THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

PROBATE APPEAL NO. 5 OF 2020

(From Probate Appeal No. 10 of 2019, in the District Court of Mbeya District, at Mbeya, Originating in Probate Cause No. 41 of 2019, in the Primary Court of Mbeya District, at Mwanjelwa).

ZAITUNI HASSAN MGANGA.....APPELLANT

VERSUS

ABRAHAM JAMES MWANGAKE.....RESPONDENT

JUDGMENT

08/07 & 06/10/2020

UTAMWA, J:

The appellant in this appeal, ZAITUNI HASSAN MGANGA appeals against the judgement (impugned judgment) of the District Court of Mbeya District, at Mbeya (the District Court), in Probate Appeal No. 10 of 2019.

The matter originated in Probate Cause No. 41 of 2019, before the Primary Court of Mbeya District, at Mwanjelwa (the primary court).

The brief background of this matter, according to the record and arguments by the parties, goes thus: the respondent in this appeal, ABRAHAM JAMES MWANGAKE was, on 7th August, 2019 appointed by the primary court, administrator of the estate of the late Fredson James Mwangake (the deceased). Soon thereafter, the appellant in this appeal, lodged in the primary court, a complaint cum-objection against the appointment of the respondent.

The primary court heard the parties and ultimately revoked the appointment. Aggrieved by the judgment of the primary court, the respondent in this appeal, appealed to the District Court. At the end of the day, the District Court reversed the decision of the primary court through the impugned judgement. The appellant was not contended by the impugned judgment hence this appeal. The appeal is based on the following two grounds of appeal:

1. That, the District Court erred both in law and facts by faulting the decision of the trial court in holding that, there was no any proof that the respondent harvested the deceased estate to wit: six acres of trees without considering that the respondent himself admitted to have harvested it.
2. That, the District court erred both in law and facts for failure to appreciate the decision of the trial court, which included the appellant as co-administrator in of the estate of her late husband.

In this appeal, the appellant was represented by Mr. Sijaona Revocatus, learned counsel. The respondent enjoyed the legal services of Mr. Philip Mwakilima, learned counsel. The appeal was argued by way of written submissions.

I have considered the record, the arguments by the parties and the law. I will now test the first ground of appeal. The issue here is *whether the District Court erred in faulting the decision of the trial primary court on ground of lack of proof of reasons for revoking the appointment.*

In his submissions, the learned counsel for the appellant argued that, there was proof that the respondent misused the deceased estate. He thus, wanted this court to fault the District Court. On his part, the learned counsel for the respondent was of the view that, there was not such proof and he defended the impugned judgment.

According to the impugned judgment, the reasons for faulting the primary court were that, there was no proof by the appellant that the respondent was misusing the estate for his own benefit. The primary court was not thus, justified in revoking the appointment.

In my view, there is sense in the impugned judgment for the following reasons: in the first place, the primary court revoked the appointment under paragraph 2 (c) in the Fifth Schedule to the Magistrates Court Act, Cap. 11 R. E. 2002 (Now R. E. 2019, and hereafter called the Fifth Schedule) and rule 9 (d) of the Primary Courts (Administration of Estates) Rules, G.N. No. 49 of 1971 (henceforth the GN.).

The provisions of paragraph 2 (c) in the Fifth Schedule are couched thus, and I quote them for a readymade reference:

> "A primary court upon which jurisdiction in the administration of deceased's estates has been conferred may...revoke any appointment of an administrator **for good and sufficient cause** and require the surrender of any document evidencing his appointment." (Bold emphasis provided).

As to the provisions of rule 9 (d) of the GN, they only give right to some persons, including any heir or beneficiary of the deceased estate to apply to the court which granted the administration to revoke or annul the grant on, *inter alia,* the following grounds: that, the grant has become useless or inoperative. In my view, the most relevant provisions under the circumstances of this matter would have been rule 9 (1) (e) of the same GN. These provisions consider the fact that, the administrator of estate has been acting in contravention of the terms of the grant or wilfully or negligently against the interests of the beneficiaries of the estate as good ground for the beneficiaries to apply for revocation of the appointment.

In my view, and according to the provisions of the law cited and quoted above, powers of primary courts in revoking letters of appointments have to be exercised only upon proof of good and sufficient cause. Such proof must be performed by the person applying for the revocation. This is because, it is a trite principle of our law, which said law is essentially adversarial, that; he who alleges bears the burden of proving the allegations. This principle is evident in the practice before primary courts, according to regulation 1 (2) of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations, Government Notice No. 22 of 1964 as

amended from time to time. These provisions provide thus; where a person makes a claim against another in a civil case, the claimant must prove all the facts necessary to establish the claim unless the other party (that is the defendant) admits the claim. The principle is also reflected in the provisions of 110 (1) of the Evidence Act, Cap. 6 R. E. 2019. The provisions guide that, whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

Now in the case at hand, and according to the record, it is doubtful if the appellant indeed, proved good cause for the revocation. In fact, her objection to the primary court was dated 9/8/2019. It was essentially intended to be an objection to the appointment of the administrator and not be a move for a revocation of the appointment. It is titled in Kiswahili as "PINGAMIZI LA KUZUIA NDG. ABRAHAM JAMES MWANGAKE KUTEULIWA KUWA MSIMAMIZI WA MIRATHI YA MAREHEMU FREDSON JAMES MWANGAKE; SHAURI LA MIRATH NA...YA 2019." This simply meant that, the appellant was lodging an objection so that, the respondent could not be appointed as administrator. In that objection, she raised various complaints against the respondent including his conduct even before he was appointed. The objection however, found that the respondent had already been appointed. Nonetheless, the primary court proceeded to take it as a ground for the revocation of the appointment. In my settled view, this course was improper because, in law, an objection against the appointment of an administrator of estate is distinct from a move for his revocation. The former is applied for and made before the actual

appointment is done. On the other hand, the latter is applied for and made when the appointment has already been done.

The record also shows that, when the primary court heard the parties, the appellant only complained as follows: that, she was not involved in the process of appointing the appellant as administrator though she was legal wife of the deceased. She had lived with him from 2006 to when he met his demise (in May, 2019). They were blessed with two issues. She also complained that some trees belonging to deceased estate had been sold.

On his part, the appellant argued that, he was dully appointed. He also admitted to have used part of the estate to pay some funeral costs and debts related to the heirs of the deceased. He was supported in his case by other relatives. In my view, this cannot be taken as an admission by the appellant that he misused the estate as the learned counsel for the appellant wanted to envisage in his written submissions. It was rather and indication that, he was discharging his duty as the administrator of the estate.

Owing to what transpired before the primary court according to its record, I agree with the District Court that, the appellant provided no proof before the primary court showing that the deceased estate had been misused. The law is trite that, court records are presumed to be serious and genuine documents that cannot be easily impeached unless there is evidence to the contrary; see **Halfani Sudi v. Abieza Chichili, [1998]**

TLR. 527. In the case at hand I saw no evidence challenging the record of the primary court.

In fact, the appellant was not only obliged to prove that some trees had been sold as she did, but to also establish that the sale was fraudulently and/or that, the fruits of such sale had been used contrary to the terms of the administration of the estate. She did not however, provide such proof. In my further views, considering nature of the objection she had lodged, which said objection was trying to obstruct the appointment as I hinted before (though the appointment had already been made), it is clear that, the appellant worked in a misconception that, mere allegation as those put in the objection, would also suffice to revoke the appointment which had already been made.

Having observed as above, I answer the issue posed above negatively that, *the District Court did not error in faulting the decision of the trial primary court on ground of lack of proof of reasons for revoking the appointment.* I thus, overrule the first ground of appeal.

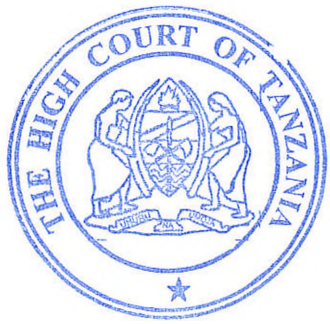
Regarding the second ground of appeal, the issue is *whether the District court erred for failure to appreciate the decision of the trial court, which included the appellant as co-administrator in the administration of the estate of her late husband.* In my view, this ground of appeal is a result of a total misconception of the record. According to the record, the primary court did not make any order directing the appellant to be the co-administrator in the administration of the estate of her late husband. What

the primary court directed upon revoking the appointment, in Kiswahili was this:

> *"Ukoo uteue msimamizi au wasimamizi kwa kushikiana na mke wamarehemu ndani ya siku 30."*

The above quoted passage of the primary court order meant that, the clan of the deceased, in cooperation with the appellant, had to appoint a person or persons to administer the estate within 30 days from the date of the order. It cannot thus, be said that the primary court had already appointed the appellant as the co-administrator of estate. Besides, the fact that the appellant was the deceased's wife was seriously disputed by the respondent before the primary court. I thus, answer the issue regarding the second issue negatively that, the District court did not make any error for the failure to appreciate the decision of the trial court. I thus, also overrule the second ground of appeal.

Having overruled the two grounds of appeal I dismiss the appeal with costs. This is because, the general rule is that, costs follow the event. It is so ordered.



JHK. UTAMWA

JUDGE

06/10/2020

06/10/2020.

CORAM; Hon. JHK. Utamwa, J.

Appellant: Mr. Peter Kiranga, advocate holding briefs for Mr. Sijaona, advocate for the appellant.

Respondent: present in person.

BC; Mr. Patrick Nundwe, RMA.

Court: Judgment delivered in the presence of Mr. Peter Kiranga, learned advocate holding briefs for Mr. Sijaona, learned counsel for the appellant and the respondent, in court, this 6th October, 2020.

JHK. UTAMWA.
JUDGE
06/10/2020.