

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

MISC. CIVIL REVISION NO. 4 OF 2020

(Originating from Mbaramo Primary Court Civil Case No. 30 of 2018)

YOHANA MGEMA ESCOBAR @ YOHANA JOHN MGEMA----- APPLICANT

VERSUS

RICHARD FRANCIS MGEMA-----RESPONDENT

RULING

MRUMA, J.

By way of revision the Applicant Yohana Mgema Escobar alias Yohana John Mgema brought this application requesting the court to call for records of Mbaramo Primary Court in Probate and Administration cause No. 30 of 2018 and determine whether:

- (i) The Mbaramo Primary Court had exercised jurisdiction vested in it by law.
- (ii) The Mbaramo Primary Court had exercised jurisdiction illegally or with material irregularities.

The application is pegged under the provisions of section 79 (i) of the Civil Procedure Code [Cap 33 R.E. 2002], Section 25 the Magistrates Courts Act [Cap II R.E. 2002] and section 19 (1) (c), fifth schedule part 1 (1), (2) and (3). As is the practice the Application is supported by an affidavit sworn by the Applicant, Yohana Mgema a.k.a. Yohana John Mgema.

The application is strongly opposed by the Respondent Richard Francis Mgema who on top of a counter-affidavit, through his affidavit filed a notice of preliminary objection containing two points namely that:

- a) The application is misconceived.
- b) The chamber summons is not supported by an affidavit.

The two points were argued by Mr. Shukuru Khalifa, learned advocate who represented the respondent. Arguing the 1st preliminary objection, Mr. Shukuru Khalifa stated that because this application originates from the proceedings of a primary court this revision ought to have been filed in the District Court. In support of his argument the learned counsel cited section 22 (1) of the Magistrates Courts Act as the law which requires revision proceedings from primary courts to be lodged with the District Court. The said law provides;

A district court may call for and examine the record of any proceedings in the Primary Court established for the District Court for which it is itself established, and may examine the records..... for purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the Primary Court.....and as to the regularity of any proceedings therein.

Counsel for the Applicant hesitantly conceded that the correct forum to deal with revision proceedings originating from Primary Court is the District Court; he however added that powers of Primary Court in Probate and administration causes is limited to matters involving Islamic and customary laws.

I beg to start with this long-standing perversion in the interpretation of the Law: Paragraph 1 (1) of Part 1 of the 5th Schedule of the Magistrate Courts Act provides as follows:

"The jurisdiction of a Primary Court in the deceased's estate, where the law applicable to the administration or distribution or succession to estate is customary law or Islamic Law, may be exercised where the deceased at the time of his death, had a fixed place of abode within the local limits of the court's jurisdiction"

The law as quoted above does not exclude Primary court from entertaining application for Probate and letters of administration where the law

applicable is neither Islamic nor customary law. What the law says is that in the event the law applicable to the distribution of the estate is Islamic in customary law jurisdiction of the court is tied to the place where the deceased had a fixed place of abode. The logic behind that requirement (that is to say administration of a deceased Moslem or traditionalist) must be instituted in a place where the deceased had a fixed abode) is easy to fetch. Moslems and traditionalists are potentially polygamous societies. Their families include children of different wives. If letters for administration of their estates would be instituted in a place where they had no fixed abode, it would be easy for people who are unrelated to the deceased to obtain letters of administration. The law under paragraph 1 (1) of part 1 of the fifth schedule under the heading Powers of Primary Courts in Administration does not exclude Christian or any other denomination from administration of their estates by Primary Courts. The modification "where the law applicable is either Islamic or customary law" put in the law, was meant to cater for those societies with respect to their *manages* styles.

That said, I now revert to the preliminary objection which has been conceded by the Applicant's counsel.

Counsel for the Applicant contended that he lodged this application in the High Court because there was no District delegate" in Tanga. I have carefully considered that argument and I find that it is misconceived. Section 22 (1) of the Magistrate's Courts Act vests power in the District Court to call for and examine "any proceedings in the Primary Court.....". It is therefore not correct to assert that probate and administration causes originating from primary courts cannot be revised by the District Court.

That said I uphold the first preliminary objection and strike out Revision Application No. 4 of 2020. The Respondent is awarded costs.

A.R. Mruma,

Judge

26/10/2021

Date: 26/10/2021

Coram: A.R. Mruma, J.

Applicant: Mr. Tumaini Bakari for Advocate Tibanyendera for Applicant

Respondent: Mr. Khalifa for Respondent.

C/C: Deborah

Court:

Ruling delivered this 26th day of October, 2021.

Sgd: A.R. Mruma, J

26/10/2021

I certify this to be the true copy of original proceedings.

