IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LILA, J.A., MWANGESI, J.A. And SEHEL, J.A.)

CIVIL APPEAL NO. 183 OF 2016

JOSEPH SHUMBUSHO.. APPELLANT

VERSUS

1. **MARY GRACE TIGERWA..1ST RESPONDENT**
2. **JAMES RUGAIMUKAMU..2ND RESPONDENT**
3. **DAVID RUGAIMUKAMU..3RD RESPONDENT**

(Appeal from the Judgment and Decree of the High Court of Tanzania at Dar es Salaam)

(Juma, J.)

dated the 3rd day of February, 2012
in
Probate and Administration Cause No. 11 of 2004

....

JUDGMENT OF THE COURT

24th April, & 6th October, 2020

SEHEL, J.A.:

The appellant and the respondents herein are siblings of the late Sebastian Rugaimukamu Kakoti Tigwera (the deceased) who died intestate on 8th day of December, 2002. The appellant is the eldest brother of the respondents. He petitioned for letters of administration. The respondents consented to the petition. Consequently, the High Court of Tanzania granted him the letters of administration. After some

years, Mr. K. Mwita Waisaka, a legal counsel acting for the appellant filed an account of the administration of the deceased's assets exhibiting the assets that came in the hands of the administrator, the manner in which the liabilities were dealt with and the distribution of the residue to the heirs. After the filing of those accounts, the respondents filed an application under sections 44, 49 and 64 of the Probate and Administration of Estates Act, Cap. 33 R.E 2002 (The Probate and Administration Act) in the High Court (Dar es Salaam District Registry) at Dar es Salaam, a Probate and Administration Cause No. 11 of 2004. The application sought for rescission, revocation, cancellation or otherwise the denial of the grant of letters of administration to the appellant. The main reason advanced by the respondents in that application for revocation was, the appellant failed to act in good faith and in transparent manner in the discharge of his obligation as an administrator. The application was heard by way of written submissions.

Three issues were raised by the parties in their written submissions which were considered and decided by the High Court. **One**, whether the respondents invoked proper provision of the law to move the High Court to revoke the appellant's grant of letters of

administration? On this issue, the trial judge found and held that the respondents properly moved the court by citing section 49 (1) of the Probate and Administration Act. **Two**, whether the respondents have advanced sufficient grounds for revocation? On this issue, the trial judge considered the obligation of the administrator under section 107 (1) of the Probate and Administration Act of exhibiting true accounts and reasoned that for the accounts to be true in material particulars and respects it ought to have shown and indicated therein that the beneficiaries and heirs were consulted and involved in its preparation. Lack of consultation and failure of the administrator of the estate to involve the beneficiaries was held to constitute sufficient ground for the rescission and revocation of the appellant's appointment. **Three**, whether the filing of the statement of accounts concluded the administration of the estate hence the respondents were barred from bringing an application for revocation? The trial court found that the administration was yet to be concluded as such the respondents were within the statutory and factual right to seek the revocation of the appointment of the appellant on ground of failure to consult the beneficiaries on the management of the estate.

At the end, the trial court allowed the application. It revoked the appellant's granted letters of administration and appointed the respondents as joint administrators of the deceased's estates. This obviously irked the appellant. He thus filed the present appeal advancing seven grounds as follows:-

1. *That the High Court erred in law and in fact to hold to the effect that for an inventory filed under the Probate and Administration of Estates Act, Cap. 352 R.E 2002 to be valid, the same is to show how the beneficiaries were consulted in its making;*

2. *That the High Court erred in law and in fact by holding to the effect that an administrator of the deceased's estate has a legal duty to consult and agree with the heirs in the filing of inventory, accounts and in the doing of anything in the administration of the deceased's estate;*

3. *That the High Court erred in fact and in law to rule to the effect that an administrator of an estate in Tanzania who is residing in Australia cannot consult heirs to the same estate who are living in Tanzania in the process of preparing an inventory of the estate;*

4. *That the High Court erred in law and in fact by appointing the respondents to be administrators of the estate of the deceased without there being an application/petition to that effect;*

5. *That the High Court erred in law and in fact by appointing the respondents to be administrators of the estate of the deceased without affording any opportunity to any person to object or say anything about their appointments and without providing an opportunity for the court and the beneficiaries of the estate to know the appointees, their commitments and their suitability in general.*

6. *That the High Court erred in law by not striking out the application which had moved it to revoke letters of administration under sections 44, 49 and 64 of the Probate and Administration of Estates Act, Cap. 352 R.E 2002 without outlining the specific section and subsections on which the application based;*

7. *That the High Court erred in law by not striking out the application for being supported by a defective affidavit.*

When the appeal was called on for hearing before us, the appellant was represented by Mr. Audax Vedasto, learned advocate whereas all three respondents had the services of Mr. Jonathan Mbuga, learned advocate. The learned counsel from both sides had earlier on filed written submissions in support and in opposition of the appeal, respectively and fully adopted them save for minor clarification

regarding the supplementary list of authorities filed in support of the grounds of appeal.

In his written submission, the learned counsel for the appellant abandoned the seventh ground of appeal and consolidated grounds number four and five. Grounds number one, two, three and sixth were argued separately. He began his submission with the sixth ground of appeal.

Before giving a summary of the counsel submissions, we find it apt to state here that after examining the record of appeal we have noted that the appellant having been appointed as administrator of the deceased's estates filed an account on the division of the deceased's estates and not an inventory. It is important to note that account is different from inventory. We shall explain the difference between the inventory and the accounts in the later stage but for the time being we shall, in this appeal, be referring to the accounts and not inventory as submitted by the counsel for the parties.

Submitting on the sixth ground of appeal that the trial court was not properly moved hence the application ought to have been struck out, the appellant contended that the respondents failed to cite

applicable subsection and cited inapplicable provisions of the law in their application for revocation of the letters of administration. Expounding further, the appellant argued, section 49 of the Probate and Administration Act has subsections (1) and (2) and subsection 1 has subsections (a) to (e) but the respondents in their application only cited section 49 of the Probate and Administration Act without specifying the relevant subsection. It was thus contended that the respondents failed to cite a proper provision of the law.

It was submitted that the respondents also cited sections 44 and 64 of the Probate and Administration Act and sections 68 (e) and 95 of the Civil Procedure Act, Cap. 33 R.E 2002 that deals with interlocutory matters whereas the application that was before the High Court did not relate to the issues of the interlocutory proceedings. Hence, it was argued that there was a citation of irrelevant provision of the law.

It was the view of the counsel for the appellant that failure to cite specific provision and the citation of the inapplicable provisions of the law was a fatal irregularity which rendered the application incompetent and ought to have been struck out. To fortify his argument, he cited the case of **Citi Bank Tanzania Ltd v. Tanzania**

Telecommunication Co. Ltd, Civil Application No. 64 of 2003 (unreported) and **China Henan International Co-operation Group v. Salvand K.A Rwegasira** [2006] TLR 220. It was pointed out that the trial court erred in finding that the respondents cited section 49 (1) (e) of the Probate and Administration Act thus arrived to a wrong conclusion that the trial court was properly moved.

In relation to the first ground of appeal, the appellant in his submission referred us to rule 106 of the Probate and Administration Rules, Cap. 352 which provides for specific form to be used, Form No. 80 whose copy is annexed to the schedule thereto. He added that Form 80 requires the executor/administrator to fill in specific details in respect of the deceased's estates. It requires the administrator to provide details about the assets, liabilities and signature of the executor/administrator with no more. It was submitted that it does not provide for a space to show that beneficiaries were consulted and/or involved in the preparation of the accounts. Section 64 of the Interpretation of Laws Act, Cap. 1 R.E 2002 was cited to cement the argument that where Forms provides for specific matters then the allowable deviation is in regard to matters which does not affect the substance. It was contended that the finding of the High Court that

the administrator ought to have shown in the inventory that he consulted the beneficiaries was a deviation in the substance of the Form prescribed by the law.

The complaint in the second ground of appeal is that an administrator has a legal requirement to consult the beneficiaries. The learned counsel for the appellant acknowledged that the court has, under the law, power to impose the requirement of consultation, if it sees that need, but not in the way the High Court suggested that it should have been shown in the inventory. It was submitted that the law under section 99 of the Probate and Administration Act recognizes the executor/ administrator as a legal representative of the deceased' assets for all purposes and all the properties of the deceased have been vested in him. In that regard, it was contended that the administrator has all powers over the deceased's assets including selling them in the name of the deceased; sue and/or be sued as stipulated under sections 100 and 101 of the Probate and Administration Act but the law does not provide for a requirement for the administrator to consult and agree with the beneficiaries as held by the trial Judge. For instance, he argued, section 101 of the Probate and Administration Act clearly provides that the administrator can dispose of 'as he thinks fit' and not

as the others think fit. Likewise, it was submitted, there is no such requirement in the distribution of the estate among the heirs. He insisted that the trial judge had no justification to go beyond the statute and his interpretation of requiring the administrator to consult with the heirs simply because he took an oath had no logical construction. To the view of the learned advocate the law is patently clear and it does not require any further interpolation as it was held in the cases of **Tanzania Teachers Union v. The Chief Secretary and 3 Others**, Civil Appeal No. 96 of 2012 (unreported).

On the third ground of appeal regarding error in holding that the administrator who resides in Australia cannot consult the beneficiaries in preparing the accounts, it was reiterated that there is no requirement for the administrator to consult the beneficiaries and, by any event, in a petition for letters of administration, the court considers, in terms of section 33 of the Probate and Administration Act, the best interest of the estate in appointing the administrator and not a residence of the petitioner.

For the combined fourth and fifth grounds of appeal on appointing the respondents as joint-administrators, it was submitted

that since there was no application or petition filed by the respondents then the trial Judge erred in appointing respondents as joint-administrators.

On the basis of the above submission, the learned counsel for the appellant urged us to allow the appeal with costs.

From the adversary side, the learned counsel for the respondents prefaced the reply by opposing the appeal that it has no merit and it should be dismissed with costs. He then proceeded to respond to the grounds of appeal in the sequence submitted by the learned counsel for the appellant save for the first and second grounds which were conjunctively argued.

Starting with the sixth ground of appeal, the respondents supported the findings of the High Court and strenuously argued that section 49 of the Probate and Administration Act cited by the respondents was sufficient to move the court. In the alternative, it was submitted that the irregularity was not fatal to nullify the proceedings. In cementing that position, the learned counsel cited the case of **Samson Ngw'alida v. The Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 86 of 2008 (unreported) where

the Court emphasized on the need to provide substantive justice to the parties and to avoid technicalities.

The first and second grounds of appeal were jointly responded that common sense requires consultation even where there is no express provision of the law especially when the deceased died intestate. It was reasoned that the law requires the administrator to discharge his duty at the interest of the known beneficiaries and that duty cannot be effectively discharged without consultation or involving the beneficiaries who are best placed to provide guidance to some issues which might not be in the knowledge of the administrator.

Regarding a person residing in Australia that cannot administer the estate in Tanzania, it was submitted that according to the circumstances of the case it was wrong for the appellant who resides in Australia to instruct an advocate to prepare the accounts and submit it in court without consulting the beneficiaries who reside in Tanzania.

For appointing respondents without there being a petition, it was responded that section 49 (2) of the Probate and Administration Act vests power to the High Court to suspend or remove an administrator and to appoint a successor. The definition of a successor as defined in

the **Black's Law Dictionary** 4th Edition, West Publishing Co. 1968 Pgs. 1599-1600 was also referred. It was further submitted that the logic behind it is for the deceased's estates not to be left unattended in the event the administrator is removed from his/her administrator-ship or office. The learned counsel for the respondents gave his opinion that if the appointed administrator does not faithfully perform his/her obligation any interested party has a chance to challenge the administrator-ship by invoking the provisions of section 49 (1) of the Probate and Administration Act. Lastly, he prayed for the appeal to be dismissed with costs.

In rejoinder, it was reiterated that the law does not require the administrator to consult with the beneficiaries.

Having given due consideration to the parties' submissions on this appeal, we find it convenient to deal with the grounds of appeal in the manner adopted by the learned counsel for the appellant. We shall thus in our deliberation start with the sixth ground of appeal followed by the first, second, third and finally deal with the combined fourth and fifth grounds of appeal. Furthermore, we are mindful that there are various laws applicable in probate and administration of the deceased's estates

but our discussion in this appeal will mainly focus on the Probate and Administration Act.

Starting with the sixth ground of appeal in respect of wrong and non citation of the proper provision of the law, it is true, as we have alluded herein, the respondents preferred their application for an order to rescind, revoke, cancel, and decline to confirm and also deny the grant of letters of administration to the appellant under sections 44, 49 and 64 of the Probate and Administration Act and sections 68 (e) and 95 of the CPC. As rightly submitted by the learned counsel for the appellant, sections 44 and 64 of the Probate and Administration Act and sections 68 (e) and 95 of the CPC were irrelevant. However, the invocation of inapplicable provision of the law does not make the application incompetent.

We are fortified with what we had said in the case of **MIC Tanzania Limited and 3 Others v. Golden Globe International Services Limited,** Civil Application No. 1/16 of 2017 (unreported) where the applicants moved the Court to exercise its revisonal jurisdiction under sections 4 (1), (2) and (3) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002 (the AJA). It be noted that section 4

(1) of the AJA does not deal with revisional powers and section 4 (2) of the AJA is applicable when the Court in the course of hearing or determining an appeal considers it necessary to exercise its powers of revision. The proper provision was section 4 (3) of the AJA. In that regard, the respondents raised, amongst other points of law, an objection that the application was incompetent for wrong citation of the enabling provision of the law. In addressing that point, the Court held:

> *"....The first point of objection is, to us, easily disposable and, for that matter, it need not unnecessarily detain us. Granted that sections 4(1) (2) are inapplicable to the situation at hand but, as correctly formulated by Mr. Kapinga, the same are mere surplusage which should simply be ignored so long as the enabling provision has been cited. We are, therefore, fully satisfied that the Court is properly seized of the matter with the citation of the enabling section 4(3) of AJA. The first point of preliminary objection is, thus, bereft of merits and, accordingly, the same is overruled."*

To date we still hold the same position of the law that the citation of the superfluous provisions of the law in the chamber application does not make the application incompetent. Given the fact that the

respondents had cited section 49 of the Probate and Administration Act which deals with revocation and removal of the administrator the citation of the inapplicable provision of the law did not make the respondents' application incompetent. Admittedly, the respondents did not go further to mention the specific subsection that was applicable. But, as rightly submitted by the learned counsel for the respondents, the failure to cite specific subsection of the law did not make the application incompetent.

We now turn to the first ground of appeal where the appellant faults the findings of the trial court that the accounts filed by the appellant ought to have shown how the beneficiaries and heirs were consulted and involved in its preparation. Section 107 (2) of the Probate and Administration Act requires an executor/administrator to exhibit an account showing the assets which have come into his hands and the manner in which they have been applied or disposed of since the last account was exhibited. The Format of that account is described under Rule 107 that:

> *"An account of the estate required to be exhibited by an executor or an administrator under section 107 of the Act shall be in Form 81 set out in the*

First Schedule and shall contain a statement showing in what proportion and to whom the residue is proposed to be paid."

For ease of reference we reproduce herein Form 81 as it appears in the First Schedule:

FORM 81

ACCOUNTS OF ESTATE

(Section 107, Rule 107)

(Title)

Date of Grant	Receipts	Value
	1. Estate as per inventory	
	2. Estate realised Shs.....	
	3. Gain (or loss) on realisation	
	Gross Estate:	______
		______

Payment	Value
1. Funeral Expenses	
2. Debts	
3. Administration expenses	
4. Net estate available for distribution	
Total	______

The aforesaid residue of..has been (or will be) divided amongst the following person entitled to the same.

Name of person entitled	How entitled	Amount

I ....the administrator (or executor) of the estate of the said..................................hereby certify that the foregoing accounts are true to the best of my knowledge and belief.

Dated the............day of ....20.......................

....

Signature of Executor or Administrator

Filed in court this...........................day of...20......................

From the above it is gathered that the administrator is required to exhibit the manner he had administered the deceased's estates by exhibiting in the accounts the assets of the deceased collected, debts and the funeral expenses incurred and paid and the expenses of the administration. He has also to indicate on how he has distributed the residue of the estate to the person or persons entitled thereto.

Here, we wish to pose and revert back to the difference between the inventory and accounts. An inventory is described under section 107 of the Probate and Administration and rule 106 of the Rules whereupon a heir or an administrator is required to file inventory containing full and true estimates of all the properties which came into his possession as a legal representative, all the debts owing by any person, and all the credits. The format of it is provided in Form 80 set out in the First Schedule to the Rules. Therefore, the inventory is filed in order to show the assets and liabilities of the deceased whereas the accounts is filed in order to show the administration of the deceased's assets and its format is provided in Form 81 of the First schedule to the

Rules. Such accounts must be filed within a period of not more than one year or within such further time as specifically appointed by the court whereas the inventory is required to be filed within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint or require. In that regard, the inventory is not synonymous to the accounts as the parties would like this Court to take.

Back to the issue on what the administrator is required to exhibit in the accounts, we have shown herein above that the law requires him to show in the accounts the assets which have come to his hands and the manner in which they have been applied or disposed of. Accordingly, we agree with the learned counsel for the appellant that it was wrong for the trial judge to hold that the statement of accounts should have shown the beneficiaries and heirs were consulted and involved in its preparation. Form 81 is very specific on items to be exhibited by the administrator. It requires him to indicate the assets of the deceased collected, debts and funeral expenses incurred and paid, the expenses of the administration and the distribution of the residue of the estates to the person (s) entitled thereto with nothing more. It does

not provide for a space that the beneficiaries and heirs were involved and consulted. Here, we are in total agreement with Mr. Vedasto that such an inclusion would make a substantive change in Form 81. The conclusion of this issue takes us to the second ground of appeal regarding whether the executor or administrator has any obligation to consult with heirs or beneficiaries.

The appellant in his second ground of appeal faults the finding of the trial court that the appellant, as an administrator, ought to have consulted the beneficiaries. It is on record that the appellant was appointed to be an administrator of the deceased estates as such by virtue of section 99 of the Probate and Administration Act, from the time of his appointment till the revocation of the letters of administration, he became a personal legal representative of the deceased and stepped into the shoes of the deceased.

The law recognises the executor/administrator as personal legal representative of the deceased. Normally, when a person dies and leaves behind a Will appointing one or more executors that named person (s), if there is no objection, then that named person becomes the executor of the Will and by virtue of section 99 of the Probate and

Administration Act he becomes a legal representative and it is said that the deceased died testate. But where there is no Will to be executed, the deceased is said to have died intestate and upon petition, the court appoints an administrator to be the legal representative of the deceased's estates.

As a legal representative of the deceased's estates, all the deceased's estates are vested to him and has all the powers over the deceased assets as the deceased would have, save that he is acting in a representative capacity. As rightly submitted by the learned counsel for the appellant, he is vested with the powers to sue in respect of all causes of action that survived the deceased, powers to recover debts due to the deceased at the time of his death, as the deceased had when he was living (section 100 of the Probate and Administration Act) and powers to dispose of property by way of sale, mortgage, leasing or otherwise in relation to immovable property (section 101 of the Probate and Administration Act). In addition, the law requires the legal representative to collect all debts due to the deceased and pay all the debts owed by the deceased.

In the performance of his duty as a legal representative, the law requires him to act in accordance with his oath. And what does this mean? Section 66 of the Probate and Administration Act requires the grantee of the probate or letters of administration to take an oath that he/she will faithfully administer the estate of the deceased and will account for the same. That is the administrator will faithfully administer the deceased's estates by first paying the just debts of the deceased, distributing the residue according to the law, making and exhibiting a full and true inventory of the deceased's properties and credits and rendering a true account of the administration. The rationale of exhibiting the inventory and accounts is to keep the beneficiaries informed and to have transparency in the execution/administration of the deceased's estates. It is therefore implicit in the Probate and Administration Act that a legal representative owes a fiduciary duty to the heirs and beneficiaries. By way of emphasis, we wish to reiterate here that such a fiduciary duty is inferred from the oath taken by the grantee of the probate or letters of administration. As such, contrary to the view of the learned counsel for the appellant, the law is very much clear on the fiduciary duty imposed upon the grantee of probate or letters of administration.

The term '*fiduciary duty*' has been defined in the **Black's Law Dictionary**, 9th Edition, Wes Publishing Co. 2009 at page 581 to mean "*a duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as the duty that one partner owes to another).*"

The Supreme Court of India in the case of **Central Board of Secondary Education and Anr. v. Adiya Bandopadhyay and Others** (2011) 8 SCC 497 sourced from https://indiankanoon.org/doc/1519371/ speaking through Ravindeeran, J. explained the term '*fiduciary*' and '*fiduciary relationship*' in the following words:

> *"The term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary)*

in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party."

Having said that, let us turn to the facts of the present appeal once more to determine the extent of a fiduciary duty owed to the respondents by the appellant who was administering the estates of the deceased. We have shown herein, the appellant who was an administrator of the estates of the late Rugaimukamu was acting as a legal representative of the estates of the late Rugaimukamu. Therefore, he owed a fiduciary duty to the beneficiaries and heirs who are the respondents herein. By virtue of his position, the appellant was supposed to act in good faith at all times for the sole benefit and interest of the estates of the deceased and to the beneficiaries of the

estate including but not limited to providing information to the beneficiaries and heirs. It is on record that the appellant filed to the court the accounts exhibiting his administration of the estates of the late Rugaimukamu as required by section 107 (1) of the Probate and Administration Act. The said account was exhibited to the court by K. Mwita Waissaka, a legal counsel acting for the appellant. After filing the accounts, the respondents might have exercised their rights provided under section 107 (5) of the Probate and Administration Act which provides:

> *"Any beneficiary under a will, person entitled to a share under intestacy or unsatisfied creditor shall be entitled to inspect the inventory and an account of an executor or administrator."*

Having inspected the account, they were not pleased with it and that is why they filed the application for revocation of the appellant's letters of administration on ground that the appellant failed to act in good faith and in transparent manner in administering the estates of the deceased. The trial judge agreed with the respondents that the accounts exhibited by the appellant were not true in material particulars and respects because there was no consultation and involvement of the

beneficiaries and heirs. We have held in the first ground that consultation and involvement is not supposed to be shown in Form 81. Nonetheless, we entirely agree with the trial judge that the obligation to consult is derived from the fiduciary duty whereby prudence requires an administrator to make consultation for smooth administration leading to a peaceful conclusion of administration but it is not a statutory requirement. It is a matter of prudence rather than legal obligation. There is no law which demands the administrator to seek for the consultation from other beneficiaries on dividing the deceased's estate. However, as rightly submitted by Mr. Vedasto, common sense dictates that consultation in dividing the deceased's estates is of great importance, particularly, where the deceased died intestate. Prudence in the process of distributing the deceased's estates to the beneficiaries would entail consultation before distribution and filing the accounts but there is no law that imposes such an obligation for it to be shown in the accounts. In that regard, we find merit on this ground of appeal.

Furthermore, in resolving the issue as to whether the accounts were correct, the trial judge also considered the issue of residence of the appellant which is the appellant's third ground of appeal. The appellant complained that the trial judge erred when he ruled that a

person in Australia cannot administer the estate in Tanzania. We are of the view that this complaint has no merit. We have keenly gone through the impugned ruling and we failed to find such a holding. The record shows that the trial judge having framed the issue, he made the following remark:

> *"It remains a misery whether whilst in Australia, the respondent instructed the learned Advocate to prepare and submit the inventory without any involvement of the beneficiaries."*

He then concluded as follows:

> *"Taking into account the undisputed long distance, between Australia where the respondent permanently resides and Tanzania where the property of the deceased is situate; the way the inventory was prepared leads me to the conclusion that the grievance of the applicants regarding the failure of the respondent to consult them over the distribution and preparation of the inventory is well founded. It is plausible to even suppose that the respondent unilaterally instructed his learned Advocate to prepare the inventory without any involvement of other beneficiaries."*

From the above, we gather that the trial judge did not particularly rule that the person residing outside the country, most specifically in Australia, cannot administer the estates in Tanzania. We gather from his ruling that in allowing the application for revocation, he considered in totality the surrounding circumstances of the case that the appellant was a permanent resident of Australia, the properties were in Tanzania, the manner the accounts were prepared and the possibility of the appellant taking unilateral decision without involving the respondents. He did not rule that a person residing outside Tanzania cannot administer the estates in Tanzania. He connected the issue of residence of the appellant with the practicability of consultation of which we have found that it is not legally required.

In any event, the law is very clear that when a court is considering as to whom it should grant a petition for letters of administration regard have to be:

1. To a person who applies would be entitled to the whole or part of such deceased's estate according to the rules for the distribution of the estate of an intestate applicable in the case

of such deceased (See section 33 (1) of the Probate and Administration Act), or

2. Where there are two or more petitioners, priority should be given to the greater and immediate interests in the deceased's estate than to a lesser or remote interests (See section 33 (2) of the Probate and Administration Act), or

3. Where necessary or convenient to appoint any other person apart from the would be entitled to a grant of administration, consideration should be on the consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered (See section 33 (4) of the Probate and Administration Act).

Lastly, the appellant complained that the respondents were appointed as joint administrators without there being a petition. There is no controversy that the respondents were appointed as joint administrators after the High Court had granted their application for revocation of the appellant's letters of administration. In that respect, we entertain no doubt that the appointment of the respondents as joint administrators was done by the High Court in exercise of its powers

under section 49 (2) of the Probate and Administration Act which reads:

> *"S. 49 (2) -Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the High Court may suspend or remove an executor or administrator (other than the Administrator-General or the Public Trustee) and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate."*

The above provision of the law is explicitly clear that it empowers the High Court to suspend or remove an executor or administrator and it also provides for the succession of another person to the office of such executor or administrator who may cease to hold office. The law vests jurisdiction to the High Court to remove and replace an executor or administrator without there being an application for petition. The appointment is done when dealing with the application for revocation and removal of the administrator. The intention of bestowing such discretionary power to the High Court is for the deceased's estates not

to be left unattended. Besides, that appointment is not absolute. If the appointed administrator mishandles the estates of the deceased then any interested person and beneficiary entitled to the estate of the deceased has a right to make an application under section 49 (1) of the Probate and Administration Act for the revocation of the grants and removal of the administrator. Therefore, it is not true that there is no safeguard against a person appointed by the court in exercise of its discretionary power under section 49 (2) of the Probate and Administration Act.

All said, we have found in this appeal that the grounds advanced by the respondents did not justify for the revocation of the appellant's granted letters of administration. As such, there was no justification for the High Court to appoint the respondents as successors of the appellant to the office of the administration. For that reason, we are compelled to set aside the appointment of the respondents as joint administrators and restore the appellant to his office as the legally appointed administrator of the estates of the late Sebastian Rugaimukamu Kakoti Tigerwa unless otherwise he is challenged and removed by the due process of law.

In the end, we allow the appeal with costs to the extent shown herein.

DATED at **DAR ES SALAAM** this 2nd day of October, 2020.

S. A. LILA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

The Judgment delivered this 6th day of October, 2020 in the presence of Mr. Alfred Rweyemamu holding brief for Mr. Vedasto Kahendeguza for the Appellant and also appearing for the Respondents, is hereby certified as a true copy of the original.

H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL