

**IN THE HIGH COURT OF TANZANIA
AT MWANZA**

HC CIVIL REVISION NO 3 OF 2006

*(Arising from Musoma District Court Probate & Administration
Cause No. 1/2005 Original from Musoma Urban Court*

KAKWAYA NYASAHILIAPPLICANT

And

MARTIN NYASAHILIRESPONDENT

ORDER IN REVISION

RWEYEMAMU, J.

This matter relates to the Inspection Report dated 7/2/2006, submitted by the Musoma Resident magistrate I/ Charge under the provisions of section 30 (2) of the Magistrate's Court Act (MCA), 1984. Its background was as follows:

1. After the death of one *Martin Nyasahili*, two Probate & Adm. Cases were filed, one being Zanaki Primary court case No. 2/2005 and the other, No. 10/2005 of Musoma Urban Primary Court.
2. Subsequently, following an application by the learned advocate Mr. Ngelo to have the matter transferred to the District Court (DC).
3. Following that, a Principal District Magistrate (PDM), made a revision order dated 23/6/2005 in Revision case No. 12/2005 and transferred both PC files to the DC supposedly under section 47 (1) (c) (1) of the MCA.

4. Thereafter, one of the deceased's relatives Kakwaya Nyasahili, a party in one of the PC cases filed Probate & Adm. Cause 1/2005 in Musoma DC. It was in the course of handling that case when the RM I/C became aware of the District magistrate's Revision cum transfer order of 23/6/2005-(*Kakwaya* had made it part of his application).
5. After inspecting the PDM's order he made and submitted to this court a report referred to above.

In the report, the RM I/C made two points which I find valid. One, that the PDM was in error when he purported to transfer the matter to the DC, because the DC had no jurisdiction in view of the fact that from some of the revealed facts, the deceased's estate did not qualify as a **small estate**, (triable by the DC) under section 6 of the Probate and Administration of Estate Act, (Cap 352 R.E. 2002). Among other properties claimed as per DC record is monies with the NBC in the sum of more than 4 million shs.

Two, the RM I/C notes that to his knowledge, no magistrate had been designated as a **District delegate** at Musoma as prescribed under S.5 of cap 352 at Musoma DC. To my knowledge, that is indeed the position.

In the Inspection Report, the RM also takes exception to the PDM's use of Swahili language but in view of my orders hereinafter, I will not pursue that issue.

I agree the DC has no jurisdiction in the matter for reasons stated. Under the circumstances, I use revision powers vested in me under section 30 (1) (b) & (2) (a) of the MCA, 1984 to:

- quash proceedings in DC Revision case 12/2005;
- strike off the register cases filed in both PCs and to;
- Strike off the register DC Probate Cause 1/2005.

What is to be the next cause of action? This probate cause has to be dealt with and come to closure, but the deceased's relatives are bent on proceeding in two different PCs, I advise whoever is desirous to be appointed administrator to file the case in the PC, and let other contending parties file objection proceedings. Alternatively, the parties may opt to file the matter in the High court. It is ordered.

R.M. Rweyemamu

Judge

28/5/2008

Order: All case files are forwarded to the DR Mwanza HC together with the Order, for delivery to the parties. This certified order and all the relevant case files are to be sent to Musoma RM's court - there to be returned to relevant registries with a copy of this order

R.M. Rweyemamu

Judge

28/5/2008

At Mtwara HC