



**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**PROBATE AND ADMINISTRATION APPEAL NO.12/2016**

*Arising from Muleba District court cause no.2/2014 of original Probate and  
administration cause no.9/2009 of Kashasha Primary court.*

**ABDULKADIRI SELEMAN .....APPELLANT**

**VERSUS**

**YUNUSU ALLY.....1<sup>ST</sup> RESPONDENT**

**HAMUDUNI AMADA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

***12/11/2019 & 25/3/2020***

***KAIRO, J***

This is a probate and administration appeal case against the decision of the District court of Muleba. In order to appreciate the context in which this

appeal was brought, it is imperative to have brief historical facts on this case.

The appellant in this appeal is **Abdulkadiri s/o Seleman**, the son of the late **Seleman Ndyanabo** who died in 1952. The first respondent **Yunusu Ally** is an administrator of the late **Seleman Ndyanabo** who was appointed by the trial Primary court of Kashasha *suo moto* from among the deceased clan members whereas the second respondent **Hamduni Amada** is the administrator of **Nusura d/o Seleman** (a daughter of the deceased **Seleman Ndyanabo**). Before her demise, the said **Nusura Seleman**, successfully objected the appointment of the appellant (her brother) as administrator in the same primary court.

Now, the record has it that through probate number **9/2009** in Kashasha Primary court, the appellant applied to be appointed as an administrator of the late **Seleman Ndyanabo** on 8/9/2009. After the trial court had issued citation and publication of the same, he encountered an objection from his late sister; **Nusura d/o Seleman**. In her objection, the late **Nusura** raised three grounds as follows; **one**, that the objector being the deceased daughter, she was not involved in the clan meeting which appointed the appellant, **two**, the appellant misappropriated the deceased estate before his application to administer the estate of their late father. **Three**, the administrator denied her a right to inherit from her late father on account that she was not a legal daughter of the deceased.

After hearing both parties, the trial primary court resolved that Nusura Seleman was a biological child of the late Seleman Ndyanabo and therefore entitled to inherit from the estate of her late father. The court went further and *suo mottu* appointed one Yunus Ally from among clan members and one Kuruthumu Ramadhani, the Village Executive Officer (VEO) to jointly administer the estate of the late Seleman Ndyanabo. The appellant appealed to the district court through civil appeal No.39/2010 but failed. He preferred no further appeal following the district court decision. Later on 13/8/2012, the objector Nusura Seleman died.

The record reveals further that the appellant and his sister Nusura Seleman (before her demise) had also a pending dispute over land which was misc. land appeal No.12/2010 in this court. It was therefore incumbent upon her death to appoint an administrator to step into her shoes whereby one Hamduni Amada was therefore appointed on 15/4/2013 through Probate cause No.1/2013. The administrators of the late Seleman Ndyanabo who were appointed by the trial court *suo mottu* went on to distribute the estate of the said deceased to its two respective rightful heirs who infact, were Abdulkadiri Seleman (the appellant) and Nusura Seleman. In the process of distribution, a portion of land was distributed to Nusura Seleman through her administrator Hamduni Amada who is the **2<sup>nd</sup> respondent** herein, the act which necessitated the appellant to rush to the district court and filed revision No.2/2014. The district court dismissed the filed revision for want of

merit, hence this appeal. The appellant who is self-represented has lodged five grounds as follows:

- 1) That the lower courts misdirected themselves by accepting the letter "Annexure" which I received from Mr.Yunusu Ally and Mr.Hamuduni Amanda that had a legal authority to seize my Shamba.*
- 2) That, the District court of Muleba erred at law to fail to direct itself on the legal authority to seize my shamba.*
- 3) That the district court erred when it failed to direct itself on whether the respondents have responsibility to distribute my shamba.*
- 4) That the district court of Muleba erred to fail to direct itself on the capacity of Amada to distribute the property of Seleman Ndyanabo who died the year 1952.*
- 5) That the district court of Muleba erred when it failed to challenge the leaves given by Kashasha Primary Court to distribute the property of the late Selemani Ndyanabo.This shows how the district court was bias and denied me justice.*

When invited for oral submission, the appellant informed the court that he had nothing to add to his grounds of appeal and prayed the court to adopt them.

The respondents were represented by Advocate Mathias Rweyemamu. In his oral submission he reiterated the historical background as already recapitulated above and for avoidance of tautology I see no need of repeating it. The Counsel went on to submit that the District court's decision to confirm the findings of the lower court was correct as the appointment of the administrator was done as per procedure and if the appellant was aggrieved he was required to appeal and not to apply for revision. He further argued that if the appellant thinks that his *shamba* was encroached in the distribution, he was required to file a fresh land claim. He concluded that this appeal lacks merit and should be dismissed with cost.

In his rejoinder the appellant submitted that the respondents were parties inserted illegally and prayed the court to refer to Probate Cause No. 9/2009 so as to confirm his contention.

Having gone through the court record and arguments from both parties, I have grasped the followings to be issues in controversy which need determination of this court:

- i) Whether the Respondents were legally appointed as administrators of the estate of the late Selemani Ndyabo and Nusura Selemani respectively.
- ii) Whether the alleged distributed shamba belonged to the Appellant

iii) Whether the 1<sup>st</sup> Respondent had the capacity to distribute the properties of the late Selemani Ndyanabo

iv) Whether the Kashasha Primary Court had the power to appoint administrators of the estate of the late Selemani Ndyanabo.

The appellant is challenging the appointment of administrators; Yunusu Ally (administrator of the late Seleman Ndyanabo) and Hamduni Amada (Administrator of Nusura Seleman) done by the Primary court and confirmed by Muleba District court when dismissed the revision prayer by the Appellant.

This court being the second appellate court is not expected to disturb the concurrent findings unless there is misdirection or non direction on the evidence and relevant law (See **The DPP v Jafari Mfaume (1981) TLR 149**). My thorough examination on the primary court record has convinced me that there was neither any misdirection on relevant procedural and substantive law nor was there any misdirection on the evidence. The reasons I endeavor to advance will be addressed through powers of primary court in appointing administrator and powers and functions of administrators after appointment.

Starting with powers of primary court in appointing administrator are set under rule 2 of the Fifth schedule to the MCA (cap 11 R.E 200) it reads:

*“A primary court upon which jurisdiction in the administration of deceased’s estates has been conferred may–*

*(a) either of its own motion or on an application by any person interested in the administration of the estate appoint one or more persons interested in the estate of the deceased to be the administrator or administrators thereof, and, in selecting any such administrator, shall, unless for any reason it considers inexpedient so to do, have regard to any wishes which may have been expressed by the deceased;*

*(b) either of its own motion or an application by any person interested in the administration of the estate, where it considers that it is desirable to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under subparagraph (a);*

*(c) revoke any appointment of administrator for a good and sufficient cause....”*

It is imperative to note that the Fifth Schedule of MCA must be read together with the Primary Courts (Administration of estates) Rules, GN 49 of 1971, the latter among other functions, prescribes the six forms to be used in the due process and if there is a lacuna (as per rule 11) the Magistrates court (Civil Procedure in Primary courts) Rule GN 310 of 1964 comes into play to cover it.

From the above legal position therefore the Primary Court has power to appoint the administrator, to hear the objection of the appointment (if any), to

receive the report of the administrator and hear objections to the report (if any), and to revoke the appointment on successful objection based on good cause.

According to record, the appellant applied to be appointed as administrator of the estate of late Seleman Ndyabo but he was objected by his Sister Nusura Seleman on the grounds which the trial court found to be sufficient cause and the objection was sustained. The trial court appointed *suo mottu* one clan member and one impartial person to administer the estate. The primary court also resolved the issue of Nusura Seleman as legal beneficiary to inherit in her father's estate. Up to this stage, I see no base to fault the primary court in its decision as what it did was within its powers in terms of the fifth schedule of MCA Cap 11 R.E 2002. Again the decision of the primary court to sustain objection against the appellant and resolving on the issue of Nusura Seleman to inherit was also within the courts power under GN 49/1971 and in my candid views, it had sufficient cause to do so. Perhaps that is why the appellant preferred no further appeal after the district court decision and in that circumstances, the decision of the district court thereon remains intact. Thus issues no 1 and 4 above have been answered positively.

I am aware that the Appellant in his petition of appeal has accused the 2<sup>nd</sup> Respondent for distributing the estate of the late Suleman Ndyabo in his 4<sup>th</sup> ground of appeal, but no records so suggest. Hamduni Amada was appointed administrator of the late Nusura Seleman and it was in the said capacity he received the share of Suleman Ndyabo.



Reverting issue no. 2 to which the Appellant seems to suggest that the 1<sup>st</sup> Respondent had distributed the shamba which wasn't part of the deceased estate (the late Suleman Ndayanabo). The record reveals that The land dispute which was pending before this court in Misc. land appl. No.12/2010 between the appellant and his sister Nusura Seleman was marked withdrawn on 18/7/2013 before Mjemmas,J (as he then was) on the request of the appellant after Nusura Seleman had passed away. The record in the Primary court shows that Hamduni Amada, the administrator of the late Nusra Seleman was appointed on 15/4/2013 (see Probate No.1/2013). It is apparent from the record that when the appellant withdrew his appeal against Nusura Seleman on 18/7/2013 in this court the administrator of the late Nusura Seleman one Hamduni Amada was already appointed. I fail to understand why did the appellant abandoned the said suit against Nusura Seleman on the disputed shamba given the fact that Hamduni Amada was present and already appointed as administrator. In my judicial interpretation, the withdrawal means he had no claim nor further interest on the said land and it is improper to be heard reclaiming it again. In my view, the doctrine of estoppel is operating against the Appellant, as such he is barred legally to re-open the said claim. To say the least re-opening it is an abuse of court process which this court cannot condone to. However if the shamba the Appellant alleged to be his is not the one which was a subject matter in the withdrawn matter against the late Nusura, then the proper cause on his part is to institute a claim against the Respondents so that the rightful owner can be ascertained as this court is not a proper forum for that.

Issue No. 3 hinges on the powers and functions of Administrators which are contained under rule 5 of the fifth schedule to the MCA (Cap 11 RE 2002) as read here under;

*An administrator appointed by a primary court shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court.*

Various authorities have elaborated the duties as per above quoted provision, some being [**Hadija Said Matika V Awesa Said Matika; PC Civil Appeal No.2/2016:High Court of Tanzania, Mtwara(Unreported) pg 14, Naftari Joseph Kalalu v A ngela Mashirima:PC Civil Appeal No.145 of 2001 HC at Dar,(unreported ) pg 24.]**

Apart from the duty of collecting and distributing estate as well as paying debts left by the deceased, the administrator has the duty in the end to file the report or inventory to the appointing court to account on what he did so that the court closes the probate case file. This duty is mandatory and failure to abide with can result to cancellation of the appointment. [See in **Mwajina Abdul Maguno v Mwanahawa Maguno Civil Appeal No.74 HC Dar, (unreported)** had this to say

*“Filing an inventory with the Kinondoni Primary court which appointed her to administer the deceased estate was one of her duty which she failed to do.*

*...I agree with Mr Mniwasa for the appellant's submission that a failure by the administrator to show how much property has been collected and how the collected property has been distributed to the entitled heirs is a serious breach of the administrators' duty which may render her appointment to be annulled"*

The administrator also has the power to sue but also he may be sued. This court in **Ibrahimu Kusaga v Emanuel Mweta (1986) TLR 26 HC** the court said:

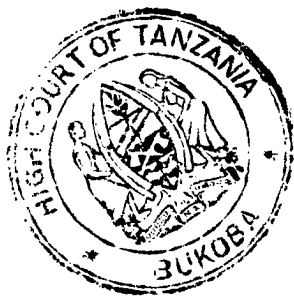
*....There may be cases where the property of deceased person may be in dispute. In such cases all those interested in determination of the dispute or establishing ownership may institute proceedings against the administrator or the administrator may sue to establish a claim of deceased property"*

In the matter at hand, Yunusu Ally and Kuruthumu Ramadhani (VEO) After being appointed as administrators of late Seleman Ndyanabo performed their duty by distributing the estate to the entitled heirs that is Abdulkadiri Seleman and Nusura Seleman. The share and portion of shamba of Nusura Seleman was handled over to her administrator Hamduni Amada on 12/07/2013. The said administrators filed a report to account on what they did on 15/7/2013 before the appointing primary court and on the very same date the primary court was satisfied with the distribution and approved it as it did not receive any objection on it. The probate file was therefore closed. *(See Primary court probate judgment 9/2009)*. Therefore the administrators legally performed their duty and the appellant did not object on the report submitted by administrators to the primary court. Issue No 4 was thus answered positively.

For the foregoing reason, it is the finding of this court that there was no misdirection or misapprehension of the evidence as such I agree with the concurrent findings of the lower courts and accordingly I dismiss this appeal for want of merit. Being a family dispute, I make no orders to cost.

It is so ordered.

R/A explained.



  
L.G. KAIRO

JUDGE

25/3/2020

Date: 25/03/2020

Coram: Hon. J. M. Minde – DR

Appellant: Present

Respondent: Present

B/C: Lilian Paul

**Court:**

It is for judgment and I deliver the said judgment in presence of both parties, let them supplied with the copy.

**Sgd: J. M. Minde – DR**  
**25/03/2020**



**CERTIFIED TRUE COPY OF THE  
ORIGINAL**

A handwritten signature in black ink, appearing to be "J. M. Minde", is written over a horizontal dotted line. To the right of the signature, there is a small, dark, stylized mark or stamp.

**Deputy Registrar  
Bukoba**

30/3/20