

“ORIGINAL”

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

PC CIVIL APPEAL NO. 12 OF 2016

**(Appeal from the District Court of Dodoma
Misc. Civil Application No. 19 of 2016**

Arising from Probate No. 132 of 2006, Dodoma Urban Primary Court

AMINA KONGOLO BHAYA..... APPELLANT

VERSUS

MRISHO KONGOLO BHAYA.....RESPONDENT

JUDGEMENT

Date of JUDGEMENT- 23RD/06/2017.

Mansoor, J:

The Primary Court of Dodoma issued letters of administration to the respondent to administer the estates of the late Mashavu Kongolo. Mrisho and the late Mashavu were step siblings sharing a father. Amina and the late Mashavu were real sisters sharing same parents. The house in question belongs to the late Mashavu and she acquired it from their mother, of whom Mrisho has no relations at all with the family



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assets from the appellant and the late Mashavu's mother. The appellant states that she was forced to vacate her sister's house by the administrator, as the house was demolished and there is now a shopping mall. The Applicant filed an application before the District Court applying for orders stopping the respondent from demolishing the property and making any development to the house which is located at PT.22 KK 23 Majengo Area in Dodoma Town, and ordering the respondent to file an inventory and the list of heirs of the late Mashavu Bhaya Kongolo, and also for the order to vacate the orders of primary court dated 18/12/2015. The District Court held that the application was out of time and that the Applicant ought to have applied before the Primary Court for such orders.

The Appellant states that there were several cases filed in the District Court and the High Court but all these cases were struck out for want of jurisdiction, and that the Appellant was ordered to file a case at the proper registry. She states further that she filed a case at the Primary Court but the Magistrate namely Mwalulefu gave strange orders. She did not give the citation of the case she filed at the Primary Court; she also did not say what strange order was given by the learned Magistrate.



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She stated further that the Magistrate ordered the tenants to pay rent to the respondents, and aggrieved by this order the Appellant filed an application at the District Court challenging the orders issued by the Primary Court. The Appellant did not explain or even cite the law which permits her to file the Application before the District Court affecting probate causes pending in the Primary Court. The Appellant did not say if she knocked the doors of the District Court challenging the orders of Primary Court in probate cause by way of an Appeal or Revision. What is on record is that the Appellant filed a fresh application before the District Court praying for orders which, if issued , would have nullified and quashed the decision of the primary Court.

The Appellant admits also that, she did not apply for extension of time in the District Court, and thus she was not supposed to account for each day of the delay, thus, she says the decision of the District Court was misplaced.

The law governing Probate Causes in the Primary Courts is the Magistrate Courts Act. It is on record that the respondent herein was appointed by the Primary Court to act as the Administrator of the late Mashavu Kongolo Bhaya on 8th



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January 2013. The objections against the administration should have been made before the same Probate Court which issued the Letters of Administration, and not by way of a fresh application before the District Court.

Item 5 of the 5th Schedule to the Magistrates' Courts Act, Cap 11 R: E 2002 gives in the widest sense the duty of the Administrator appointed by the Primary Court, this section reads:

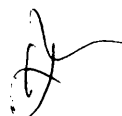
5. *“An administrator appointed by a primary court shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court.”*

If the Appellant is objecting that the Administrator never accomplished his duties, that, he never distributed the estate of the deceased to the heirs or if she wants the letters issued to the Administrator to be revoked or for any other order regarding the administration against the Administrator appointed, the Appellant ought to have applied for such



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orders before the Probate Court which appointed the Administrator. Under item 2 of the 5th Schedule to the Magistrates Courts Act, the primary court has been given powers to supervise the administration of the deceased estates and also powers to revoke the administration for good and sufficient cause when exercising powers of supervision, and it has powers to join another administrator to work together with the person already appointed. Item 2(c) of the 5th Schedule to the Act, the primary court is given power to *“revoke any appointment of an administrator for good and sufficient cause and require the surrender of any document evidencing his appointment;”* together with the powers to appoint the administrator, the primary court under item 2(d) of the 5th Schedule to the Act, has powers *“to either of its own motion or an application by any person interested in the administration of the estate, where it considers that it is desirable to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under subparagraph (a);* thus it has power either to add or replace the administrator on its own or on an application by a person interested in the administration.



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For the above stated reasons, I agree with the decision of the District Court that the application was misplaced, and consequently, the appeal is dismissed, with costs.

DATED at **DODOMA** this 23rd day of **JUNE, 2017**.



L. Mansoor
L. MANSOOR

JUDGE

23rd JUNE 2017