

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

(CORAM: MWARIJA, J.A., MWANDAMBO, J.A, And MASHAKA, J.A.)

CIVIL APPEAL NO. 236 OF 2018

KHERI RAMADHANI KASIBA @ FERUZ

(Administrator of the estate of

the late RAMADHANI KASIBA)APPELLANT

VERSUS

AZIZA RAMADHANI KASIBA..... RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Tabora)

(Mallaba, J.)

dated the 22nd day of March, 2018

in

PC. Probate Appeal No. 5 of 2017

.....

JUDGMENT OF THE COURT

30th March & 1st April, 2022

MWANDAMBO, JA.:

The appellant was aggrieved by the judgment of the High Court sitting at Tabora in PC. Probate Appeal No. 5 of 2017. He preferred the instant appeal with a view to setting aside that judgment. In that judgment, the High Court dismissed the appellant's appeal from the ruling of the District Court at Tabora refusing to extend the time within which to lodge an application for revision from the decision of

Tabora Urban Primary Court in Probate and Administration Cause No. 77 of 2001. For a reason which will become apparent shortly, the determination of the appeal turns on an issue different from the grounds set out in the memorandum of appeal.

The following facts will help to appreciate the issue and the course of action we have taken. The appellant and the respondent were among the children of the late Ramadhani Kasiba Feruzi (the deceased) who died intestate in Tabora on 10/09/1975. For reason not apparent on the record, the heirs of the deceased did not take any step to apply for letters of administration for the appointment of an administrator of his estate. Sometime in the year 2016, long after the death of the deceased, the appellant filed Probate and Administration Cause No. 69 of 2016 in the Primary Court of Ilala District at Ilala for the grant of letters of administration in respect of the deceased's estate. The appellant did so apparently with the consent of his siblings in a meeting of the deceased's surviving children said to have been held in Dar es Salaam. The respondent is shown to have consented too although she did not attend the meeting.

Subsequently, on 23/08/2016, the Primary Court of Ilala granted the letters of administration to the appellant appointing him as the administrator of the deceased's estate. In the course of discharging his duties, the appellant came to learn later that the Tabora Urban Primary Court had granted letters of administration to the respondent in respect of the same estate of the deceased in Probate & Administration Cause No. 77 of 2001 long before his appointment as an administrator by Ilala Primary Court without his knowledge and consent.

From that discovery, the appellant sought to challenge the proceedings and the grant of the letters of administration to the respondent made by Tabora Urban Primary Court by way of revision. However, as he was late in doing so, he moved the District Court of Tabora for an order extending the time in Miscellaneous Civil Probate Application No. 13 of 2017 but in vain. The District Court dismissed that application upon being satisfied that the appellant had not exhibited sufficient reasons to explain away the delay of as long as 16 years from the date of the grant of letters of administration to the respondent. That decision culminated into an appeal before the High Court at Tabora vide Probate Civil Appeal No. 5 of 2017.

Generally, the appellant's complaint before the High Court centred on the alleged failure by the District Court to take into account that the respondent had procured the grant of the impugned letters of administration fraudulently warranting an order extending the time to seek revision. In particular, ground six in the petition of appeal sought to have the alleged fraudulent grant quashed and substituted by the grant by the Ilala Primary Court in Probate and Administration Cause No. 69 of 2016 made on 23/08/2016. The first appellate court dismissed the appeal upon being satisfied that no sufficient reason had been advanced to warrant interfering with the exercise of discretion by the District Court.

Undaunted, the appellant instituted the instant appeal premised on six grounds. Prior to the institution of the appeal, the appellant moved the High Court to certify five points of law for the Court's determination as required by section 5 (2) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019], henceforth, the AJA. Nevertheless, Rumanyika, J., (as he then was), certified only one point contained in his ruling delivered on 05/07/2018. The point certified by the High Court runs thus:

"Whether given the obtaining circumstances the Ilala Primary Court Probate Cause No. 69 of 2016 which granted him (the applicant) letters of administration was time barred."

That point features as ground six in the memorandum of appeal. Without expressing any opinion on the tenability of the rest of the grounds not certified by the High Court, our immediate concern lies in the propriety of the very point certified by the High Court for the Court's determination. This is so because, whereas the impugned judgment arises from an appeal originating in Tabora Urban Primary Court in Probate and Administration Cause No. 77 of 2001, the point certified by the High Court seeks to have the Court determine whether Probate and Administration Cause No. 69 of 2016 before Ilala Primary Court was time barred.

When the appeal was called on for hearing, the appellant appeared in person unrepresented so did the respondent who, due to hearing impairment, she could hardly follow the proceedings. We allowed Kapalata Mohamed, her grandson who accompanied the respondent to assist her. Apparently, both parties had filed their respective written submissions for and in opposition pursuant of

Rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

We felt compelled to draw the attention of the parties to the propriety of the certified point for their comments mindful that it had a bearing on the competency of the appeal and ultimately the Court's jurisdiction to entertain it.

Not surprisingly, the appellant conceded as such that the point certified by the High Court concerns the proceedings in Ilala Primary Court and not Tabora Urban Primary Court from which the appeal has originated. All the same, the appellant was candid that as a layman, he could not comprehend its effect since he believed that it was properly issued by the High Court. Otherwise, he left the matter to the Court's decision. The respondent had nothing to say understandably so given that apart from her being a layperson, she could not easily comprehend the issue due to her hearing impairment.

From the foregoing, the issue for our consideration and determination lies in the competency of the appeal in the light of section 5(2) (c) of the AJA which stipulates:

"no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order;"

On the other hand, in terms of rule 96(2) of the Rules, a certificate on a point of law is one of the essential documents to be incorporated in the record of appeal in an appeal to which Part III Head (c) of the Magistrates' Courts Act [Cap 11 R.E 2019], (the MCA) is applicable. The certificate on a point of law envisaged by section 5(2) (c) of the AJA and rule 96(2) of the Rules must relate to the decision in the proceedings from which an appeal has arisen. As conceded by the appellant, the certificate appearing at pages 72 - 75 of the record of appeal relates to a decision in Probate and Administration Cause No. 69 of 2016 before the Primary Court of Ilala District at Ilala quite distinct from Probate and Administration Cause No. 77 of 2001.

The net effect of the above is that there is no certificate on a point of law on the basis of which the appeal could have been instituted capable of being determined by the Court. As the appeal is

incompetent, we exercise the powers of revision vested in the Court under section 4(2) of the AJA and hereby strike out the appeal. Considering the nature of the case and the fact that the issue resulting into the striking out of the incompetent appeal was raised by the Court *suo motu*, we shall make no order as to costs.

Order accordingly.

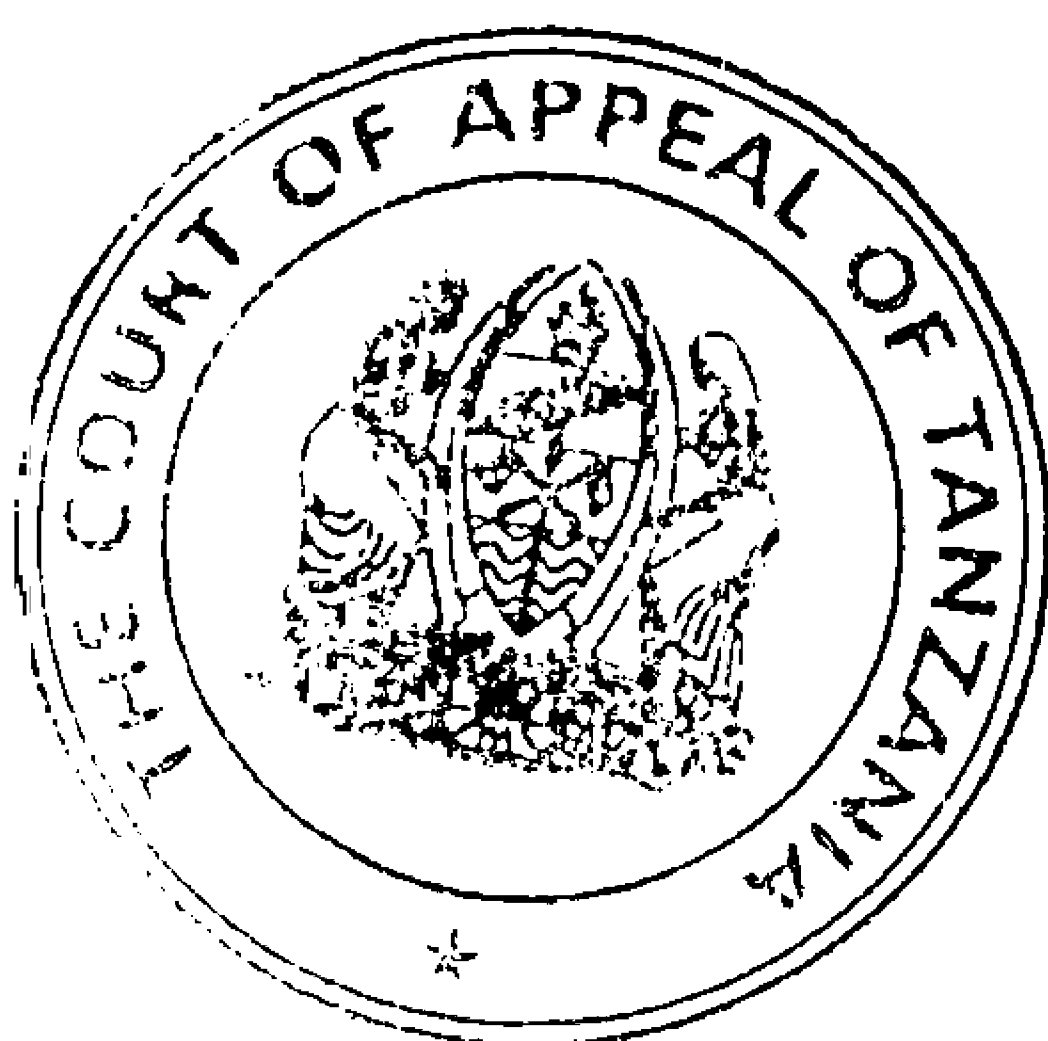
DATED at **TABORA** this 31st day of March, 2022.

A. G. MWARIJA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

The Judgment delivered this 1st day of April, 2022 in the presence of the Appellant and Respondent in persons, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL