

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
PC CIVIL APPEAL NO. 73 OF 2004
(Originating From District Court Civil Application No.35 of 2005
at Kinondoni)

THERESIA ZAKARIA.....APPELLANT
VERSUS
OSCAR RWECHUNGURA.....RESPONDENT

JUDGMENT

SHANGWA, J:

This appeal is against the ruling of the District Court of Kinondoni made on 11.3.2004 by Makwandi, RM in which the respondent's application to set aside the dismissal order of his application for want of prosecution was granted. The dismissal order reads as follows:

"Since the applicant is absent and no notice for his absence I allow Mr. Nathaniel Issa's prayer and accordingly dismiss the application for want of Prosecution. The original file is to

*be remitted back to the trial Primary Court
to proceed with execution ...*

Makwandi, RM – Sgd

18.9.2003”

Earlier before filing the application which was dismissed for want of prosecution, the respondent Oscar Rwechungura had filed an application seeking for extension of time to file an application for revision of the proceedings of Kawe Primary Court in Probate Cause No.11 of 1998. This application was dismissed by Mnengo, Honorary Magistrate on 19.3.2003 for having been filed hopelessly out of time. In doing so, he observed as follows and I quote:

On 11.8.2002 Applicant Oscar Rwechungura the Administrator filed an application out of time but gave no grounds for his delay of over four years since Kawe Primary Court delivered its decision on 18.6.1998.

With the above backgrounds, the Court with due respect cannot entertain the

application which is hopelessly out of time.

Application dismissed with Costs...

Appeal Rights explained .

J.F. Mnengo, H.M. – Sgd

19.3.2003”

The fundamental question which arises in this appeal is whether the District Court of Kinondoni acted properly by continuing to entertain Oscar Rwechungura and hearing his subsequent application after his earlier application had been heard inter partes and dismissed. I am of the considered view that in doing so, the District Court of Kinondoni acted improperly and erroneously. After dismissing Oscar Rwechungura's application for extension of time to file an application for revision of Kawe Primary Court's proceedings in Probate Cause No. 11 of 1998 on ground that it had been filed hopelessly out of time, the District Court of Kinondoni became **FUNCTUS OFFICIO**. Thereafter, it could no longer entertain him in a similar matter. Mr. Mmanda for the respondent supports

the District Court's ruling in which his client's application to set aside the dismissal order of his application for want of prosecution was granted. He submitted that the District Court decided correctly in restoring his client's application so that it may be argued inter partes.

On my part, I do not think that by so doing, the District Court decided correctly. As I have already said, the said court was functus officio. Therefore, it was wrong for Makwandi, RM to entertain and grant the respondent's application when the District Court had become functus officio.

For this reason, I agree with learned Counsel for the appellant Mr. Nathaniel Issa that the District Court's action of continuing to entertain Oscar Rwechungura after dismissing his earlier application was nothing but chaos in administering justice. As such, I set aside the ruling made by Makwandi, RM on 11.3.2004. I sustain its ruling made earlier by Mnengo,

Honorary Magistrate on 19.3.2003. I embrace the fair decision made by Kawe Primary Court in Probate Cause No. 11 of 1998 in which **AHMED SAIDI, ZAINABU SAIDI** and **ZAHARA SAIDI** were recognized as some of the heirs of the estate of the late **SAIDI RWEHABURA TIRUKAIZILE** who was their putative father. Finally, I allow this appeal with Costs.

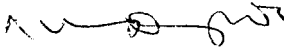
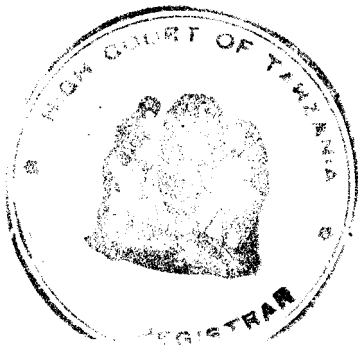


A. Shangwa

JUDGE

23.2.2005

Delivered in open Court at Dar es Salaam this 23rd day of February, 2005.



A. Shangwa

JUDGE

23.2.2005.