

IN THE HIGH COURT OF TANZANIA
AT IRINGA

(PC) CIVIL APPEAL NO. 7 OF 2013

(Originating from Miscellaneous Civil Application
No. 6 of 2013 Original Probate Cause No. 48 of 2010
from Iringa Bomani Primary Court)

CHARLES S/O G. VANENZIS ----- APPELLANT

VERSUS

KRIAKOS S/O KALOGERIES AND OTHERS ----- RESPONDENTS

16/03/2015 & 30/04/2015

JUDGMENT

KIHWELO, J.

This is an appeal against the decision of the District Court of Iringa which stayed the execution pending the results of the Revision Application.

The facts as reflected in the court records are brief and may be stated as follows.

On 21st June, 2010 the appellant petitioned for letters of administration of the late Gregory Vanenzis vide Probate and Administration Cause No. 48 of 2010 at Iringa Bomani Primary Court which were granted on 14th July, 2010 by appointing the appellant as the Administrator of the Estate of the late Gregory Vanenzis.

On 19th August, 2013 the appellant as an Administrator of the late Gregory Vanenzis through a letter moved the Iringa Bomani Primary Court seeking to attach properties of the respondents on allegations that the respondents had misappropriated the properties of the appellant's late father which were part of the Estate of the late Gregory Vanenzis.

Following that request on 3rd September, 2013 the Iringa Bomani Primary Court directed the Court Brokers one Majembe Auction Mart to attach the listed properties of the respondents in execution of the court order presumably the one dated 26th August, 2013.

As a result of that turn of events the respondents on 16th September, 2013 filed a Miscellaneous Civil Application No. 6 of 2013 seeking to stay the execution of the order of the Primary Court pending the revision of the decision of the Primary Court. The respondents further invited the court to call for and examine the proceedings of the Primary Court in the Probate and Administration cause for purposes of satisfying itself as to the appropriateness, legality or propriety and regularity of the proceedings involving the respondents.

The District Court after hearing the application for stay and revision went ahead to issue both a stay of execution and later revised the proceedings by nullifying them and ordered a hearing *de novo* before another competent Magistrate and a different set of assessors.

Dissatisfied by the decision of the District Court the appellant filed this present appeal. He has filed a five point petition of appeal which I wish to summarize as follows:-

1. The Honourable Senior Resident Magistrate erred in quashing the proceedings in Probate and Administration Cause No. 48 of 2010 and ordering a fresh trial on the ground of irregularities which did not occasion any miscarriage of justice.

2. The Honourable Senior Resident Magistrate erred in basing his decision on lack of order to publish the citation while there was no complaint from the applicant about the appointment of the administrator.
3. The Honourable Senior Resident Magistrate erred in holding that the only items listed were three while the attachment contained more goods.
4. The Honourable Senior Resident Magistrate erred in ruling that the appellant gave no reason for not having faith with the trial Magistrate.
5. The Honourable Senior Resident Magistrate erred in basing his decision on technicalities while delaying substantive justice.

Whereas the respondents were represented by Ms. Caroline Kivuyo, learned counsel from IMMA Advocates, the applicant appeared in person.

Upon request of the parties this appeal was argued by way of written submissions which were dully filed as per the schedule as directed by the court.

A cursory perusal of the court records and based upon both the submissions made by the parties as well as the grounds of appeal, it is my humble view that the following are the central issues of

substance upon which the determination of the appeal turns around.

1. Whether the District Court rightly revised the proceedings of the Primary Court and therefore nullifying the appointment of the administrator.
2. Whether the Primary Court was legally right in entertaining the application for execution and subsequent attachment of the respondent's properties.
3. Whether the Primary Court had jurisdiction to entertain the current probate and administration cause.

I will first examine the propriety and correctness of the revision done by the District Court. This is essentially raised in ground one and partly ground two of the petition of appeal. The appellant contended that the Senior Resident Magistrate was wrong in nullifying the entire proceedings on account of irregularities which in the opinion of the appellant neither jeopardized the respondents nor occasioned any miscarriage of justice. Ms. Kivuyo forcefully submitted that the order to issue citation was a mandatory procedural requirement in order to invite the general public in case any third party has an objection to the probate proceedings.

Furthermore the petition was not declared as required by the law.

As the complaint on the nullification of the proceedings is based upon the procedural irregularity, I think it is desirable to examine briefly the manner in which the appointment of the administrator was dealt with by the Iringa Bomani Primary Court. From the record it is apparent that the trial Magistrate proceeded to appoint the administrator without any order to issue citation and that Form No. 1 was not declared before any Commissioner for Oaths which is an apparent irregularity.

Further the trial Magistrate issued an order of attachment of the respondents' properties as listed by the applicant. However, with due respect I am at one with the Honourable Senior Resident Magistrate that the trial Magistrate invoked a course of action which was outside the purview of the dictates of the law much as the proceedings in Probate and Administration Cause No. 48 of 2010 related to appointment of the administrator of the deceased as such it was improper for the trial Magistrate to entertain the request for attachment of the respondents' properties. From these circumstances I am of the considered opinion that the Honourable Senior Resident Magistrate rightly revised the decision in Probate and Administration Cause No. 48 of 2010. This automatically