

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
MISC. CIVIL APPLICATION No. 104 OF 2019  
(Arising from Probate and Administration Cause No. 59 of 2014)**

**ABRAHAM ALLY SYKES.....APPLICANT**

Versus

**ZAINAB SYKES..... 1<sup>st</sup> RESPONDENT**

**ABDOUL ALLY SYKES.....2<sup>nd</sup> RESPONDENT**

**ALHAJ ARAF SYKES.....3<sup>rd</sup> RESPONDENT**

**RULING**

09/05/- 22/10/2019

**J. A. DE-MELLO, J;**

This ruling is in respect of the **Preliminary Objections** on Point of Law to the effect that;-

- 1. In view of the existing/pending Appeal initiated through the Applicant's notice of Appeal dated 22<sup>nd</sup> March 2018, the Honourable Court lacks jurisdiction to entertain the present Application.**

**Counsel Daniel Bernard Welwel**, represented the Respondent, whereas; the Applicant enjoyed the legal services of **Counsel Dr. Chacha B. Muringu**. It is **Counsel's Welwel** contention that, this Court has no **Jurisdiction** to determine this Application considering a pending Appeal in the Court of Appeal against the decision of this Court in **Probate and Administration Cause No. 53 of 2014** before **Hon. Mkasimongwa, J;** dated **16/03/2018** whereby the **Notice of Appeal** was served on 27/03/2018. It is further submission that, the **Notice of Appeal** filed by

the Applicant is to oppose the **Grant of Probate in Petition No. 53 of 2014** while the instant Application is to Revoke that grant of probate. It is improper and unlawful to have the same matters running concurrently from both Courts, **Counsel Welwel** further observes, until and when the said Appeal is conclusively and finally determined. Supporting his argument, Counsel referred to the case of **Aero Helicopter (T) Ltd vs. F.N. Jensen [1990] TLR Page 142** praying for Struck Out the Application with costs.

In response, **Counsel Dr. Muringu** opposed the objection stating his Court has jurisdiction to determine the Application, considering it arises from **Probate and Administration Cause No. 59 of 2014** with no relation whatsoever with **Probate and Administration Cause No. 53 of 2014** which is subject matter before the **Court of Appeal**. Further that, even with the Notice, this Application does not seek to challenge the decision of the High Court granting Probate to Respondents rather it challenges the Executors in their capacity have mis-handled and concealed properties of the deceased which the Applicant has invoked his right to challenge the Executor under **section 46 (i) of Probate Act**. **Counsel Dr. Muringu** furthermore contended that, there is no Appeal pending before the Court of Appeal as alleged by the Respondents, since when it was lodged on **21/3/2018** up to filing of this Application. He therefore prayed for the dismissal of the objection with costs.

In rejoinder, **Counsel Welwel** did not submitted much, but rather reiterating his earlier submission in chief, stressing jurisdiction to remain an issue here.

Whether or not the instant Application is competent before this Court is now subject to determination. With a view of establishing this, a careful perusal has to be ascertained from the decision of this Court in **Probate and Administration Cause No. 53 of 2014** on which the **Counsel** for the **Respondent** alleged to have been appealed by the Applicant in the **Court of Appeal** by filing a **Notice of Appeal** on **21/03/2018**. There is no doubt that, this Application arises from **Probate and Administration Cause No. 59 of 2014** and with no relation whatsoever with **Probate and Administration Cause No. 53 of 2014**, allegedly appealed against at the highest Court. But even more and as correctly submitted by **Counsel Muringu**, this Application does not seek to challenge the decision of this Court granting Probate to the Respondents, rather it challenges the **Executors** in the manner and the way they have mis-handled and concealed properties in their capacity under **section 49 (1) (e) and (2) of the Probate and Administration of Estates Act Cap. 352 R.E. 2002**. More so there is no proof whatsoever of the said **Notice of Appeal** filed by the Applicant in the Court of Appeal challenging the decision of this Court in **Probate and Administration cause No. 53 of 2018**

In view of this, this Court has **jurisdiction** to determine this Application.

I accordingly order the Application to proceed on its merit.

Costs to follow event, as I order.

  
**J. A. DE-MELLO**

**JUDGE**

**22/10/2019**