

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**[PC] CIVIL APPEAL NO. 72 OF 2017**

*(Arising from civil application No. 10 of 2016 of the District Court of Morogoro at Morogoro before Hon. R.R. Futakamba – Original Probate No. 144/ 1994 of Morogoro District Primary Court at Morogoro Urban)*

**MSAFIRI SAID OMARI .....APPELLANT**

**VERSUS**

**ALLY MOHAMED MBEGA.....RESPONDENT**

**JUDGEMENT**

*Date: 21/6/2018 & 6/7/2018*

**I.C. MUGETA, J**

This dispute revolves around a probate case filed in 1994 in the Morogoro District Primary Court at Morogoro, probate cause No. 144 of 1994 which is about the estate of Mwanaisha Juma Millinga who died intestate. One Laurent Millinga was appointed administrator of this estate on 6<sup>th</sup> December, 1994. The record is not clear if this administrator accounted for his administration. Apparently, on 21<sup>st</sup> December, 2016, the respondent filed an application which is subject of this appeal. He applied for extension of time within which to apply for revision orders to challenge the appointment of Msafiri Said Omari as administrator of the estate of the late

Mwanaisha Juma Millinga. In the same chamber summons the applicant prayed also for orders to revise the appointment of Msarifi Said Omari.

Upon hearing the application, the trial court made a specific finding that Msafiri Said Omary had not been appointed to administer the estate. The learned trial Magistrate further declared the purported appointment as fraud because it was not featured in the record of the primary court. Being aggrieved by these orders, Msafiri Said Omar has preferred this appeal. The petition of appeal contains six grounds of complaint. He enjoys the professional service of CSB Law Chambers while the respondent is represented by Jonathan Mbuga of Legis Attorneys. On the hearing date Prof. Binamungu for CSB Law Chambers was absent. Ms Jackson Liwewa held his brief without instruction to proceed and for this reason it was decided that the appeal be argued by way of filing written submissions.

Both Counsels dutifully complied with the schedule. In this ruling I shall determine each ground of appeal without necessarily referring to the arguments of the parties in support of on each point except where I find good and compelling reasons to do so.

The first ground is on the citation of the Primary Court where the proceeding originated. Counsel for the appellant has taken offence with the way that court is cited in the proceedings at the District Court. He submitted that the chamber summons indicates that the challenged decision originates from "Mirathi No. 144/1994 at Morogoro Primary Court" which is too general a name to give a proper identity of a particular court.

The learned counsel argued that the proper citation should have been Morogoro Urban Primary Court. In reply Counsel for the Respondent has submitted, among other arguments, that since this issue was not raised at the lower court it cannot be raised at appeal. Without prejudice to the foregoing, counsel for the respondent further argued, the improper naming is purely a typographical error which cannot vitiate the proceedings.

The citation of primary courts is governed by section 3 of the Magistrate Court Act [cap. 11 R.E. 2002] of the laws of Tanzania (MCA) which reads: -

*"3-(1) There are hereby established in every district primary courts which shall, subject to the provisions of any other law for the time being in force, exercise jurisdiction within the respective districts in which they are established.*

*(2) – The designation of a primary court shall be the primary court of the district for which it is established."*

According to the above section of the law, every administrative district has one Primary Court. What differentiate one Primary Court from another is a place of its sitting. Indeed, the Primary Court whose proceedings are in issue is a primary court of Morogoro District. Its place of sitting is Morogoro Urban. Therefore, its proper designation is the *"Primary Court of Morogoro District at Morogoro Urban"*. It is, therefore, true that in the instant case the primary court is not properly described. However, while it is desirable and good practice to describe courts properly, I hereby hold that failure to do so cannot vitiate the proceedings. The error is minor and it neither prejudiced the appellant nor occasioned failure of justice. I find the complaint without merits.

The second complaint is that the prayers in the application are omnibus for combining prayer for extension of time together with those seeking to revise proceeding of the trial court. Counsel for the appellant has submitted that the application for revision ought to have been filed after time had been extended. He referred this court to the decision in **Mohamed Mprili v. Nassoro Kaliyae** (PC) Civil Appeal No. 141/2003, High Court-Dar es Salaam Registry (unreported) where my learned brother Shangwa, J. held that it was not proper to combine or bring in the same chamber summons an application for extension of time to apply for setting aside the dismissal order with an application for setting aside the dismissal order. He added that an application to set aside the dismissal order has to be filed after an application for extension of time has been heard and granted. By the same analogy, the learned counsel submitted that the application for revision ought to have been filed after extension of time to do so has been granted.

I respectfully do not agree with counsel for the appellant. In my considered opinion the decision in **Mohamed Mpili (supra)** which was entered on 4/5/2009 was made in per incuriam of the Court of Appeal decision in **Mic Tanzania Limited Vs. Minister for Labour and Youth Development & another**, Civil Appeal No. 103/2004 Court of Appeal, Dar es Salaam (unreported) delivered on 12<sup>th</sup> December, 2006 where the Court of Appeal considered a decision of the High Court dismissing an application for multiplicity of prayers. The Court of Appeal while referring to the trial Judge held: -

*"If the position he took is sustained on those grounds, it would lead to undesirable consequences. There will be a multiplicity of unnecessary applications. The parties will find themselves wasting more money and time on avoidable application which would have conveniently combined. The court's time will be equally wasted in dealing with such applications. Therefore, unless there is a specific law barring the combination of more than one prayer in one chamber summons the court should encourage this procedure rather than thwart it for fanciful reasons".*

To this day, I know no law applicable in the High Court and subordinate courts which bars combination of more than one prayer in one chamber summons. As rightly submitted by counsel for the respondent, the practice is barred in the Court of Appeal particularly where the two prayers one can be determined by a single judge and the rest by three judges. [See **National Housing Corporation & Another vs. Jing Langli**, Civil Application No. 180 of 2016, Court of Appeal, Dar es Salaam (unreported)]. Therefore, this ground of complaint has no merits too.

I move to the third ground. For charity, I shall rephrase it to reflect its intended theme because as it stands, the same is crafted in ambiguous terms. Essentially the complaint in this ground is that the district court erred to entertain revision proceedings where the aggrieved party ought to have filed objection proceedings in the same Primary Court. I find merits in this complaint. It is an established practice and a principle of law that in probate matters issues concerning the administration of the estate ought to be tabled before the court where the probate cause was filed. The respondent having been aggrieved by the appointment (if any) of the appellant as administrator, ought to have knocked the doors of the primary

court to state his case. To the contrary, be entered into the doors of the District Court under section 22 of the Magistrates Court Act [Cap. 11 R.E 2002] of the laws of Tanzania (MCA) and section 14(1) of the Law of Limitation Act [Cap. 89 R.E. 2002] of the Laws of Tanzania.

The grounds of complaint of the respondent against the appellant's appointment as administrator of the estate are contained in paragraphs 9 and 10 of the affidavit supporting the application. These are among others that distribution of the estate was concluded by Laurent Millinga and that the meeting proposing the appellant to administer the estate did not involve all the beneficiaries. These issues concern matters justiceable by the Primary Court where the probate cause was filed under the Primary Courts (Administration of Estate) Rule, [GN. 49/1971]. Rule 9 of the rules states: -

*"9 – (1) Any creditor of the deceased person's estate or any heir or beneficiary thereof may apply to the court which granted the administration to revoke or annul the grant on any of the following grounds: -*

- a) That the administration had been obtained fraudulently.*
- b) That the grant had been made in ignorance of facts the existence of which renders the grant invalid in law.*
- c) That the proceedings to obtain the grant were defective in substance so as to have influenced the decision of the court.*
- d) That the grant has become useless or inoperative.*
- e) That the administrator has been acting in contravention of the terms of the grant or willfully or negligently against the interests of creditors, heirs or beneficiaries of the estate".*

The grounds of complaint in the affidavit fits in one or more of the pigeon holes prescribed under rule 9 of the rules. It was, therefore, an error on part of the District Court to entertain not only the application for extension of time but also the revision proceedings.

The foregoing is enough to dispose of this appeal. In my settled view and having considered the circumstances of this case and the nature of the complaints in ground, 4, 5 and 6, there is no need to discuss these grounds. This is because issues raised therein might be subject of determination by the Primary Court in view of the orders I am going to make. These complaints are that the learned Magistrate erred to act on extraneous matter, to make orders affect the other party without affording him an opportunity to be heard and to impeach the record of the lower court as fraudulently obtained. It suffices to say that the procedure adopted by the learned trial magistrate to handle the issues that he raised suo mottu is wanting in that the allegation of fraud needed proper investigation and evidence to prove it which could have been done better by the primary court.

In the final analysis, I hold that the application was improperly before the District Court. The District Court ought to have struck it out but failed in its duty. I, accordingly, step into its shoes and proceed to strike it out. I now give the following orders: -

- i) Appeal is allowed

ii) Any party who has issue with the administration of the estate of the late Mwanaisha may raise it with the Primary Court where the probate cause involving her estate was filed.



Having considered circumstances of this case, I give no order as to costs.

*Mugeta*

**I. C. MUGETA**

**JUDGE**

**6/7/2018**

**Date 6/7/2017**

**Coram:** Hon. I.C. Mugeta

For Appellant: Absent

For respondent: Dickson Sanga, adv

Cc. Mayala

**Edwin Sikwese:** I am a legal officer from CSB Law Chambers. I have been sent to receive the judgement and report that Prof. Binamungu is attending to examinations at Mzumbe University.

**Dickson Sanga:** My Lord, the case is for judgement. We are ready to receive the same.

**Court:** Judgement delivered in chambers.

**Sgd. I. C. MUGETA**

**JUDGE**

**6/7/2018**