

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

PC. CIVIL APPEAL. NO. 82 OF 2018

*(Arising from the District Court of Kilombero in Civil Appeal No. 51 of
2017, originating from Probate Cause No. 13/2017 in Mang'ula
Primary Court)*

RAURENT ALBERTO MKAMBO ----- APPELLANT

VERSUS

ROBERT GOLDEN MKUMBA ----- RESPONDENT

RULING

MUTUNGI, J.

The appellant having filed his appeal, the respondent did enter appearance and was dully represented by Mr. Nestor Mkoba. When the appeal was called up for hearing Mr. Mkoba raised an issue of jurisdiction which was done orally. In light of the same the court called upon the parties (the appellant was represented by Mr. Ambrose Nkwera) to address the court on this point. It was of utmost importance

as the court is alive to the fact that issues of jurisdiction are fundamental and paramount in matters of justice.

The two learned advocates were of the same stand that, the two lower courts had no jurisdiction to determine the deceased's probate that was initially instituted with the Mang'ula Primary Court (trial court). The applicant therein being Laurent Alberto Mkambo seeking to be appointed as an administrator of the late Alberto Mkambo.

The learned advocates further appraised the court that, the deceased was a Christian hence the trial court was not clothed with jurisdiction. The said court being a Primary court could only deal with probate matters relating to either Islamic or customary law. The appellant's counsel in support thereof cited the case of **GEORGE CLEMENT MFUKO V. ANDREW CLEMENT MFUKO, CIVIL APEAL NO. 82 OF 2012 (HIGH COURT – DSM)** to support his stance.

Having gone through the two submissions, the court finds indeed the deceased did profess the Christian faith as per the evidence in the Primary Court. In view thereof, his mode of life was regulated by the Christian norms hence his estate was to be administered according to his faith. The court is

alive with the provisions of paragraph 1 (1) of the fifth schedule to the Magistrate's Courts Act, Cap. 11 R.E 2002 that a Primary Court has jurisdiction in administration cases if;

“(a) the law applicable to it is customary law or Islamic law, (b) if the deceased at the time of his death had a fixed abode within the local limits of the court.”

Considering the above cited provision of law, it is evident and crystal clear that the trial court had no jurisdiction to determine the said Probate (No. 13/2017). It follows therefore it was also out of jurisdiction for the District Court at Kilombero to proceed with Appeal No. 51/2017. With such observation, the parties are advised and are at liberty to file afresh probate proceedings before a court with competent jurisdiction. In the upshot this appeal is accordingly struck out. This being a probate matter the same is with no costs.

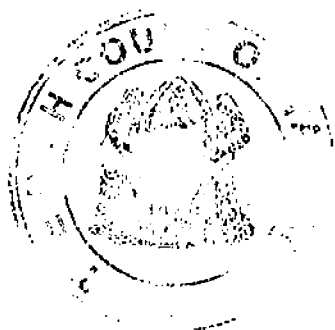


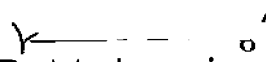
B. R. Mutungi

JUDGE

17/10/2019

Read this day of 17/10/2019 in presence of the parties, Mr. Ambrose Nkwera for the appellant and Mr. Nestor Mkoba for the respondent.

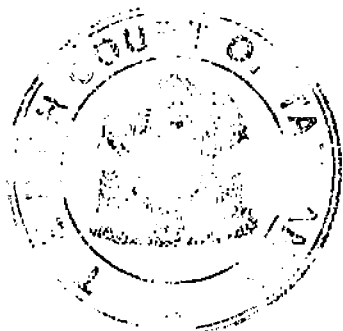



B. R. Mutungi

JUDGE

17/10/2019

Right of appeal explained.




B. R. Mutungi

JUDGE

17/10/2019