



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

MISC CIVIL APPLICATION NO. 08/2018

(Arising from Probate and Administration appeal No. 16/2016 and Probate and Administration Appeal No. 5/2012 from the District Court of Bukoba and originating from Kolekero Primary Court in Probate and Administration cause No. 05/2012)

GRATIAN MAGANA.....APPLICANT

VERSUS

JUSTUS KWEYAMBA.....RESPONDENT

RULING

Date of last order 22/05/2020

Date of judgment 29/05/2020

N.N. Kilekamajenga, J.

The applicant lodged the application seeking the certificate of point of law to enable him to appeal to the Court of Appeal of Tanzania. The application was made by way of chamber summons under **section 5(2) of the Appellate Jurisdiction Act, Cap. 141 RE 2002** and **Rule 46(1) of the Court of Appeal (Amendments) Rules 2017, G.N. No. 362 of 2017**. The application is accompanied with the affidavit deposed by the learned advocate, Mr. Mathias Rweyemamyu.

In the application, the applicant urged to certify the following points of law:

- 1. That every primary court in the probate and administration cause have special and specific geographical jurisdiction under Regulation 1(1) of the 5th Schedule to the CMA (sic) [Cap. 11 RE 2002].*
- 2. That the proper notice was announcement (sic) the News paper of Mtanzania on 14/08/2012.*
- 3. That violated the rule of publication and breached the principles of natural justice of fair hearing.*
- 4. That the Primary Court, District Court and High Court grossly erred in law and facts to entertain the Probate and Administration cause tainted with fraud and illegality.*
- 5. That the High Court as subordinate court (sic) grossly failed to believe a competent will of the deceased person.*
- 6. That the judge of the High Court misconceived the interpretation of Section 11(1)(2)(3)(4)(5) of the Law of Marriage Act 1971.*

When the application was called for hearing, the appellant was represented by the learned advocate, Mr. Mathias Rweyemamu while the learned advocate, Mr. John Erasto appeared for the respondent. The counsel for the appellant informed the Court that under **Regulation 1(1) of the 5th Schedule of the Magistrates' Courts Act, Cap. 11 RE 2002**, the probate and administration cause must be instituted in the place where the deceased had a fixed abode. He argued further that, in the instant case, the deceased lived and died within the jurisdiction of Kishanje Primary Court but the probate and administration cause

was filed at Kolekero within Maruku Ward albeit the two Primary Courts are within Bukoba Rural District.

When submitting on the second point, he argued that the publication concerning the appointment of the respondent as the administrator of estate was done in the Newspaper on 14/08/2012. The administrator was appointed on 15/08/2012 and the inventory of the deceased's estates was filed before the Primary Court on 17/08/2012. The notice was therefore too short. On the third point, Mr. Rweyemamu informed the Court that the appointment of the administrator of estates was tainted with fraud and illegalities intended to deceive the heirs from the administration of estates. On the fourth point, Mr. Rweyemamu argued that the High Court dismissed the competent will, as a result, the applicant was denied his right to inheritance. He finally urged the Court to certify the above points as points of law to the Court of Appeal of Tanzania.

In response, the counsel for the respondent informed the Court that some of the issues raised by the applicant were not raised in the subordinate court, hence they are not worthy to be considered at this stage. He further argued that Kolekero Primary Court was competent to determine the case because it is located within Bukoba Rural District where the deceased had the fixed abode. He referred the Court to **section 3(1) (2) and 63(1) of the Magistrates' Courts Act, Cap. 11 Re 2002**. When arguing on the second point, Mr. Eraso informed

the Court that the notice about the respondent's intention to administer the estates was issued through form II and also advertised in the Newspaper on 14/08/2012. The administrator was appointed on 15/08/2012 and the inventory of deceased's estates was filed on 17/08/2012. Therefore, the publication and the filing of the inventory was proper. He further informed the Court that there was no any fraud or illegality in the case.

When submitting on the validity of the deceased's will, Mr. Erasto informed the Court that the will was written by another person because the deceased was sick hence it contravened the law (GN No. 436 of 1963). He further argued that the issue of conversion of marriage was not the major contention in the case. On whether the applicant raised points of law to be certified, Mr. Erasto referred the Court to the cases of **Zuberi v. Ally Hamisi, Civil Application No. 5 of 1999**, CAT at Dar es salaam (unreported); **Lazaro Kabinza v. The General Manager Mbeya Cement Company Ltd, Civil Application No. 1 of 1999**, CAT at Mbeya (unreported). He finally informed the Court that there is no point of law to be certified to the Court of Appeal of Tanzania.

In the rejoinder, the counsel for the applicant did not raise any substantial argument.


I am mindful, the task of this Court is to certify point(s) of law (if any) to enable the applicant appeal to the Court of Appeal of Tanzania. Upon perusal of the record in the court file and also considering the submission from the parties, I allow the application and certify the following points of law to be determined by the Court of Appeal of Tanzania.

- (a) Whether the notice/publication before the appointment of the administrator of estate was properly conducted.
- (b) Whether the deceased, who married under Christian rights, converted his marriage to polygamous marriage under section 11 of the Law of Marriage Act, Cap. 29 when married other wives under customary rights.

Order accordingly.

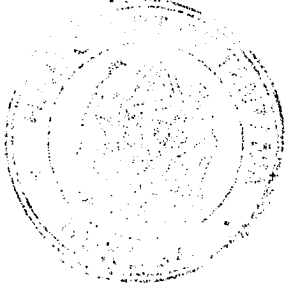
Dated at Bukoba this 29th May 2020.




Ntemi N. Kilekamajenga
Judge
29th May 2020.

Court:

Ruling delivered today on 29th May 2020 in the Court's chamber in the presence of the respondent.




Ntemi N. Kilekamajenga
Judge
29th May 2020.