

**IN THE HIGH COURT OF TANZANIA
AT TABORA.**

**PC. CIVIL APPEAL NO. 44/2006
ARISING OUT OF KIGOMA RM'S COURT CIVIL
APPLICATION NO 1/2006 AND ORG. UJIJI P/COURT
PROBATE AND ADMINISTRATION CAUSE NO. 82/2006.**

KIGOMA DISTRICT BAKWATA SECRETARY APPELLANT

Versus

THININA d/o MUSSA....'RESPONDENT

JUDGMENT

3rd April, 07 & 31st May, 07

MUJULIZI, J.

This is an appeal from the decision of the Resident Magistrate's Court of Kigoma in RM Misc. Civil Application No. 1 of 2006, dated, 17/10/2006.

The Application leading to the impugned decision was an application for revision from the decision of the Ujiji Primary Court, Probate and Administration Cause No, 82/2004, under which the present Appellant was appointed by the Ujiji Primary Court suo motto, following rejection of the appellant's application to be appointed as admistrix of the estate of the late Abdallah Said.

It is therefore clear that the Appellant was not party to the proceedings before the Ujiji Primary Court. The decision of the Primary Court was not appealed from.

Close to 12 months after the decision, the Respondent purported to seek revision of the same decision that she had a right to appeal against but did not.

There is indeed not much in the decision of the Ujiji Primary Court to merit any serious challenge by way of Revision. All it did was to appoint an administrator of the estate.

By the time the matter went for revision the Respondent was actually challenging matters subsequent to the decision of the Lower Court. There was no allegation made that the Respondent had subsequently complained to the Ujiji Primary Court in relation to any misconduct of the appointed Administrator, the Appellant herein.

The Application which did not name the beneficiaries of the deceased's estate, the interested parties who were to be affected by the decision to be made therein, was still born. No court of competent jurisdiction ought to have entertained it at all.

As it happens however, the Resident Magistrate's Court did not even have the jurisdiction to entertain the matter.

I entirely agree with the submissions of Mr. Kayaga learned Counsel for the Appellant;

The Revisional Jurisdiction under section 22 of the Magistrate's Court's Act, (Cap.11 R.E. 2002) is vested in a DISTRICT COURT. It has not been disputed seriously by the Respondent that the impugned application was filed in the Resident Magistrate's Court of Kigoma. That is the issue, not whether the Magistrate who presided over the matter was or was not a District Magistrate. To cite SHYAM THANK & AN. V. NEW PALACE HOTEL LTD (1972) HCD NO. 20 is stating the obvious.

The application was misconceived in the first place and was an attempt to appeal against the decision of the Ujiji Primary Court out of time.

Secondly it purported to be filed against a person who was not even a party to the proceedings, excluding the people whose rights were to be affected by the orders sought: Section 22 (3).

But worse still the Resident Magistrates Court had no jurisdiction.

For the above reason, I allow the Appeal, with costs both in this and the District Court to the Appellant.

The proceedings and decision of the District Court are hereby quashed and set aside.


A.K. MUJULIZI

JUDGE

31/5/2007

Delivered in the presence of the Respondent. The Appellant and his Counsel are absent. The advocate reported that he was indisposed.


A.K. MUJULIZI

JUDGE

31/5/2007