

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
(DAR ES SALAAM DISTRICT REGISTRY)
CIVIL REVISION NO. 24 OF 2016

LATE: HON. AMINA ABDALLAH AMOUR.....APPLICANT

VERSUS

ASIA a.k.a. IKUNDA MAMBO AND OTHERSRESPONDENT

27/11/2017 & 2/2/2018

RULING

KITUSI J.

Asha Ali Salum holds letters of administration of the estate of Amina Abdallah Amour granted by the High Court of Zanzibar. In her capacity as legal representative of Amina Abdallah Amour, Asha Ali Salum has filed this application seeking that this court be pleased to revise orders of Temeke District Court in Miscellaneous Civil Application No. 140 of 2014.

The second respondent Omari Juma Mzee raised a point of preliminary objection the gist of which is that the letters of administration of the estate of Amina Abdallah Amour granted to the applicant by the High Court of Zanzibar cannot take any effect within this jurisdiction without the same being re-sealed. In support of this point, the said second respondent submitted in writing as earlier ordered by the court, that his objection finds legitimacy in sections 4

and 94 of the Probate and Administration Act cap 352. He went on to submit that the mandatory requirement for re-sealing of letters of administration is provided by Rules 97 and 98 of the Probate Rules GN No. 369 of 1963.

The other objection raised by the second respondent is that even if the applicant had no problem with locus standi, this application would be unmaintainable for the reason that the applicant has not exhausted all remedies available to him at the trial court particularly an action envisaged by order xxi Rule 62 of the Civil Procedure Code, Cap 33.

In response the applicant who enjoyed services of Mr. Adinan Chitale learned advocate submitted through the said counsel that an application for revision may be made by any person who has an interest in a case. He prayed that the preliminary objection be dismissed on the ground that this application has nothing to do with the administration of the estate of the deceased Amin Abdallah Amour.

The learned counsel justified the step taken by the applicant by submitting that Amina Abdallah Amour could not have appealed because she was not made a party in Misc. Civil Application No. 140 of 2014.

This matter should not unduly detain me as the powers of the Court to revise a decision are statutory [**Kilimanjaro Truck Co. Limited Vs Damiana Lutu & Another** Civil Revision No. 40 of 2015, High Court, Dar es Salaam Registry (unreported)]. I shall confine myself to the point of objection raised by the second respondent despite my doubt

regarding the cited provision of the law. The application has been made under section 79(i) (c) of the Civil Procedure Code, Cap 33.

There is no dispute that Asha Ali Salum was not a party in the proceedings before the lower court and that she is now (according to the chamber summons) making this application in her capacity as an administratrix of the estate of Amina Abdallah Amour who was a party or ought to have been one. The second respondent's contention that Asha Ali Salum has no locus standi because her letters of administration have not been re-sealed has been countered by an argument that there is no need of re-sealing the letters because this matter is not about administration of the estate of the deceased. With respect I am not only unable to see Mr Chitale's point but I am surprised.

The application cites Asha Ali Salum as an administratrix of Amina Abdallah Amour because it is a legal requirement under Order XXII of the Civil Procedure Code, Cap 33. It is inconceivable that one may be accepted to act as legal representation of a deceased estate without proof thereof. In compliance with that requirement of proof the applicant has attached a copy of letters of administration of the estate of Amina Abdallah Amour(Annexure 'A') There is no dispute that these letters were issued by the High Court of Zanzibar.

The question is whether these letters issued by the High Court of Zanzibar have legal effect within this jurisdiction so as to clothe the holder with locus standi. With respect I agree with the second respondent and hold the letters of administration ineffectual for the

reason that the same required re-sealing under section 4 of the Probate and Administration of Estate Act Cap 352.

For the reason that the person who purports to be a legal representative of the estate of Amina Abdallah Amour is a holder of letters of administration of the latter's estate issued by the High Court of Zanzibar, and for the reason that those letters have not been re-sealed by this court, Asha Ali Salum has no locus standi. I disagree with Mr Chilale's contention that anybody may institute revision proceedings. I find that to be a very strange suggestion which is inconsistent with the laid down principles of locus standi. The Court of Appeal has held that any party does not mean anybody. See **Mehar Singh t/a Thaker Singh V. Highland Estates Limited & 2 others** Civil Reference No. 2 of 2014, (unreported).

The point of preliminary objection is sustained as a result of which this application is struck out with costs.


I.P. KITUSI

JUDGE

2/2/2018