

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISC. CIVIL APPEAL NO. 12 OF 2002

(From the decision of the District Court
of Mbeya District at Mbeya in (Probate)
Civil Appeal No.19 of 2001 and Igurusi
Primary Court Civil Case No.3 of 2001)

NAZIRI KOSHUMA.....APPELLANT

VERSUS

SWIGA ITEGE.....RESPONDENT

JUDGEMENT

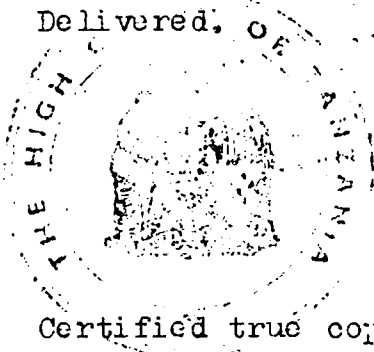
MACKANJA, J.

This appeal originates from the appointment of Swiga Itege as the administratrix of the estate of the late Malay John Lazaro Mwangosi who passed away at Mtwara where he resided. His roots are at Igurusi, Mbeya. The decision from which it is appealed was delivered on 14th December, 2001. Having been aggrieved the appellant lodged this appeal on 21st March, 2002. According to section 25 of the Magistrates Courts Act an appeal originating from a primary - it must be instituted within thirtydays after the date of the decision of the appellate District Court. The one before me was instituted 115 days after the date of the decision which it is intended to appeal. It follows that the appeal is hopelessly out of time. I dismiss it on that account. There shall be no order as to costs.

I have discovered, however, that there appears to be a fundamental error on the face of the records of proceedings regarding the territorial jurisdiction of the trial court. I

therefore direct that revisional proceedings to be instituted to determine whether the Igurusi Primary Court had jurisdiction to entertain the application, considering that the deceased resided at Songea where he had landed property. In the meantime the deceased's estate shall not be distributed or in any way alienated until the revisional proceedings have been concluded.

Delivered. O

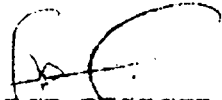


sgd: J.M. MACKANJA

JUDGE

18/7/2002

Certified true copy of the original.


DISTRICT REGISTRAR

MBEYA