

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

**PC PROBATE APPEAL NO. 1 OF 2019
(Arising from Probate Appeal No.4 of 2018 of the District
Court of Tabora - A.T. Millanzi, RM)**

**HABIBA JUMA.....1ST APPELLANT
AZIZA YASINI.....2ND APPELLANT**

VERSUS

**JACKSON SHILINDE NDOMOLO
As Administrator of the Estate
of the late SIDA SHIJA NDOMOLO.....RESPONDENT**

RULING

Date of Last Order: – 18/09/2020

Date of Delivery: – 13/11/2020

AMOUR S. KHAMIS, J:

Habiba Juma and Aziza Yasini are widows of the late Sida Shija Ndomolo who died intestate on 18/09/2017 in Sikonge District, Tabora region.

Upon death of Sida Shija Ndomolo, Jackson Silinde Ndomolo was appointed as administrator of the estate by Sikonge Primary Court through Probate and Administration Cause No. 18/2017.

Thereafter, Habiba Juma and Aziza Yasini moved the trial Primary Court to revoke appointment of the administrator and instead, appoint them as joint administratrix of the estate.

In its ruling of 31st July 2018, the trial Court revoked appointment of Jackson Silinde Ndomolo and appointed the Ward Executive Officer for Sikonge Ward as administrator of the estate.

On appeal to the District Court of Tabora vide Probate Appeal No. 4 of 2018, the trial Court's ruling was upheld.

Aggrieved by the Judgment and Decree of the District Court of Tabora, Habiba Juma and Aziza Yasini preferred this appeal on five grounds, namely:

1. That the first appellate Court erred in law and fact by failure to resolve its own first issue.
2. That the first appellate Court erred in law and fact by failure to resolve its own second issue.
3. That the first appellate court grossly erred in law and fact by its failure to give reasons why the appellants should not be appointed as co – administrators in order to protect their interests in the estate.
4. That the first appellate Court seriously erred in law by its failure to discover that the trial Primary Court had no requisite pecuniary jurisdiction to entertain the matter.

5. That the first appellate Court misdirected itself by deciding on the third ground of appeal which was abandoned by the appellants in their joint written submissions.

At the first appellate Court and in this appeal, the appellants were represented by Mr. Said Seleman, learned advocate while Jackson Shilinde Ndomolo had legal services of Mr. Musa Kassim, learned advocate.

Upon receipt of the Petition of Appeal, the respondent lodged a notice of preliminary objection which reads that:

"As long as there is no any appeal before the District Court which was ever preferred by the appellants herein against Probate Cause No. 18/2017 Sikonge Primary Court, then this appeal is incompetent before this Court."

The preliminary objection was canvassed by way of written submissions and the filing schedule set by the Court was duly complied with by both sides.

In support of the preliminary objection, Mr. Musa Kassim contended that the present appeal is incompetent because the appellants did not prefer any appeal to the District Court against Judgment of the trial Court handed down on 20/10/2017.

He added that the appellant's documents of appeal purported to show that the appeal originally arose from Sikonge Primary Court's Probate Cause No. 18 of 2017

which was not the case as it arose from ruling of that Court and not its Judgment.

Mr. Said Selemani invited this Court to overrule the objection on the ground that in law there can never be an appeal where revocation of letters of administration is sought.

The issue is whether this appeal is incompetent on account of irregularity in the trial Court's case number.

I have perused records in respect of the Sikonge Primary Court Probate and Administration Cause No. 18 of 2017.

Upon an application for letters of administration, the trial Court (A.K Nyami, PCM) pronounced a UAMUZI (decision or ruling) on 20/10/2017 thereby appointed Jackson Shilinde Ndomolo as administrator of the estate of the late Sida Shija Ndomolo.

The application for revocation of the letters of administration filed in the same Court by Habiba Juma and Aziza Yasini in January 2018 was also titled Probate and Administration Cause No. 18 of 2017.

The decision in the application of January 2018 was delivered by Hon. Nkya, RM on 31st July 2018 and equally termed as UAMUZI.

Records show that an appeal to the District Court of Tabora was founded on the UAMUZI by Hon. Nkya, RM

dated 31st July 2018 and not on the original decision of the trial Court (A.K Nyami, PCM).

Despite of titling the decision by Hon. Nkya, RM as UAMUZI in SHAURI LA MIRATHI NA. 18 LA 2017 (Ruling in Probate and Administration Cause No. 18 of 2017), proceedings in that matter and the case file identified those proceedings as Application No. 1 of 2018 arising from Probate and Administration Cause No. 18 of 2017.

Apparently, the case number appearing in the title of the ruling by Hon. Nkya, RM was picked up by the appellants and pasted in their Probate Appeal No. 4 of 2018 lodged in the District Court of Tabora.

This issue was not hardly fought in the first appellate Court and the appellate magistrate treated it as such.

Apart from the stated case number, the first appellate Court was not misdirected or confused on the two decisions by the trial Court as demonstrated in pages 7 and 8 of the typed Judgment, thus:

“And regarding the issue of jurisdiction of the trial Court to hear and determine Probate Cause No. 18/2017 he argued that the appellants are not appealing against Probate Cause No. 18/2017 of Sikonge Primary Court instead are appealing against the ruling resulted from an application filed in Court by the appellants arising out of Probate Cause No. 18/2017.....”

Having examined the entire records from the courts below, I am satisfied that a misquotation of the case number did not occasion any miscarriage of justice in the proceedings.

In **TANZANIA RENT A CAR LIMITED V PETER KIMUHU, CIVIL APPLICATION NO. 210/01 OF 2019** (unreported) the Court of Appeal ruled that a party to the case could not be penalized for confusions inadvertently caused by the Court itself.

In the same footing, I find that the errors cited were beyond the appellant's control and therefore the preliminary objection raised is hereby overruled.

Apart from that irregularity, I noticed another flaw on names of parties appearing in the appellate Court's proceedings.

In page 1 and 2 of the typed Judgment, the appellate magistrate wrote that:

"This is an appeal by Habibu D/O Juma and Aziza d/o Yasini against the trial Court ruling dated on 31/07/2018. The respondent is Jackson S/o Shilinde ndomolo who was the administrator of the estate of the late Sida s/o Shija Ndomolo.

The ruling of the trial Court appealead from was to the effect that Jackson Shilinde Ndomolo is no longer an administrator of the estate of the late Sida s/o Shija Ndomolo as his letters of administration was revoked.

Meanwhile the Ward Executive Officer of Sikonge Ward became an administrator in place.”

However in the proceedings before the District Court of Tabora and in this Court, the parties were named as:

“HABIBA D/O JUMA.....1ST APPELLANT

AZIZA D/O YASINI.....2ND APPELLANT

VERSUS

JACKSON SHILINDE NDOMOLO

the administrator of the estate

of SIDA SHIJA NDOMOLO.....RESPONDENT”

Records show that the trial Court revoked appointment of JACKSON SHILINDE NDOMOLO as administrator of the estate of the late SIDA SHIJA NDOMOLO on 31st July 2018.

Probate Appeal No. 4 of 2018 was filed in the District Court of Tabora on 20th August 2018 and determined on 13/12/2018.

In other words, at the time of lodging and determination of Probate Appeal No. 4 of 2018, Jackson Shilinde Ndomolo was not an administrator of the deceased's estate.

The newly appointed administrator of the estate was and remains to be the Ward Executive Officer for Sikonge Ward who was not impleaded in the two appeals.

In ***BOLTON V SALIM KHANOI (1957) E.A 360***, the defunct East Africa Court of Appeal held that:

“When a person is suing as an administrator before obtaining letters of administration the suit is a nullity and cannot be validated by the subsequent grant.”

Whereas I accept the reproduced decision as a good law, I would add that a person whose letters of administration have been revoked by a competent Court of law cannot be subsequently sued in the previous capacity as administrator of the same estate.

Upon revocation of the letters of administration by the trial Court, Jackson Shilinde Ndomolo ceased to be administrator of the estate and thus not a party to the probate and administration proceedings. No appeal could or should have been taken against him in that capacity.

In such a case, the first appellate Court erred in law in failing to address itself on this issue that was apparent on the face of its record.

For the stated reasons, the proceedings before the first appellate Court were a nullity.

In the exercise of the revisional powers of this Court, the entire proceedings of the District Court of Tabora in Probate Appeal No. 4 of 2018 are hereby nullified and the appellate Court's Judgment and subsequent orders are quashed.

Any party interested to pursue the matter further is at liberty to institute a fresh appeal in the District Court in accordance with the law.

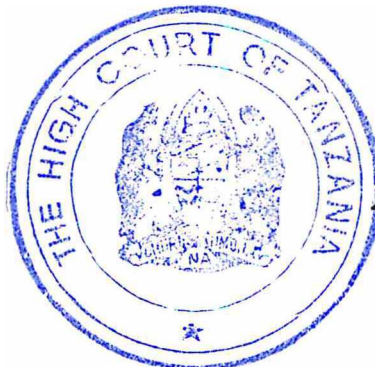
I make no order as to costs. It is so ordered.



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AMOUR S. KHAMIS
JUDGE
13/11/2020

COURT: Ruling delivered this 13/11/2020 in presence of the first appellant and the respondents counsel. Mr. Musa Kasim in the open Court.



A handwritten signature in blue ink, appearing to read "G. Ngajeje".

G. NGAEJE
AG. DEPUTY REGISTRAR
13/11/2020

Court: Right of appeal fully explained.



A handwritten signature in blue ink, appearing to read "G. Ngajeje".

G. NGAEJE
AG. DEPUTY REGISTRAR
13/11/2020