probate Rules GN 369 of 1963*

The respondents duly filed and affidavit in reply resisting the application and disputing the applicant's averments found in the affidavit supporting the notice of motion.

When the application came for hearing, Mr. Shilinde Ngalula learned Advocate entered appearance for the applicant while on the part of the respondent, he was represented by Mr. Michael Chahe, learned Advocate.

Mr. Shilinde Ngalula informed the Court that the current application has been overtaken by events because Revision No. 1 of 2017 which related to matters raised in the current application was heard and determined by this Court on the 18<sup>th</sup> May 2017. The learned counsel therefrom prayed to withdraw the application.

On the part of the learned counsel for respondents, he did not resist the prayer sought by the learned counsel for the applicant but extended prayers that the respondent be granted costs in view of the preparations done, court appearances made and other related expenses incurred.

We have carefully considered the prayers sought by the applicant's counsel and also the fact that the counsel for the respondent registered no objection and we thus accede and grant the prayer to withdraw the application. In the result, the application is marked withdrawn under Rule 58(3) of the Court of Appeal Rules, 2009 (The Rules)

That being the position, the remaining issue for consideration is determination on costs. We have heard the concerns raised by the respondent's counsel relating to expenses incurred in preparation and court appearances made while on the part of the applicant's counsel he

submitted that he was assigned the brief by the Legal and Human Rights Centre (LHRC) in provision of legal aid to the applicant, and also that they had alerted the Court and the respondent soon after the decision in Civil Revision No. 1 of 2017 was delivered, their intention not to pursue the current application. The counsel intimated that they had filed the said notice of withdraw of the application at Moshi sub-registry of this Court and prayed that each party pay own costs. We have deliberated on these submissions by both counsel and find that the applicant counsel failed to either show proof of the notice of withdrawal of the current application or that the said notice was served to the respondent counsel. Efforts to trace the said notice at the Moshi sub-registry and the Court of Appeal registry Dar es Salaam have not borne any fruits.

Even if we consider that this application has been filed by virtue of providing legal assistance to the applicant, we are aware that section 31 (1) of the Legal Aid Act, 2017 (Legal Aid Act) states that, where an aided person receives legal aid for proceedings and loses the case, award of costs against the aided person shall only be ordered in exceptional circumstances. Again, under Section 31(2)(a) of the Legal Aid Act, in exceptional circumstances, a court in determining whether or not the legal

aided person should pay costs, may exercise its discretion and consider the conduct of the legal aided person that caused the other party to incur unnecessary costs.

In the end, we find that taking all the circumstances pertaining to these proceedings alluded to above which led the respondent to incur unnecessary expense, warrants us to order that costs be met by the applicant. Order Accordingly.

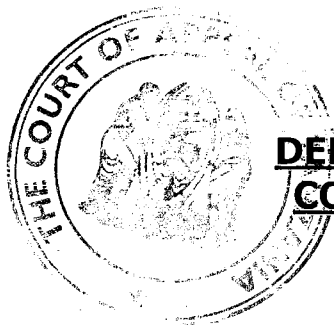
**DATED at ARUSHA** this 11<sup>th</sup> day of December, 2019

K. M. MUSSA  
**JUSTICE OF APPEAL**

W. B. KOROSSO  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

The Ruling delivered this 12<sup>th</sup> day of December, 2019 in the presence of Ms. Emiliana Emanuel James counsel for the applicant and Mr. Lecktony Ngeseyan/Michael Chaye for respondent, is hereby certified as a true copy of the original.



G. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**