

“ORIGINAL”

**IN THE HIGH COURT OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA**

**PC CIVIL APPEAL NO. 12 OF 2015
(From District Court of Singida,
Civil Appeal No. 26 of 2014, original Urban Primary Court, Civil
Appeal No. 70 of 2014**

JUMA SAID HUMBE APPELLANT

VERSUS

SUBIRA SAID MWANJA RESPONDENT

JUDGEMENT

Date of final submissions-20/04/2017
Date of JUDGEMENT- 05TH /06/2017

Mansoor, J:

On 22/11/2013, the Appellant petitioned before the primary Court to be appointed the Administrator of the estates of the late Hussein Said Humbe who died on 15/1/2013. The respondent herein objected the petition, the objection was upheld and the respondent was appointed the administrator instead of the appellant. The family meeting was held on



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21/11/2013, in which the respondent participated, and the entire family agreed that the appellant be appointed the administrator of the deceased estates. It is on record that the respondent was the ex-wife of the deceased but before the deceased died, they were divorced, and the respondent remarried, and at the time she filed her objection before the primary court, she was already pregnant with her second husband. The respondent was the second wife to the deceased. The deceased had the first wife and the children from his first marriage.

The procedure for petitioning for letters of administration are governed by the Probate and Administration Act, Cap 352 R: E 2002, which provides:

Section 33. Letters of administration on intestacy:

(1) Where the deceased has died intestate, letters of administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an



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intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) Where more than one person applies for letters of administration, it shall be in the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.

(3) Where no such person applies, letters of administration may be granted to a creditor of the deceased. (4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be



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administrator; and in every such case letters of administration may be limited or not as the court thinks fit.

Section 58 provides that “any person having or asserting an interest in the estate of the deceased may enter a caveat against the probate grant or letters of administration.”

The petitioner petitioned for letters of administration, and the respondent entered a caveat. There is a procedure after the caveat is entered, and the procedure is provided under section 59 (3) of the Act, it provides “Where a caveator enters an appearance the court shall proceed with the petition in accordance with paragraph (b) of section 52, and section 52(b) of the Act provides that “in any case in which there is contention, the proceedings shall take, as nearly as may be the form of a suit in which the petitioner for the grant shall be plaintiff and any person who appears to oppose the proceedings shall be defendant.



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Section 52 (a) of the said Act relates to the procedure in contentious cases. It provides that such proceedings shall take form of a regular suit according to the provisions of the Civil Procedure Code, Cap 33 R: E 2002. Section 52 (a) of the said Act in fact reads thus:

52. Procedure in the Court Except as hereinafter provided, and subject to any Probate Rules made in that behalf-

(a) the proceedings of the court relating to the grant of probate and letters of administration shall be regulated, so far as the circumstances of the case admit, by the Civil Procedure Code vi*, or any enactment replacing the same; and

(b) In any case in which there is contention, the proceedings shall take, as nearly as may be the form of a suit in which the petitioner for the grant shall be plaintiff and any person who appears to oppose the proceedings shall be defendant.

Undoubtedly, section 52 of the said Act is in relation to procedure that is to be followed in respect of probate proceedings, once the same becomes contentious. The

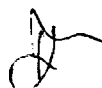


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petitioner for the probate becomes the plaintiff whereas the person who opposes the grant of probate becomes the defendant and the proceedings proceed in the form of a regular suit according to the Code of Civil Procedure.

The Primary Court violated the procedures. Once the respondent filed the objection (the caveat), the matter became a contentious matter, and the court was supposed to proceed with the matter in the form of a regular suit, according to the Civil Procedure Code, this means that the court should have conducted a full trial, affording all parties to present evidences and witnesses and make a final finding. The procedures were violated, and for that reasons, this appeal is allowed. The grant of letters of administration to the respondent is hereby nullified. The primary court, if it is satisfied that it has jurisdiction to try the petition, it should observe the provisions of Section 52 of the Probate and Administration of Estates Act, Cap 352 R: E 2002.

Appeal allowed, with no orders as to costs.



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DATED at DODOMA this 05TH day of JUNE, 2017


L. MANSOOR

JUDGE

05TH JUNE 2017