

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

(DAR ES SALAAM DISTRICT REGISTRY)

CIVIL REVISION NO. 37 OF 2016

RAMADHANI MWINDADIAPPLICANT

VERSUS

MWINDADI ALLY IBRHAIMU RESPONDENT

28/5/2018 & 2/5/2018

RULING

I.P.KITUSI,J.

Mwindadi Ally Brahimu the deceased, died intestate on 24th April 2004, and his estate is the subject of these proceedings. On 23rd June 2010, Ramadhani Mwindadi, who appears as the applicant here, petitioned the District Court of Temeke for letters of administration of the estate, and the Court granted the petition by an ex parte decision dated 22nd October 2012.

Subsequent to that and as Ramadhani Mwindadi was trying to discharge his duties as an administrator, one Abdi Ally Ibrahimu turned up at Temeke Primary Court and successfully applied for letters of administration of the same estate and the court order granting them is dated 15th May 2014. According to one Ally Mwindadi who appeared before me in response to notice, the said Abdi Ally subsequently died after which he Ally Mwindadi was appointed to take over the administration of the estate.

It seems, Ramadhani Mwindadi became aware of the appointment of another administrator for the same estate, so he wrote to draw the attention of the Resident Magistrate in charge of Temeke District to this fact. The Resident Magistrate incharge for Temeke District Court considered the dilemma and referred the matter for consideration by this Court, on receipt of which the judge incharge directed the opening of a Revision, the instant matter.

The letter by the learned Resident Magistrate incharge by which the two probate and administration causes (filed before Temeke Primary Court and another before Temeke District Court) were referred cited Sections 30(2) (a) and 471 (c) of the Magistrates Court Act, 1984. The said provisions read;

30 (2). A resident magistrate incharge may call for and inspect the record of any proceedings under this part in a Resident Magistrates court, a District Court, a Primary Court and may examine the records or registers thereof for the purpose of satisfying himself as to the correctness, legality or propriety of any decision or order and as to the regularity of any proceedings therein, and may, in any case in which he considers that any decision or order is illegal or improper or any proceedings are illegular-;

(a) in the case of a Resident Magistrates' Court or District Court, forward the record with a report to the High Court in order that it may consider whether or not to exercise its powers of revisions; and

(b) NA

Section 47 (1) (c) provides;

"where any proceedings has been instituted in a Primary Court, it shall be lawful, at any time before judgment for.....

(a) NA

(b) NA

(c) *The High Court to order the transfer of the proceedings to itself or a magistrate Court."*

With respect I am satisfied that the learned Resident Magistrate incharge correctly exercised his powers under the Magistrate's Courts Act Cap 11 in referring or forwarding the matter to this Courts. I am also satisfied that the estate of Mwindadi Ally Brahim has been dealt with by the Primary Court of Temeke vide Probate and Administration Cause No. 102/2013 and the District Court of Temeke vide Probate and Administration Cause 15 of 2010.

In dealing with this matter I summoned Ramadhani Mwindadi who was appointed by the District Court and Ally Mwindadi who was appointed by the Primary Court. After hearing their brief account of what happened I have concluded that at the time when the application for letters of administration was filed at the Primary Court there was already an administrator who had been appointed by the District Court as early as 22nd October, 2012.

However the law governing administration matters in Primary Courts requires the applicant to declare that there is no other application pending in any Court in respect of the same estate. This is Rule 3 of **The Primary Courts(Administration of Estates) Rules GN No. 49 of 1971** read together with **Form I to the Schedule.** There is nothing to show that this requirement was complied with as a result of which there are two administrators of the same estate appointed as a result of two separated Court proceedings.

For violating the procedure relevant for administration of estates, the proceedings before the Primary Court of Temeke, Probate and Administration Cause No. 102/2013 are quashed and any orders made therein set aside.

I now turn to the proceedings in the District Court. The same were conducted ex parte upon the Court satisfying itself that all the beneficiaries who had been served with notices to appear, willfully refused to enter appearance. I think the beneficiaries are divided into two rival groups, which explains why one group went to Temeke

Primary Court while aware of the existence of the application by the other group before the District Court.

If the two sides knew that the role of the court in administration causes is limited to appointing an administrator they would have refrained from waging wars. See **Samson Kishusha Gabba V. Charles Kingogo Gobba** [1990] TLR 133 for the principle that the court's duty is to appoint an administrator.

Since the justice of this case requires that the beneficiaries of the estate from both groups be heard and now that they are all aware of the matter pending at the District Court, I quash and set aside the ex parte judgment and order that hearing inter parties be conducted by a Magistrate competent to do so. As this matter is old, I order that hearing be conducted with dispatch.

No order as to costs.



I.P.KITUSI

JUDGE

2/5/2018

2/5/2018

Coram : Hon. Magutu DR

For the Applicant : Present

For the Respondent : Absent

Cc: Delphina

Court : The ruling delivered on 2/5/2018 in the presence of the applicant .

Right of appeal full explained .

A.A.MAGUTU

DR

2/5/2018