IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

PC. PROBATE APPEAL NO. 1 OF 2020

(Arising out from the District Court of Tabora Appeal No. 02/2020 and

Original Administration cause No. 04/2019 of Isevya Primary Court)

HELENA MALALE ---------- APPELANT

VERSUS

KULWA SILAS ---------- RESPONDENT

JUDGMENT

27/11 & 14/11/2020

BAHATI, J.:

This is the second appeal whereby the appellant **HELENA MALALE,** the widow of the deceased **SILAS NJEGELE** petitioned to this court to challenge the decision of two lower Courts Tabora District Court in Probate Appeal No. 2 of 2020 and Isevya Primary Court in Administration Cause No. 4 of 2019.

The essential background of this case is as follows; upon the death of one Silas Njegele, Mr. Medard Njegele the deceased's young brother successfully applied for the administration of the estate of his late brother at Isevya Primary Court through Administration cause No. 04 of

2019 and on 08/01/2019 he was appointed the administrator of the estate of the late Silas Njegele.

Seven months later after appointment, the administrator Mr. Medard Njegele notified the appointing Court of his failure to execute his duties as administrator for the reason that he stays far from the Court and is tied up, he thus prayed the Court to revoke his appointment, and the court was convinced with Mr. Medard's reasons and revoked his appointment. The court went further to order the deceased's family to appoint another administrator and that was on 20/08/2019.

For the reasons unknown to this Court, on 12/12/2019 the trial Court admitted another application from Kulwa Silas praying the administrator's appointment be revoked. The Court heard the objection and for the second time revoked the appointment of Mr. Medard Njegele and subsequently appointed both Kulwa Silas (deceased's son) and Helena Malale (deceased's wife) as administrators and administrix respectively of the estate of the late Silas Njegele.

Dissatisfied with that decision the administrix Helena Malale filed an appeal to the District Court of Tabora against co-administrator Kulwa Silas on grounds that he is not known to family members and also his appointment lacked consent from the family. After a full hearing of the appeal, the appellate magistrate upheld the decision of the trial Court hence this second appeal.

The appellant is now challenging the judgment of the District Court of Tabora basing on the following grounds:-

1. *That, the learned Resident Magistrate erred in law and fact by interfering with the duty of administrator/or family when went on the root of distribution of the estate of the deceased and questioning the validity of disposition made by deceased and who are real heirs; these facts needed evidence.*
2. *That, the learned Resident Magistrate erred in law by involving properties in the appeal case.*
3. *That, the learned Resident Magistrate erred in law and fact by dealing with the matter of whether the respondent is genuine heir the matter which needed evidence.*
4. *That, the learned Resident Magistrate erred in law and fact by ignoring the fact that the duty to appoint or object the administrator is vested only upon the family of the deceased. For instance, the current administrators were not appointed by clan members.*
5. *That, the learned Resident Magistrate erred in law and fact by deciding that there was a forgery of documents the fact which needed evidence.*
6. *That, the learned Resident Magistrate erred in law and fact by holding that the family held a meeting on 07/10/2019 to appoint new administrator the fact which isn't true.*

7. *That, the learned Resident Magistrate erred in law and fact by indorsing false evidence by SM2 and SM3 while indeed SM2 had criminal accusation concerning contract dated 14/02/2016 and false evidence adduced on 07/01/2020.*

The appellant prayed to this court to allow the appeal with cost, quash the District Court decision to its entirety as it is tainted with many irregularities and illegalities.

When the matter was called on for hearing the appellant appeared in person under the legal assistance of Mr. Sichilima, learned advocate while the respondent appeared in person unrepresented.

Mr. Sichilima buttressed that the matter is on the revocation of the administrator, he prayed that one Medadi Njegele be re-admitted as an administrator so that he can administer the properties. He added further that Mr. Medadi was not afforded a fair hearing for him to show why he failed to collect and distribute the deceased properties, he argued that the court erred in revoking the appointment of Medadi Njegele who was appointed by the Clan.

He added further that, the trial court distributed the deceased properties instead of the administrator doing the same. He contended that it is not the duty of the Court to distribute the deceased estate rather it is the duty of the administrator.

On another ground on whether the respondent Kulwa was a deceased son, he submitted that Kulwa was not recognized as the child of the deceased.

In reply the respondent submitted that Medard Njegele is their uncle, who was appointed administrator of the estate but he did not comply with the court's directions, he decided to write a letter to the Primary Court on his revocation and that is when the Court granted them the opportunity to find another administrator.

That, they held a clan meeting headed by Mr. Masoud Ezegenuka but Helena Malale refused to attend the meeting so they went back to the court which directed them to go again for a meeting. He added that the meeting was conducted and all the required members were present, he told them that he is ready to administer the estate then he started making follow ups on the deceased's estate. The appellant objected that Kulwa Silas is not the son of the deceased.

Having heard from both parties, before determination on the grounds leveled by the appellant, I would like to go through the record of the trial court to see whether it was conducted in conformity with the law or there are irregularities as alleged by the appellant in his grounds of appeal.

Having perused through the proceedings and ruling of the trial Primary Court, it came to my knowledge that, on 08/01/2019 during

the hearing, the Court admitted a will of the deceased from the appellant Helena Malale but nothing was discussed about the will.

Rule 8 of the Primary Court (Administration of Estate) Rules GN. No. 49 of 1971 requires that:-

> (8) *Subject to the provisions of any other law for the time being applicable the court may, in the exercise of the jurisdiction conferred on it by the provisions of the Fifth Schedule to the Act, but not in derogation thereof, hear and decide any of the following matters, namely–*
>
> ***(a) whether a person died testate or intestate;***
>
> ***(b) whether any document alleged to be a will was or was not a valid or subsisting will;***
>
> ***(c) any question as to the identity of persons named as heirs, executors or beneficiaries in the will;***
>
> ***(d)*** *any question as to the property, assets or liabilities which vested in or lay on the deceased person at the time of his death;*
>
> ***(e)*** *any question relating to the payment of debts of the deceased person out of his estate;*
>
> ***(f)*** *any question relating to the sale, partition, division, or other disposals of the property and other assets comprised in the estate of the deceased person for the*

purpose of paying off the creditors or distributing the property and assets among the heirs or beneficiaries;

(g) *any question relating to investment of money forming part of the estate; or*

(h) *any question relating to expenses to be incurred on the administration of the estate.*

To save the time of this Court I will recess my discussion on the first three bullets of Rule 8 cited above. The proceedings of the trial court do not speak as to whether after the scrutiny of evidence the deceased died testate or intestate. However the document alleged to be the last will of the deceased was not discussed in Court about its validity or its content rather the court ruled out on a single phrase that, the house was bequeathed to the deceased's wife. The Court did not go further to name a person who is mentioned as an executor of that estate and the listed heirs; in absence of those key legal insights, it is my considered view that the trial magistrate fatal erred which renders the whole proceedings a nullity.

As to the grounds leveled by the appellant, in his submission, Mr. Sichilima did not go in sequence of leveled grounds rather his argument based on two issues that,

i. *Re-appointment of Medadi Njegele as administrator of Estate of Silas Njegele and*

ii. Whether, Kulwa Silas was recognized by family members to be the Child of the deceased.

It is clear on the record of the trial Court that Medadi Njegele was not removed from administering the estate of his brother accidentally rather the court granted the prayers he sought through the letter dated 19-8-2019. I quote:-

YAH: OMBI LA KUJIONDOA USIMAMIZI WA MIRATHI KESI NAMBA 4/2019

Rejea ombi langu nililolitaja hapo juu, lahusu kujiengua (kupumzishwa) ili mwingine asimamie kesi hii.

Sababu:-

1. *Ninaishi mbali na Mahakama husika, hivyo uwezo wangu kusimamia unakuwa mzito (mgumu)*
2. *Kutokana na utumishi nilionao nitawacheleweshea stahiki za watoto.*

Nitashukuru kama ombi langu litapokelewa na mimi Mahakama inisaidie

Wenu

MEDALD NJEGELE

19-8-2019

Now, I am wondering how the learned counsel is requesting the Court to appoint a person who was earlier appointed but refused the appointment. Also, Rule 9 (d) of the Primary Court (Administration of

Estate) Rules GN. No. 49 of 1971 requires that, once an administration is revoked the person who has been acting as the administrator shall forthwith surrender the documents evidencing the grant and full account of administration to the Court.

I have perused through the whole record of the trial Court and found that Medadi Njegele never submitted to Court those documents evidencing his appointment and he never submitted to Court full account of administration to the Court that alone disqualifies him from being reappointed.

On the second issue, Mr. Sichilima argued that Kulwa Silas was not recognized as a child of the deceased, I am amazed to find that the first administrator who is now opposing the appointment of Kulwa Silas once called him as a witness in the trial court and he gave his evidence as to the deceased's son. On the other hand at the clan meeting which was held on 07/10/2019 Kulwa Silas and his twin brother were named as the lawful children of the deceased Silas Njegele. Basing on that evidence I am of the view that the family of the deceased in a family meeting recognized Kulwa Silas and his twin brother Dotto Njegele to be lawful children of the deceased.

Having observed so, I find that the proceedings in the trial Primary Court were highly irregular, and in the circumstance, I allow the appeal, all orders of the District Court and Primary Court are quashed and set

aside. Whoever wishes to pursue the matter is at liberty to file the same in an appropriate court with another pair of assessors.

Since the involved parties are relatives likely to meet again for clan meetings on the same, I make no order as to costs.

Order accordingly.

A.A.BAHATI

JUDGE

14/12/2020

Judgment delivered under my hand and seal of the court in the chamber, this 14th day December, 2020 in the presence of both parties.

A. A. BAHATI

JUDGE

14/12/2020

Right of appeal is fully explained.

A. A. BAHATI

JUDGE

14/12/2020