

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**PC. PROBATE APPEAL NO. 17 OF 2020**

(Arising from Judgment of Sengerema District Court in Probate Appeal no. 4 of 2020 dated 14/09/2020, original Sengerema Urban Primary Court Probate Case No. 10 of 2020)

**JULIANA CHARLES SAGALANI ..... APPELLANT**

**VERSUS**

**LUCIA WILLIAM NKANDA ..... RESPONDENT**

**JUDGMENT**

**30/10 & 06/11/2020**

**RUMANYIKA, J.:**

The 2<sup>nd</sup> appeal, therefore its historical background, it is with respect to judgment and decree dated 14/08/2020 emanating from a decision dated 28/02/2020 of Buyagu Primary Court with respect to the estate of Charles Sagalani Kumaliya (the deceased) against the letters of administration in that regard granted to Lucia William Nkanda (the respondent). Juliana Charles Sagalani (the appellant) is aggrieved hence the appeal.

The 3 grounds of appeal revolve around two points essentially: **(1)** that the 1<sup>st</sup> appeal court should have disqualified the respondent for under stating the estate **(2)** that the 1<sup>st</sup> appeal court should have disqualified the respondent for failure discharge the liability and close the Probate Cause.

Like the appellant, the respondent appeared in person.

When the appeal is called on for hearing on 30/10/2020 the appellant had nothing material to add to her petition of appeal according to records lodged 09/09/2020 just like the respondent who had nothing to add to her reply to the petition of appeal.

In a nutshell the evidence on record ran that upon being granted the letters of administration on 28/02/2020, the respondent also she is on record having stated that her father died intestate on 16/04/2014 (for some reasons Mawazo Charles, formerly administrator of the estate having had his letters been revoked. That the deceased had been survived by six children inclusive of the present appellant and 2 widows but part of the estate ie 60 heads of cattle and four houses had been distributed before her appointment.

SM2 one Donatila Petro Kagili and Daud Maganiko Ruba the nephew and grandson of the deceased respectively supported the SM1's evidence essentially.

From the record therefore, with the copy of the minutes of the clan/family meeting dated 11/01/2020 the appellant cannot be believed saying that she was excluded because out of the 28 participants her name appeared No. 22. If anything, according to a letter of the local Nyamalunda cluster chair also dated 11/01/2020 (copy appended to the minutes of the meeting), the appellant attended but just in the middle, for reasons known to her she just walked out. It follows therefore that by doing so the appellant risked to missing it all now that it is a self inflicted wound the latter shouldn't have blamed the probate court.



Now that upon being appointed say five (5) years later the appellant found the portion of the estate having been distributed and, being one of the beneficiaries the appellant reasonably knew it before, not only Mawazo Charles (the previous administrator) was to blame but also the appellant's claims are afterthought. There is no wonder out of six heirs only the appellant contests the respondent's letters of administration. Litigation should always get to end more so Probate Causes.

It is very unfortunate that the 6 years old probate cause hasn't been disposed of. With respect to the remaining part of the estate the appellant should have waited for the respondent to do the needful. It sounds to me that the appellant fears of the unknown. If she thinks that out of the estate the respondent and or the company did hide some property, appellant may wish to institute a separate suit against the incumbent administrator, the latter's predecessor and co-heirs if need raised. The appellant is so advised and directed.

The devoid of merits appeal is dismissed without costs given its' nature. The respondent is directed to accordingly present inventory so that the Probate Primary Court shall, without further delay do the needful. The District Resident Magistrate In charge Sengerema should very closely follow it up and report back.

Right of appeal explained.



**S. M. RUMANYIKA**

**JUDGE**

**31/10/2020**

The judgment is delivered under my hand and seal of the court in chambers this 05/11/2020 in the presence of both parties in person.



**F. H. MAHIMBALI**  
**DEPUTY REGISTRAR**

**06/11/2020**