

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

AT DAR ES SALAAM

CIVIL APPEAL No. 24OF 2019

(Originating from Kinondoni Civil Revision Number 48, 2013. Before Hon. Wambura RM,
original Kawe Primary Court Probate and Administration cause No. 99 of 2013)

KWAME MAKAME RASHIDI.....APPELLANT

Versus

- 1. AMINA MAKAME**
- 2. ABUBAKARI MAKAME**
- 3. MSHAMU MAKAME**
- 4. IDANUS MAKAME**
- 5. AWADH MAKAME**



.....**RESPONDENTS**

JUDGMENT

27th August – 19th November 2.19

J. A. DE-MELLO, J;

Aggrieved by the decision of **Kinondoni District Court** Appellant lodged this Appeal on the following grounds;

- 1. That, the learned Resident Magistrate erred in law proceeding to appoint Administrator General as administrator of the estates of the late Makame Rashidi having held that by the**

value of the estates it should be administered in the high court instead of the Primary court and having ordered the closure of the primary court records.

- 2. That, the learned Resident Magistrate erred in law and, on fact by revoking the appointment of Respondent (now appellant) as administrator of the estate of late Makame Rashidi having held that the application for revocation ought to be made first before the trial court, namely the Primary Court.**

It is the Appellant's ultimate prayer that, the Appeal be allowed, the purported appointment of the **Administrator General**, as Administrator be nullified and, parties be free to Petition before a competent Court with costs to the Appellant. Both parties were duly represented by learned Counsels, **Rutabingwa and Lwisilo** for the Appellant and, Respondents respectively, submitting orally towards the said Appeal. It is Counsel **Rutabingwa's** submissions that, vide **Probate & Administration Cause No. 99 of 2013**, the **Appellant** was appointed **Administrator of Estate** of the **late Makame Rashidi** in **Probate** and, **Administration Cause No. 99, from 2015** running through **2016**, having assumed powers to act, as appointed. An inventory was even prepared and in place. However and unaware, it came to the knowledge of the Appellant a Ruling by **District Court** following a **Revision No. 48 of 2013** revoking his appointment, from what the Primary Court proceedings decided, and thereby quashing and set aside the judgment and, decree, ordering the Probate be administer by the office of **Administrator General**, notwithstanding the acknowledgement that the procedure for **Revocation of Administrator** is before the Trial Court as

opposed to the Appellate Court. It is Counsel's further observation that, **section 5 (1) of Cap. 227** requiring the Court to be properly moved, let alone the pecuniary jurisdiction based on the Estate of the deceased far beyond it.

Opposing the Appeal **Counsel Lwisijo** was of a firm view that, the District Court properly directed itself, based on **Part 1 of 5th Schedule** of the **Magistrate's Court Act** (supra) limiting the powers based on pecuniary jurisdiction. Even the appointment of Administrator General was appropriate drawing its justification from **section 5(1) of Administrator General Powers and Function Act Cap. 27**.

The section has proviso to the effect that;

"Where it appear before the court that circumstances of the case require, for reasons recorded in its proceedings, the Court may, of its own motion or otherwise, grant letters of administration to the Administrator General or to any other person notwithstanding that there are persons who in the ordinary course, would be legally entitled to administration".

Referring the case of Mohamed **Kechapo vs. Abas Kechapo (1999) TLR 320** in obiter dictum;

"Parties being blood relatives should not waste time on friendless litigation, that will influence ill feeling and act to their detriment. They can settle their matter amicably or seek assistance of administrator", Counsel was of that view that in absence of formal

application for Revocation the Court may Suo Motu appoint the Administrator General, as a neutral party to oversee the administration of estates. Section 22(1) and (2) of Cap. 41 clearly stipulates so as, the District Court in its wisdom acted justly. Henceforth, the Appeal is with no merit and, justifies a dismissal with cost.

I have gone through the rival submissions by both parties and I find that this Court is called to determine two issues;

- **Whether the Primary court had jurisdiction to Grant Letters of Administration to the Appellant as it did.**
- **If the above is answered in affirmative, then Whether Revocation of the said Letters of Administration and granting the same to Administrator General was proper.**

Commencing with the first issue, the law provides for unlimited jurisdiction to Primary Courts in Administration of deceased's estates, where the law applicable, is **Customary** or **Islamic**. This position is clearly stated in **section 1 (1)** to the **5th schedule** to the **Magistrate Court Act** in whose records, the deceased had all along in his life, confessed and, prophesized Islamic religion, as he died intestate. This is, notwithstanding the value of the estate left behind. Such powers are unlimited in terms of pecuniary provided that, the deceased had a fixed place of abode within the local limits of the Court's jurisdiction, at the time of his demise as what the case of **Scolastica Benedict vs. Martin Benedict (1993) TLR 1** held by the Court of Appeal. The Court went as far as, to clarify the provision of **section 18** of the **Magistrates Court Act** which establish jurisdiction of **Primary Court**

in Administration of Estates with exception of a proviso in **sub section (1) (a) (i)** which gives jurisdiction of Primary Court in **(ii)** and **(iii)**. **Section 18 (2)** has the Chief Justice by order, publish in the Gazette conferring Primary Courts, extra jurisdiction in administration matters. Further, by order published in the Gazette as Government **Notice No. 320 of 1964**, the Chief Justice did just that. **Under rule 2** of that Order, Primary Courts were given jurisdiction over the Administration of Estates, regardless the said estates are registered or not. Meaning that, the question of jurisdiction of Primary Courts in matters of administration of estates of deceased where Customary or Islamic law apply, it is only the sky that is the limit. With regard to the second issue, **section 49(1)** of the **Probate and Administration of Estate Act**, confers the Court with powers to Revoke and Annul, grant of Probate and Letters of Administration in which **Rule 29(1)** of Probate rules provides for the manner of application for Revocation.

"Revocation" is the withdrawal of what was granted by the Court such purely as a discretion, but following, a thorough scrutiny of the facts adduced by the parties as to why it should be considered. A yard stick measure is provided under **section "49(1)** as it provides;

The grant of Probate and Letters of administration may be revoked or annulled for any of the following reasons;

- (a) That the proceedings to obtain the grant were defective in substance.**

(b) That the grant was obtained fraudulently by making a false suggestion or by concealing from the court something material to the case.

It is evident that, neither of the above reasons were submitted to move the District Court to exercise that discretion to act as it did, much as the fact on record that reveals an Inventory and which the **District Court** captured had already been lodged. The Appellant being duly appointed, neither objected nor revoked, still stands as one. How and why the order for **Administrator General** arrived to and appointed, has not even been substantiated by the District Court.

In the light of above findings this Appeal has basis, as I set aside all **Judgment** and **Decree of Kinondoni District Court** while upholding the **Judgment of Kawe Primary Court**, where the Appellant found his legitimacy. Primary Courts are empowered by law under **section 15(1) (c)** of the **Magistrates Courts Act** as was the holding in the case of **Ibrahim Kusaga vs. Emmanuel Mweta [1988] TLR** with reservation that the law applicable is **Customary** or **Islamic**.

In fine, I allow the Appeal as I waive costs this being a family and, Probate matter of their demise father.


J. A. De-Mello

JUDGE

19/11/2019