

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**PC PROBATE APPEAL NO. 05 OF 2019**

*(Arising from the Probate Appeal No 2 of 2019 of Bariadi District Court. Original shauri la Mirathi No 2/2019 of Mkula Primary Court)*

**CUSTOM LIFUMBULA..... APPLICANT**

**VERSUS**

**DAUDI LIFUMBULA..... RESPONDENT**

**JUDGEMENT**

*Date of the last Order: - 15<sup>th</sup> October, 2020*

*Date of the Ruling: -04<sup>th</sup> December, 2020*

**MKWIZU,J:**

On 2/4/2019 through Form No 1 respondent herein, Daudi Lufumbula moved the Mkula Primary Court - **Busega Districtt**, Simiyu Region to appoint him as administrator to the estate of his late father, **LUFUMBULA YACHU** who died intestate on 5/5/1992.

Appellant, Custom Lufumbula on 30/03/2016 filed an objection to the proposed appointment on the grounds that:

- i. Kwamba kikao kilichofanyika kumteua ni batili kwa sababu Watoto baadhi hawakushirikishwa kama vile Custom s/o Lufumbula, Emmanuel s/o Lufumbula,Pauls/o Lufumbula and Minza d/o Lufumbula
- ii. Daudi Lufumbula hakutaja mali zote za marehemu kama vile Ngombe, Mbuzi,Kondoo,Kuku, madeni ya marehemu na BRITISH FIRM silaha za marehemu, PINDE,MIKUKI.

The trial court heard the objection. Custom Lufumbula testified as SM1 on 7/6/2019 and Emmanuel Lufumbula testified as SM2 on 5/9/2019 and this marked the end of the objectors' evidence. On the other side Respondent had 6 witnesses, SU 1, Daudi Lufumbula, SU 2 Luja Samame, SU 3 Masanyiwa Yachu, SU 4, Kabula Lufumbula; SU 5 Othman Lufumbula and SU 6,Vunje Lufumbula.

Having considered in length, the parties' evidence, trial magistrate dismissed the objection on the ground that the objector failed to prove his allegations before the court. On the same reasoning, Daudi Lufumbula was granted letters of administration of the deceased's Estate.

Unsuccessfully, appellant appealed to the Bariadi District Court. In its decision, the 1<sup>st</sup> appellate Court found no reason to disturb the trial court's decision hence the present appeal which comprises of four (4) grounds of appeal summarized thus:

- i. The petition for letters of administration was filed out of time.
- ii. There was no proof of service of the letter informing the appellant of the clan meeting held on 1/8/2017.
- iii. Appellant proved that respondent is not faithful and credible person to administer the deceased estate.

This matter proceeded orally on 15/10/2020. Both parties were unrepresented hence had very little to say. Submitting for the appeal, appellant said the 1<sup>st</sup> appellate court did not take into consideration his submissions and that it was clear that the clan meeting was not communicated to him.

Respondent opposed the appeal. He argued that the family had initially proposed their uncle to administer the deceased estate. The proposed person was objected to by the appellant. At the high Court parties were advised to convene another family meeting to suggest who would be the administrator. Appellant failed to attend the meeting that proposed the respondent an administrator. Respondent submitted further that he is credible and faithful that is why family members had proposed him

In his short rejoinder, appellant said there is nothing to be administered in the deceased estate.

I have profoundly read and considered the grounds of appeal, the two lower court's records and the parties submissions for and against the grounds presented in this appeal. It should be remembered that this is a 2<sup>nd</sup> appeal. The general rule is that an appellate court should not disturb the concurrent findings of facts of the lower courts unless there has been misapprehension of evidence, a miscarriage of justice or violation of some principles of law or practice. This was so held in the cases of **Pandya V.R.** (1957) EA 336; **Amratlal D.M. And Another T/A Zanzibar Silk Store V. A. H. Jariwala T/A Zanzibar Hotel** (1980) TLR 3; **Issa Mgara@ Shuka V Republic,**



Criminal Appeal No.37 of 2005 (Unreported); and **Dickson Joseph Luyana and Another V Republic**, Criminal Appeal No. 1 of 2005 (Unreported), to name but a few.

On the first ground the appellant contended that the petition for letters of administration was filed outside the time prescribed by the law. No submissions were made in support of this grounds and therefore I would have dismissed the ground outrightly, but being a point of law, I find it appropriate to determine the same. I have perused Part I & II of the Fifth Schedule to the MCA Cap 11 RE 2019 no specific provision prescribing time limit for petitioning for letters of administration before the Primary court. This was also the position in the case of **Majuto Juma Nshahuzi Vs Issa Juma Nshahuzi**, P. C. Civil Appeal No.9 of 2014 (HC), at Tabora (Unreported). For the reason above, I find no validity on the first ground of appeal.

The second complaint by the appellant is that there was no proof of service of the letter informing the appellant of the clan meeting held on 1/8/2017

contrary to the findings of the two courts below. This was one of the grounds of objection at the trial court. Petition was challenged because the appellant and some other relatives did not attend the clan meeting which proposed the respondent administrator. Both, the trial court as well as the 1<sup>st</sup> appellate court found for the respondent. It was decided that appellant was informed of the clan meeting but ignored. On the complaint that there is no proof of service on him, the notice for the meeting, the 1<sup>st</sup> appellate court was of the view that lack of proof of service is not fatal, being a family meeting no formal service would be expected. Communication could be through cell phone messages, calls. I think, there is nothing genuine on this complaint. During cross examination before the trial court, appellant said I quote:

*"Mimi sikuweza kuhudhuria kwenye kikao hicho sababu kilifanyika kwa mtu ambaye nilikuwa nimempinga asiwe msimamizi wa Mirathi ya marehemu baba"*

There was no serious issue pointed as to why he failed to attend the meeting. The above appellants' statement shows that he was not only aware of the

family meeting but also the venue. The blame thrown to the respondent is unfounded. I find nothing to fault the two courts below on this ground.

Last issue brought in the Appellants grounds of appeal is that there was enough evidence proving that respondent is unfaithful and not credible person to administer the deceased estate. Again, the two courts below were of the view that appellant failed to prove this allegation. I have revisited the evidence adduced by the parties at the trial court. Apart from calling the respondent '*Muhuni na Mwizi*' nothing was specifically brought to the court to justify his claim. The principle governing proof of case in the civil suit is that the one who alleges must prove. This is as per sections 110 and 111 of the Tanzania Evidence Act [Cap. 6 RE 2019]. See for instance the case of **Barelia Karangirangi V. Asteria Nyalwambwa**, Civil Appeal No 237 Of 2017, CAT at Mwanza (unreported). The trial record in this case contain no evidence by the appellant proving the allegations. The appellant under the circumstances of the case was expected to lead evidence to show the list of the deceased properties, and name the properties that have been stolen or squandered by the respondent and how the same were stolen. This is missing in his evidence. I, as concluded on the above two grounds, find no merit on this ground.

That said, Appellant appeal is dismissed for lacking in merit.

It is so ordered.

**DATED at Shinyanga** this 4<sup>th</sup> day of **December, 2020.**



  
**E.Y. MKWIZU**

**JUDGE**

**4/12/2020**

**Court:** right of appeal is explained

  
**E.Y. MKWIZU**

**JUDGE**

**4/12/2020**