

IN THE HIGH COURT OF TANZANIA

(Dar es Salaam District Registry)

AT DAR ES SALAAM

CIVIL APPEAL NO. 102 OF 2014

DELVINA BALTAZAR SWAI.....APPELLANT

VERSUS

KEBISI CHACHA.....1st RESPONDENT

KIRIGINI CHACHA.....2nd RESPONDENT

FURAHA CHACHA.....3rd RESPONDENT

JUDGMENT

MWANDAMBO, J

The facts giving raise to the instant appeal emanate from Probate Cause No. 7 of 2014 before the District Court of Ilala District at Samora. At the instance of the first Respondent who was a Petitioner in the said Probate Cause, the District Court granted letters of Administrators to him and the 2nd and 3rd Respondents. The appointment of the 2nd and 3rd Respondents as Co-Administrators of the estate of the late Chacha Nyamoyo Wambura was a result of an objection by the Appellant against the appointment of the 1st Respondent who had earlier petitioned before the said court to be appointed a Sole Administrator. Aggrieved by the lower court's decision, the Appellant has appealed to this court praying for the nullification of the proceedings and appointment of the Respondents as Administrators of the deceased's estate on the following grounds namely;

1. That the District Court erred in law and fact for appointing the Administrators without a proof of the document of the clan meeting which proposed the Respondents to be appointed as administrator (sic!)
2. That the District Court erred in law and in fact in appointing a person who did not apply (Petition) to be appointed as administrator.
3. That, the District Court erred in law and fact in appointing a person who is (sic!) objected by a legally heir (sic!) of the estate of the deceased.
4. That, the District Court erred in law and fact in addressing to the objection that the petition is fraudulent before the court.
5. That, District Court erred in law and fact in giving weight to the evidence of the witnesses of the petitioner who gave planned evidence in order to grab the estate of my late husband and leave the legal heir with nothing.

During hearing the Appellant was represented by Mr. Msigwa learned Advocate and the Respondent fended for themselves. For clarity, the 3rd Respondent opted not to take part in the appeal because she had declined to be one of the Administrators notwithstanding the lower court's order the subject of the appeal. At the request of the parties the appeal was argued by way of written

submissions. In the course of my consideration of the submission for composing a judgment, I discovered a point of law which, if addressed could determine the appeal without the need to consider the grounds of appeal. Accordingly, alive to the fundamental right to be heard a point before making a decision thereon, I summoned parties to address the court whether the lower court was properly seized with jurisdiction to determine a Probate cause presided over by a Resident Magistrate and make a competent decision capable of being appealed to this court.

On the date of a resumed hearing, Mr. Msigwa learned Advocate readily conceded that the lower court had no jurisdiction to determine the Probate for two reasons. One, though the District court has jurisdiction to determine probate on small estates, such jurisdiction is only exercised if probate proceedings are presided over by a District delegate. Since the Magistrate who presided over the probate before the lower court was a Senior Resident Magistrate with no evidence of being appointed as a District Delegate by the Chief Justice, he had no jurisdiction to preside over the Probate proceedings, Mr. Msigwa argued. Two, Mr. Msigwa argued that even assuming Mr. Hassan, SRM who presided over the probate proceedings had been appointed as a District Delegate, he could not, **never the less** exercise his jurisdiction over a probate in an estate whose value exceeded TZS 15,000/= pursuant to the provisions of S.5(1) of the probate and Administration Act, Cap 352 R.E 2002. Consequently, Mr. Msigwa urged me to find and hold that the proceedings and the resultant order before the lower court

were a nullity and thus the court ought to exercise its revisional jurisdiction by quashing them as well as nullifying the appointment of the Respondents as Co – Administrators. For their part the 1st and 2nd Respondents who had no legal representation had nothing in reply. They both left the point to the court’s wisdom.

I have followed the submissions by Mr. Msigwa learned Advocate for the Respondent and I must, with respect agree with him. As already submitted, section 3 of Cap 352 vests jurisdiction on probate and administration under that law in the High Court whereas S. 5 confers jurisdiction on District Delegates approved by the Chief Justice in relation to estates whose gross value does not exceed Tshs.15,000/= commonly referred to as small estate as the record will bear testimony, Probate Cause No. 7 of 2014 was in relation to application for letters of administration of an estate whose gross value was in excess of Tshs 15,000/= judged from the petition.

By any standard that was not a small estate which could have fallen under the jurisdiction of the District Court presided over by a District Delegate under S.5 of Cap 352. But even assuming the application related to a small state, there is no evidence as rightly submitted by Mr. Msigwa that Mr. Hassan, Senior Resident Magistrate who presided over by the said proceedings was designated as such by the Chief Justice. Had it been the case, the record ought to have clearly reflected the fact that there is no such

indication can only mean that the proceedings were presided over by a person who had no jurisdiction to preside over them.

Having held that the application for Letters of Administration in Probate Cause No. 7 of 2014 involved an estate whose value was in excess of Tshs 15,000/= which could not have been competently been determined by a District Court. The next question for determination is what was the effect of the proceedings and the resultant order Mr. Msigwa invited the court to declare them a nullity and quash the lower court's order appointing the Respondents as Co- Administrators. With respect, I agree that lack of jurisdiction renders the proceedings a nullity and so the orders made therein. Luckily, this court has had occasion to deal with appears in similar circumstances before.

In **Kashindi Zaidi Baraka V. Asia Hussein**, Civil Appeal No. 200 of 2003 (Kalegeya, J as he then was (unreported) a Resident Magistrate presided over probate proceedings in a District Court, in an estate whose value exceeded Tshs 15,000/=. There was no evidence to establish that the Magistrate was appointed as a District Delegate. The court in exercise of revisional powers set aside the appointment of the Administrators and quashed the proceedings.

In **Ismail Mohamed V. Mwahija Gulam Mohamed**, Civil Appeal No. 181 of 2002 (Mlay, J) (unreported) an appeal based on similar background, the court declared the proceedings before the District court a nullity – see also: **-Kassim Salum Muhanga**

&Others V. Tukae Rajabu Mzindu, Civil Appeal No. 160 of 2003 (Mlay, J) and **Naima Ibrahim V. IsayaTsakarlis**, Civil Appeal No. 140 of 2005 (Shangwa, J) (both unreported).

Accordingly, based on the unbroken chain of authorities from this court, I have no hesitation whatsoever in declaring the proceedings before the District Court of Ilala at Samora a nullity and so the appointment of the Respondents as Co- Administrators which is hereby quashed.

In the light of the foregoing, the Appellant's prayer in the memorandum of appeal for nullification of the lower court's proceedings and the resultant order is hereby upheld albeit for different reasons. I would in the final analysis uphold the appeal with no order as to costs because the point on the basis of which the appeal has been determined was raised by the court suo mottu.

It is so ordered.

L.J.S Mwandambo

JUDGE

24/04/2015

Court: Delivered in court in the presence of the Appellant and the 1st and the 2nd Respondents this 13th day of May 2015.

Right of appeal explained.

L.J.S Mwandambo

JUDGE

13/05/2015