IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA

PROBATE AND ADMINISTRATION APPEAL NO. 10 OF 2018
(Arising from Bukoba District Court in Civil Revision case No. 3/2018 which originated from Katoma Primary Court in Probate and Administration case No. 11/2015)

EVODIUS PETRO MAJURA.....APPELLANT

VERSUS

VICTOR GERVAS.....RESPONDENT

JUDGMENT

Date of last order 14/05/2020
Date of judgment 22/05/2020

N.N. Kilekamajenga, J.

The deceased, John Buriti Ichurika was blessed with six children. He died on 28th May 2010 leaving behind two children namely, Julian John Ichurika and Bertha John Ichurika. He was also survived with one widow. It is alleged that the deceased left some landed properties within Bukoba Municipality and some money in the bank account. The deceased's wealthy possibly turned into the disgrace in the entire family and the clan as there were perennial disputes arising from the deceased's estates. In 2015, the respondent and Archard Ichurika, each of them, applied to administer the estates of the deceased before Bukoba Urban Primary Court. The Bukoba Urban Primary Court appointed the respondent to

administer the estates of the deceased through Probate and Administration cause No. 82 of 2015. Archard Ichurika was aggrieved by the decision of the Primary Court of Bukoba hence appealed to the District Court of Bukoba vide Probate and Administration Appeal No. 02 of 2016. The District Court decided in favour of the respondent. Archard Ichurika appealed to the High Court through Probate and Administration Appeal No. 03 of 2017.

Immediately thereafter, Archard Ichurika also died. So, the Probate and Administration Appeal No. 03 of 2017 stayed pending the appointment of the administrator of estates. Honourable Justice Bongole ordered the appointment of the administrator of the estates of Archard Ichurika to take over the case. Prompted by this order of the High Court, the appellant applied before Katoma Primary Court to be appointed the administrator of the estates of Archard Ichurika. The appellant further applied to administer the estates of the later John Buriti Ichurika through Probate and Administration Cause No. 11 of 2017. However, the respondent was not notified about the applicant's application and appointment done by Katoma Primary Court.

When the respondent knew about the appointment of the appellant, he wrote a complaint letter to the District Court. The District court immediately called the records of Katoma Primary Court in Probate and Administration Cause No. 11 of 2017 for revision. Upon revision, the District Court was convinced that the

appointment of the appellant as the administrator of the estates of John Buriti Ichurika was wrong and did not follow the legal procedures. The District Court quashed the proceedings of the Katoma Primary Court in Probate and Administration Cause No. 11 of 2017 and set aside the appointment of the appellant. The appellant was aggrieved by the revision order of the District Court hence this appeal.

As a result, there were two case files originating from the estates of the late John Buriti Ichurika. **First**, the objection raised by Archard Ichurika against the respondent which originated from Bukoba Urban Primary Court i.e. Probate and Administration Appeal No. 03 of 2017. **Second**, the instant application which challenged the order in civil revision case No. 03 of 2018. In the first case, I inquired from the children of the late Archard Ichurika on whether they proposed the appellant to administer the estates of their father. The children of Archard Ichurika who were present before the Court were surprised by the fact that the appellant was appointed to administer the estates of their father. It became apparent that the appellant is not a clan member. None among the deceased's children attended the clan meeting to propose the appellant to administer the estates of Archard Ichurika. The children were afraid that the appellant's appointment might cause unnecessary conflicts while the children divided the estates and they were happy with the division. In short, they never needed an

administrator of estates. Hence, the appellant withdrew the case i.e. Probate and Administration Cause No. 11 of 2017. The instant case proceeded for hearing.

In the instant appeal, the appellant coined five grounds thus:

1. *That, the District Court erred in law in entertaining the application brought before it and adjudicate on the matter, as it did, without being not properly moved by the respondent/applicant; and (sic)*
2. *That, the District Court erred in law and in fact to entertain the application brought before it by the respondent/applicant while the same was not one of the parties and/or an interested party in probate cause No. 11/2017; and (sic)*
3. *That, the District Court erred in law for condemning the appellant/respondent unheard ab initio as required by the law; and (sic)*
4. *That, the District Court erred in law and in fact in thinking that it could override the order of the High Court at Bukoba (Hon. Bongole, J.) derivered (sic) on 28/09/2017 in Probate & administration Appeal No. 3/2017, which directed the sole heir (Julian John Ichurika) of the late John Buriti Ichurika to understand all legal processes to take with him (the sole heir) when the case would be mentioned on another day, an administratrix whom he (the sole heir) thinks befits (sic) him (the sole heir); and (sic)*
5. *That, the District Court erred in law and in fact in thinking that the Primary Court of Katoma did not issue orders for citation of the Probate Cause No. 11/2017 as required by the law and that a copy of Form No. II was not signed and sealed by the same.*

When the appeal was called for hearing, the appellant appeared in person while the respondent enjoyed the legal services of the learned counsel, Miss Gisera Maruku. During oral submission, the appellant argued that the District Court erred in law in entertaining Civil Revision Case No. 03 of 2018 because the court was not properly moved. He cited **section 101 (1)(2)(3) of the Civil Procedure Code, Cap. 33 RE 2002** to argue that the complaint before the Court must be made in a prescribed form. He argued that, under **Order XLIII, Rule 2 of the Civil Procedure Code, Cap. 33 RE 2002**, every application before the court must be made by way of chamber summons supported with an affidavit. But in the instant case, the respondent moved the court by way of a letter. Therefore, the District Court was not supposed to revise the proceedings and decision of Katoma Primary Court.

While arguing on the second ground, the appellant argued that the District Court erred in entertaining Civil Revision No. 03 of 2018 while the respondent was not the party in the original case at Katoma Primary Court. The appellant informed the Court that he was the only party in Probate and Administration Cause No. 11 of 2017 which was determined by Katoma Primary Court. He further argued that when applied for administration of estates of the late John Buriti Ichurika, the notice was issued and no body objected the appointment. The 21 days' notice

was issued; court stayed for 63 days without giving the decision and the respondent did not object the appointment.

On the third ground, the appellant argued that the District Court erred in entertaining the case without affording him the right to be heard. The District Court received the respondent's letter on 23/02/208 and pronounced the decision on 28/03/2018 without informing him. He received the decision of the District Court through the Street leader of Kyakairabwa and then preferred this appeal. Failure to summon the appellant to defend the revision order contravened **section 22(3) of the Magistrates' Courts Act, Cap. 11 RE 2002** and **Article 13 of the Constitution of the United Republic of Tanzania of 1977**.

In his oral submission, the appellant abandoned the fourth ground. On the fifth ground, the appellant argued that the District Court misdirected itself when it decided that Katoma Primary Court did not issue notice on the application for appointment of the administrator of estates (the appellant). He argued further that the notice was given and the same was signed and stamped by the court. The appellant urged the Court to allow the appeal and set aside the decision of the District Court.

On the other hand, the counsel for the respondent submitted that the District Court of Bukoba received the complaint letter from the respondent and immediately called the records from Katoma Primary Court for revision. She further argued that the revision was made *suo motto* and not under the application by the respondent. The revision was done under **section 22(1) of the Magistrates' Courts Act, Cap. 11 RE 2002**. Therefore, the argument that the District Court was not properly moved has no merit.

The counsel for the respondent further impugned the application of **section 101(1)(2)(3) of the Civil Procedure Code, Cap. 33 RE 2002** and **Order XLIII, Rule 2** of the same Code in this appeal. On the second ground, the counsel for the respondent argued that when a person was not a party to the suit, the best way is to apply for revision. Therefore, the respondent was right in applying for revision. She further informed the Court that the respondent was appointed by Bukoba Urban Primary Court to administer the estates of John Buriti Ichurika. His appointment was never revoked by any court. Therefore, the appointment of the appellant by Katoma Primary Court as an administrator of the estates of the late John Buriti Ichurika was wrongly done.

On the third ground, the counsel for the respondent argued that **section 22(3) of the Magistrates' Courts Act, Cap. 11 RE 2002** which was cited by the appellant is not relevant in this matter. The District Court had power to act *suo*

motto and revised the decision of Katoma Primary Court. She referred the Court to the case of **Hashimu Abdallah v. Hawa Abdallah, Probate and Administration Appeal No. 17 of 2016**, HC at Bukoba (unreported). Therefore, the appellant was not denied the right to be heard because the District Court moved *suo motto* to revise the decision of the Primary Court of Katoma.

On the fifth ground, the counsel for the respondent argued that, in the Decision of the District Court, especially on page 3 the magistrate pointed out that the notice was not signed or sealed something which is contrary to the law. She finally urged the Court to dismiss the appeal with costs because the appellant caused a lot of inconveniences.

When rejoining, the appellant reiterated that the notice was signed and stamped by the court. He further objected the submission that the District Court acted *suo motto* because it was moved by the respondent's letter. However, the respondent was supposed to file the chamber summons and support the application with the affidavit. As the respondent simply wrote a letter something which is contrary to the law. The appellant further argued that the District Court was supposed to hear the parties before deciding. Also, the appellant refused to address the allegation that the respondent was appointed to administer the estates of the late John Buriti Ichurika before him. He argued that probate cause

No. 82 of 2015, appeal No. 02 of 2016 and Probate and Administration Appeal No. 03 of 2017 are not relevant in this case and should not be addressed in this case. He urged the Court to uphold the decision of Katoma Primary Court and set aside the decision of the District Court.

After considering the submissions from the parties, in my view the third ground of appeal if resolved may determine the entire appeal. On the third ground, the appellant argued that he was not given the right to be heard by the District Court when it moved *suo motto* to revise the decision of Katoma Primary Court. In addressing this ground, I perused the court file and found the following information: The District Court received a complaint letter from the respondent questioning the appointment of the appellant as an administrator of the estates of the late John Buriti Ichurika while his (respondent) appointment was never revoked by any competent court. The District Court immediately acted on the respondent's letter, called the records of Katoma Primary Court in Probate and Administration Case No. 11 of 2017, and revised the decision. However, the District Court did not invite the parties to submit on the allegations lodged by the respondent. Therefore, the appellant was not afforded the right to be heard. I am mindful, under the old school of thought and the trend of legal jurisprudence, the court could, *suo motto*, exercise the revisionary jurisdiction without affording the parties the right to be heard. Such approach of justice is waning.

Currently, the trend of justice has shifted towards strict observance to natural justice that calls for parties to be heard on every matter that may result to an order affecting their interests. The right to be heard is the fundamental constitutional right enshrined under **Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977**. See, the case of **The Managing Director Kenya Commercial Bank (T) Limited and Albert Odongo v. Shadrack J. Ndege, Civil Appeal No. 232 of 2017**, CAT at Mwanza (unreported). Based on the principle of justice, a court cannot decide on any matter that affects the parties without affording them the right to be heard. In the case of **Mbeya-Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma [2003] TLR 251** the court stated that:

> *'...natural justice is not merely a principle of the common law, it has become a fundamental constitutional right, Article 13(6)(a) includes the right to be heard among the attributes of equality before the law.'*

The above principle of law is reiterated in a number of cases. For instance, in the case of **I.P.T.L. v. Standard Chartered Bank (Hong Kong) Ltd, Civil Revision No. 1 of 2009** (unreported), the court stated that:

> *'no decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties* ***so as to adversely affect the interest of any person without first giving him a hearing according to the principles of natural justice.'***

The right to be heard whether the court does any revision *suo motto* or where the court raises any new issue at the time of hearing or writing the judgment. For instance, when the court raises a new issue during hearing an appeal or writing the judgment, the court must invite the parties to submit on the new issue. See also the cases of **Margwe Erro and 2 others v. Moshi Mohalulu, Civl Appeal No. 111 of 2014** (unreported); **Mire Artan Ismail and Anr v. Sofia Njati, Civil Appeal No. 75 of 2008** (unreported) and **Kluane Drilling Ltd v. Salvatory Kimboka, Civil Appeal No. 75 of 2006**, Cat at Dar es salaam (unreported).

The right to be heard must be guaranteed by courts regardless whether the party has substantial reasons to present before the court. In the case of **Halima Hassan Marealle v. Parasistatal Sector Reform Commission, Civil Application No. 84 of 1999** the court observed the following:

> *'The concern is whether the applicant whose rights and interests are affected is afforded the opportunity of being heard before the order is made. The applicant must be afforded such opportunity even if it appears that he/she would have nothing to say, or that what he/she might say would have no substance.*

In the instant case, as stated earlier, the District Court was prompted by the respondent's complaint letter and revised the decision of the Primary Court. In my view, the District Court was justified and right in revising the decision of the

Primary Court due to the blatant anomalies. I perused the records of the Primary Court and noticed a lot of irregularities in appointing the appellant as the administrator of the estates of the late John Buriti Ichurika. The Primary Court erred in appointing another administrator while the respondent's appointment was not revoked. There are also other irregularities in the Primary Court record which cannot remain uncorrected. Therefore, the District Court under its revisional powers vested under **section 22 of the Magistrates' Courts Act, Cap. 11 RE 2002** was right in revising the decision. However, the procedure to conduct the revision was not properly followed. The District Court ought to invite the parties to address the respondent's complaint; the parties could submit on the irregularities, then the court could revise the decision of the Primary Court.

Based on the illegality committed by the District Court, I allow the appeal. I hereby quash the proceedings and the revision order of the District Court as the parties were not afforded the right to be heard. I however, remit the file back to the District Court for revision. The District Court should invite the parties to submit on the respondent's complaint and revise the decision of Katoma Primary Court accordingly. It is so ordered.

Dated at Bukoba this 22nd May 2015.

Ntemi N. Kilekamajenga
Judge
22nd May 2020

Court:

Judgment delivered in the presence of the counsel of the respondent, Miss Gisera Maruku and the appellant present in person. Right of appeal explained to the parties.

Ntemi N. Kilekamajenga
Judge
22nd May 2020