

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPEAL NO. 27 OF 2005

**SHOMVI ULIZA APPELLANT
VERSUS
MWAJABU RAJABU FUNDI RESPONDENT**

Date of Last Order : 28/4/2007

Date of Judgment : 1/6/2007

JUDGMENT

ORIYO, J.

The appellant was granted letters of administration over the estate of the Late Rajabu Fundi who died intestate on 30/3/1999 in Mwananyamala. The Grant was made by the District Court of Kinondoni in Probate and Administration Cause No. 1 of 2003 on 25/3/2003; by the late Mnengo, (Honorary District Magistrate). According to the Petition, the deceased estate comprised of assets including a house at Mwananyamala Dar es Salaam.

Subsequent to the grant, the respondent filed a caveat against the administrator in that she is entitled to part of deceased estate because she was one of the deceased children born of a different mother. In a Ruling delivered on 4/11/2004 the trial court (learned L. J. Mbuya – SRM) granted the prayers and ordered the appellant to include the respondent in the list of beneficiaries.

The appellant has lodged this appeal against the ruling on 4 grounds. Before I consider the merits of the appeal I wish first to look into the issue of the jurisdiction of the District Court to Grant the Letters of Administration; albeit **suo mottu**. The question of jurisdiction is paramount in any court proceedings. It is so fundamental in any trial even if it is not raised by the parties at the initial stages, it can be raised and entertained at any other stage of the proceedings, to ensure that the court is properly vested with jurisdiction to adjudicate the matter before it.

The Petition for Letters of Administration lodged by the appellant in the District Court was made under Section 56 of the Probate and Administration of Estates Act, [Cap 352, R.E. 2002]. In terms of Section 3 of the Act, jurisdiction over probate and administration of deceased estates is vested in the High Court. The situation, however, is different for Magistrates Courts. For Resident Magistrates to exercise jurisdiction they must have been appointed District Delegates by the Chief Justice; in terms of Section 5 (1) and

(2). For District Courts, their jurisdiction is provided under Section 6 (1) which states:

" *A district court presided over by a first or second class magistrate **shall have jurisdiction in the administration of small estates, with power to appoint administrators of small estates** where the deceased died within the jurisdiction of the court."*
(emphasis mine)

The jurisdiction of District Courts is limited to Grants over Small Estates. Small Estates is defined by Section 2 (1) of the Probate and Administration of Estate Act as follows:

" ***an estate the gross value of** which a district court, having jurisdiction in probate or administration is satisfied **does not exceed ten thousand shillings.***"

The jurisdiction of District Courts under the Act is limited to grants where the relevant estates value do not exceed shs. 10,000/-. Going by the record, the gross value of the estate of the late Rajabu Fundi was far in excess of shs. 10,000/=; it was not a Small Estate.

In view of the foregoing, the Honorary District magistrate who made the grant of letters of administration to the appellant on

25/3/2003 had no jurisdiction over the matter as the estate involved was of a value exceeding shs. 10,000/=.

In the circumstances; the proceedings in Probate and Administration Cause No. 1 of 2003, in the District Court of Kinondoni were conducted without jurisdiction; which renders the proceedings, a nullity.

In the result, the proceedings are quashed; the Grant dated 25/3/2003 and all other orders made thereon are set aside.

In view of the decision made above, it will not serve any useful purpose to consider the merits of the appeal.

The appellant may wish to make a fresh Petition in the High Court for the Letters of Administration over the deceased Estate. The respondent may likewise apply to be included in the list of beneficiaries.

Under the prevailing circumstances, I make no order for costs.

K. K. Oriyo

JUDGE

1/6/2006