

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

PROBATE APEAL NO. 5 OF 2021

*(Originating from the Probate Appeal No. 2/2019 of Dodoma District Court and
Probate Case No. 31/2018 of Dodoma Urban Primary Court)*

SHEILA HAIDARY NASORO KAVIRA.....APPELLANT

VERSUS

HAMISI NASSORO KAVIRARESPONDENT

JUDGMENT

03/12/2021 & 13/12/2021

KAGOMBA, J.

SHEILA HAIDARY NASSORO KAVIRA ("the appellant") has filed this appeal against her paternal uncle HAMIS NASSORO KAVIRA ("the respondent") to challenge the decision of the District Court of Dodoma delivered on 20/1/2020 in Probate Appeal No. 2 of 2019, which appointed the respondent the new Administrator of the Estate of the late Nassoro Kavira ("the deceased").

The appeal is based on the following two grounds:-

1. That, the Court erred in law and in fact by appointing the respondent herein despite the fact that the administration of the estate of the late Nassoro Kavira was concluded by the late Haidary Nassoro Kavira.
2. That, the learned Magistrate ought to have upheld the decision of the Probate Cause No. 31/2018 by Dodoma Urban Primary Court which rightly upheld the objection posed by the appellant herein.

Based on those grounds, the appellant prayed for her appeal to be allowed with costs.

Briefly, following the death of Nassoro Kavira ("the deceased") his son Haidary Nassoro Kavira, who is the appellant's biological father, was appointed the Administrator of the Estate of the deceased vide Probate Cause No. 37 of 1988 by the District Court of Dodoma. The deceased was survived by two wives and five children. He also left behind two houses, one being plot No. 20 Block EF Kilosa township in Morogoro region, which the Administrator distributed to the respondent, together with his full brother Bakari Nassoro Kavira and their respective mother, who was the senior wife of the deceased.

The second house on plot No. 8 Block 11, Dodoma Town was given to the Administrator together with his sister Mwajuma Nassoro Kavira and his full brother Yusuph Nassoro Kavira as well as their respective mother. The said distribution of the deceased's estate was effected on 9/2/1993, amidst some complaints from Bakari Nassoro Kavira, in particular.

Sometimes in 2008, the Administrator also passed away, as did his sister Mwajuma Nassoro Kavira. On 30/9/2018 a clan meeting was held at Mwananyamala "A", Dar es Salaam for continuation of the Probate Cause No. 37 /1988 where the parties herein were both elected to apply for letters of administration of the deceased's estate for continuation with the administration duties which were not completed by the late Administrator. The meeting also was implementing the ruling of the Dodoma Urban Primary Court dated 16/7/2018 (Hon. Lyimo – Magistrate) which objected to the filing of a fresh petition by the respondent but ordered the application by the respondent to be filed in the same existing

file of the Probate Cause under which the deceased Administrator was acting i.e Probate Cause No. 37 of 1988.

On 11/10/2019 the Dodoma Primary Court (Hon. D. J. Msuya-Magistrate) delivered its judgment, after a trial, that turned down the respondent's application for letters of Administration. The reason was that the deceased's estate was already distributed by the deceased Administrator, the appellant's father. This decision was overturned by the District Court of Dodoma, on appeal filed by the respondent. The District Court found that the deceased Administrator had not completed his administrative duties according to the law, hence appointed the respondent as the new Administrator of the deceased's estate. The current appeal is against the said decision of the District Court.

On the date of hearing of the appeal Mr. Fred Kalonga, learned advocate represented the appellant while Mr. Cogsmas Mataba and Mr. Lucas Komba, learned advocates represented the respondent. Submitting on the first ground of appeal Mr. Kalonga argued that the District Court erred in law and fact to appoint the respondent as the Administrator of the deceased's estate because the estate was already administered and closed by the deceased Administrator, Haidary Nassoro Kavira, vide Probate Cause No. 37 of 1988. He submitted further that the Dodoma Urban Primary Court was given evidence by the appellant, who was the caveator, to show how the late Haidary Nassoro Kavira had administered the estate and that even the respondent had acknowledged, in writing, that the estate was already distributed.

Mr. Kalonga also pointed out that the application to the Primary Court by the respondent was filed in 2018, while the Probate Cause was

of 1988 and the deceased Administrator died in 2008. He added that there was no any opposition against what was done by the deceased Administrator all that time. He also pointed out that the respondent was a beneficiary as an heir who signed to acknowledge receipt of his share of inheritance on 19/2/1993, which was a house in Kilosa. Mr. Kalonga emphasized that the administration of the deceased's estate had already been done and its distribution was closed, hence it was wrong for the District Court to appoint the respondent as administrator.

Submitting on the second ground of appeal, Mr. Kalonga argued that the District Court ought to have upheld the decision of the Primary Court in Probate Cause No. 31 of 2018, which considered the caveat filed by the appellant. He said, there was no reason to appoint the respondent to administer the estate which had already been administered, without objection by the deceased Administrator vide Probate Cause No. 37 of 1988. He argued that if the respondent had any issues with the closed Probate Cause, he should have challenged the same instead of filing a fresh one.

For those reasons, Mr. Kalonga prayed the Court to allow the appeal with costs. He also prayed the Court to quash the decision of the District Court and uphold the decision of the Dodoma Urban Primary Court.

Mr. Mataba, vehemently opposed the appeal, stating that the District Court was right in its decision.

On the first ground of appeal, Mr. Mataba submitted that the deceased Administrator, Haidary Nassoro Kavira, who was appointed vide Probate Cause No. 37 of 1988, did not complete his duty according to the law. He submitted that under the fifth schedule to the Magistrate Courts

Act, [Cap 11 R.E 2019], section 11 and rule 10(1) of the Primary Courts (Administration of the Estates) Rules GN 49/1971, the Administrator has a legal duty, among other things, to identify, list and distribute assets of the deceased to all the heirs. He submitted further that the cited Rules, direct the administrator within four months to submit an inventory in Court which lists and identifies assets and liabilities of the deceased. He also submitted that the law mandatorily requires the administrator to furnish the Court with a report of the division of assets of the deceased in form No. 6 according to the law.

Mr. Mataba recalled that there were several Courts decisions enjoining the administrator, after filing form No.5 and 6, to give a notice to the heirs, creditors and whoever is concerned on the inventory filed. He said the aim of such a requirement is to see if justice has been done and once there are no issues from the heirs and those other concerned parties the Court will close the Probate according to the law.

Mr. Mataba told the Court that in this Probate Cause, there were complaints as captured in the judgment of the District Court, including whether the Probate was known to be closed or not by the heirs. He cited Bakari Kavira who said he was not involved and thus refused to sign the document he was required to sign by the deceased Administrator. He emphasized that there were issues of concern since Primary Court.

Mr. Mataba also attacked what is said to be an agreement of the heirs regarding distribution of the estate. He said, the said agreement does not show if it originated from Court or any Probate Cause. He said the same looked like directives of one person who was instructing others, with some threatening words. That, Bakari Kavira did not sign and above

all, the said agreement cannot replace Form No. 6, which is legally required to show distribution of the deceased's estate.

On the second ground of appeal, Mr. Mataba submitted that since the death of the deceased in 1979 up to when the deceased Administrator Haidary Kavira filed Probate Cause No. 31 of 1988, it is approximately nine (9) years. He also said that another five (5) years elapsed from the time the late Haidary was appointed the Administrator in 1988 to 1993 when it is said the agreement for division of estate was done. He said even when Haidary Kavira was still the Administrator before his death in 2008, there were record to show that there was filed Probate Cause No. 88 of 2010 by the respondent, at Kinondoni Primary Court. The learned advocate further said, it is that case which for the first time led to the family of the late Nassoro Kavira and the heirs including the respondent, to recognize that there was a Probate Cause filed by their brother the late Haidary Nassoro Kavira. That, it is the said Court which directed them to come to Dodoma District Court but when they came problems started with the case file gone missing at Dodoma Urban Primary Court.

Mr. Mataba explained that the family decided to meet and appoint another of the heir brothers to file Probate Cause No.4 of 2013 where the applicant was Sefu Kaptan Mbwana, which was determined by Hon. A. P Kilim, RM (as he then was). Mr. Mataba submitted further that the learned Magistrate, on page 3 of his ruling, sustained a preliminary objection and advised the heirs to file a Probate Cause in Primary Court since they are Muslims. He argued that from the above background, there has been no time the matter was put to rest. He concluded that the appeal lacked legal and human grounds as his clients are old people who have moved a lot in Courts and would now like to close the matter.

Mr Komba, learned advocate supported the above submission by Mr. Mataba and prayed the appeal to be dismissed with costs.

In his short rejoinder, Mr. Kalonga reiterated his submission in chief on the first ground of appeal insisting that the late Haidary Kavira had concluded his administration of the deceased 's estate.

Regarding threats in the agreement titled "*Mirathi ya Marehemu Baba Yetu...*" Mr. Kalonga rejoined that the learned advocate for the respondent is the one who signed on 19/2/1993 to acknowledge receiving the house in Kilosa. He said acknowledgement showed that the probate was concluded.

Mr. Kalonga further rejoined that it had not been disputed by the respondent that he signed the letter dated 15/1/2015 where the respondent was advising Bakari Kavira to go to Court to get his rights if he had any grudges. Mr. Kalonga argued that with such a letter, it cannot be said that when the respondent was going to file the Probate Cause he had no knowledge of the previously filed Probate Cause by Haidary Kavira. He argued that to make a U-turn ten years after the death of Haidary Kavira, was not correct.

On the second ground of appeal, Mr. Kalonga rejoined that the several Probate Causes mentioned by the respondent's advocate were not part of the matter before this Court. He argued that, the submission made by the respondent's advocates seemed to accept that the Probate Cause No. 37 of 1988 was there but they challenge its contents. He said, if that is the case, then the matter is *res judicata pro veritate accipitur*, to mean that judicial decisions must be accepted as correct. He said no body

attempted to challenge the decision in Probate Cause No. 37 of 1988, hence the same has to be respected.

Mr. Kalonga also had an argument on the sympathy sought for the old clients of the respondent's advocate. He said they should accept the decision made in Probate No. 37 of 1988 to close the matter. He concluded by praying the Court to allow the appeal, quash the decision of the District Court and uphold the decision of Dodoma Urban Primary Court, with costs.

Having heard the above submissions and after perusal of the lower Courts records, I find two issues for my determination:-

One, whether the administration of the Estate of the late Nassoro Kavira was completed and closed by the late Haidary Nassoro Kavira vide the District Court Probate Cause No 37 of 1988. **Two**, whether the District Court of Dodoma was legally justified to appoint the respondent as the Administrator of the Estate of the late Nassoro Kavira.

In determining the above issues, I am aware of the legal position that each case should be decided on its own facts', merits and circumstance. I am also alive to the Constitutional requirement on rendering justice according to the law.

On the first issue, there is no dispute that in the District Court Probate Cause No. 37 of 1988 the late Haidary Nassoro Kavira, was appointed the Administrator of the Estate of the late Nassoro Kavira. There is no dispute also that the said Administrator, Haidary Nassoro Kavira passed away in 2008 having been administering the Estate of the late Nassoro Kavira.

What appears to be the mantle of the dispute is whether the administration of the estate was completed closed. Mr. Kalonga has submitted that the late Haidary Nassoro Kavira had already completed his administrative duties before his death. This is the position which the trial Primary Court strongly held but which was successfully opposed by the respondent during appeal to the District Court.

Having duly considered the facts submitted by both sides, I decline the silent invitation by the learned advocates for both sides to dwell on whether or not the late Haidary Nassoro Kavira discharged his administration duties fairly to the heirs. My concern is whether he compelled his duties as administrator and closed the Probate according to the law.

On the above issue, Mr. Mataba correctly submitted that the deceased Administrator, Haidary Nassoro Kavira did not complete his duty as administrator according to the law. The Probate and Administration of Estate Act, [Cap 352] requires the Administrator to exhibit inventory containing a full and true estimate of all the property in possession, and all the credits and also all the debts owing by any person to which the Administrator is entitled in that character, and also requires the Administrator in a similar manner to exhibit an account of the estate, **within one year** after grant of letter of administration, showing the assets which have come to his hands and the manner the same were applied and disposed of. This is per provision of section 107 (1) of the Act.

It is the opinion of this Court that an administration of deceased's estate does not end with division of the estate. Since there are rights of

heirs to get their due shares of the deceased's estate, the law requires transparency in such an exercise. For this reason, an administrator who has not furnished to the Court an inventory of the estate, and an account of how the assets and liabilities of the deceased were collected and applied cannot be said to have discharged his duty in the eyes of law.

It is for sanctity of heirs' rights and requirement for such transparency to protect such legitimate rights of heirs, that the law provides for penal sanctions under section 107 (3) and (4) of the Act.

In the circumstances of this case, there are complaints that some of the heirs were not aware of the Probate Cause that appointed the late Haidary Nassoro Kavira the administrator of the deceased's estate. However, such complaints could be disregarded if the appointment was duly done. It is not expected that all the time all the heirs will know of the filling of the Probate and Administration Cause. And such lack of knowledge of any of the heirs shall not be a valid reason for invalidating an appointment of an administrator where the due process involving family meeting, and citation, petitioning and granting of Letters of Administration was duly observed. What is important, after an appointment is duly done, is for the administrator to abide by the law from the commencement of his duties to the very end. I hold the view that any administration of estate that has not been duly closed by filing of a full and true inventory and account, as required by the law, is still open no matter how long it has taken.

The above position is supported by the wording of the Administrator's Oath made under section 66 of the Act and Rule 64 of the Probate Rules,

GN 107 of 1963. In the Administrator's Oath, the following commitments are stated:-

One; to well and faithfully administer the estate of the deceased person, **two;** to make and exhibit a full and true inventory of the deceased's property and credits in the Court appointing the Administrator, and **three** to render a true account of the Administrator's administration to the Court appointing the Administrator within one year from the date of appointment or within such further time, as the appointing Court may from time to time appoint.

It is also the views of this Court that, not even the death of the administrator, as it is the case in this dispute, has the effect of closing an administration of the estate in which a full and true inventory and final accounts had not been filed in Court. Holding otherwise will be tantamount to abrogating all the protective conditions enshrined in the Administrator's Oath as well as Administration Bond with or without surety. For clarity, the obligation in the Administration Bond made under section 67 of the Act and Rule 66 does not become void until any residue of the said property in the estate is paid into such persons entitled to such residue.

In the circumstances above explained, this Court holds that the late Haidary Nassoro Kavira did not conclude the administration of the Estate of the late Nassoro Kavira by failure to file a full and true inventory as submitted by Mr. Mataba and for rendering of the account of the administration of the estate. It was therefore lawful for the respondent to petition for grant of letters of administration as it was lawful for the District Court to grant the same. The administrator is expected to communicate

to the Court on how the estate is distributed so that the Court can have necessary particulars to be able to make necessary orders for change of titles from the late Nassoro Kavira to his lawful heirs.

It is for the same reason as above that the law of limitation will not apply in the circumstances of this case as was correctly held in **Majuto Juma Nshahuzi Vs. Issa Juma Nshahuzi**, PC Civil Appel No 9 of 2004 High Court Tabora (Unreported), where my learned brother Hon. Mruma, J held;

"There is no specific time limit for petition for letter of administration and in my view it would not be in the interest of justice to have such a provision".

I fully subscribe to the views of the Hon. Judge in the above cited case.

Having deliberated the first issue as above, I am settled that the objection posed in the Primary Court was wrongly upheld. The Probate and Administration Cause No. 37 of 1988 was commenced but not concluded in the eyes of the law. In fact, it aborted the moment the full and true inventory was not filed and final account not rendered. For this reason, there existed legal justification to appoint another Administrator to carry on the Administration duties to finality. The appointed Administrator has full powers under the law to carry out his administrative mandate as per his letters of Administration. This disposes the second issue.

In the final analysis I find no merit in this appeal and the same is accordingly dismissed with no order as to costs.

Dated at **Dodoma** this **13th** day of **December, 2021**.



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba".

ABDI S. KAGOMBA

JUDGE