

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA  
PC. PROBATE APPEAL NO.4 OF 2020**

**JULIUS MAGESSA..... APPELLANT  
VERSUS**

**ABEL MANG'ENDO.....RESPONDENT**

*(Arising from Bariadi District Court)*

*(V. J. Mlingi, RM)*

*Dated 19<sup>th</sup> day of March, 2020*

*in*

*Probate Appeal No.4 of 2019*

**JUDGMENT**

**11<sup>th</sup> November, 2020 & 5<sup>th</sup> February, 2021**

**MDEMU, J.:**

This is a second appeal. In the Primary Court of Masanza, the Appellant filed probate cause so as he be appointed the administrator of the estate of the late Kalele Makambi@Mlangale. The deceased, according to Form No.1, died intestate in the year 1980. In that probate cause No.1 of 2019, the Respondent herein filed objection proceedings for disqualification of the Appellant for the appointment as the administrator of the estate of the late Kalele.

The objection was determined, and accordingly sustained. It was observed in the trial Primary Court that, the Respondent being among family members, was not involved in the clan meeting that nominated the Appellant for the appointment and that, some properties included in the estate are not of the deceased. On 19<sup>th</sup> March, 2020, the District Court of Bariadi affirmed the decision of the trial Primary Court hence this second appeal on the following grounds:

*1. That, the first appellate court erred in law for not holding that, there were no any grounds advanced by the Respondent for disqualifying the Appellant from being appointed the administrator of the estate of Kalele Makambi@ Mlangale*

*2. That the first appellate court erred in law in holding that a death certificate is necessary for determining jurisdiction of Primary Courts in probate and administration matter.*

I heard the Appellant through Audax Costantine, learned Advocate on 11<sup>th</sup> of November, 2020. The Respondent on that date appeared unrepresented. Submitting in support of the appeal as raised in the first

ground of appeal, Mr. Audax submitted that, appointment towards administration of the deceased estates is governed by **Item 2(a)(b)** of the **5<sup>th</sup> Schedule to the Magistrates' Court Act, Cap.11**. The case of **Sefu Marare vs. Mwadawa Salum (1985) TLR 253** is also relevant. He thought, under the circumstances, the court should have considered interest of the Appellant in that estate.

In the second ground of appeal, it was his submission that, it is not correct that the Primary Court had no jurisdiction for want of death certificate of the deceased thus applying the principles in **Ibrahimu Kusaga vs Emmanuel Mweta (1986) TLR 26**. Mr. Audax thought that to be wrong as, according to **Rule 3 of Primary Courts (Administration of Estate) Rules, GN 49 of 1971**, application for appointment of administrators shall be made in accordance with form No.1 requiring religion of the deceased to be mentioned, which, if is a Muslim, then the Primary Court will have jurisdiction. But if is a Christian, then the said Primary Court will have no jurisdiction.

In his view, there is no requirement to annex death certificate in form No.1. He thus asked me to nullify proceedings and resultant decisions and

compel the Primary Court to determine the application for appointing the Appellant an administrator.

In reply, the Respondent adopted his reply to the petition of appeal as his submission. In that reply, he could not observe any error committed by the two courts below and that, the Appellant never proved his case as required.

Having considered submissions of both parties and the entire evidence on record, one question for determination is whether objection proceedings was rightly determined in favour of the Respondent herein. According to the record, grounds for disqualification are in three fold. **One** is noninvolvement of the Respondent in the clan meeting that nominated the Appellant for appointment as an administrator. **Two**, inclusion in the estate properties of the Respondent. **Three**, is want of the death certificate annexed to the application on appointment of an administrators.

In the latter, I agree with Mr. Audax that, in Form No.1, there is no requirement to annex death certificate. The case of **Ibrahim Kusaga v Emmanuel Mweta**(supra) referred by the learned appellate Magistrate is on jurisdiction, insisting the role of the court to ensure is clothed with jurisdiction in granting letters of administration. It is stated in that case that:



*(i) A Primary Court may hear matters relating to grant of administration of estates where it has jurisdiction, i.e., where the law applicable is customary law or Islamic law;*

I do not see any wrong committed by the appellate Magistrate by stating that, a certificate may assist to determine jurisdiction. He did not observe that to be the sole factor. For clarity, relevant part of his judgment is reproduced at page 6 as hereunder:

*Secondly, the death certificate may also assist the court to determine its jurisdiction by finding out where the deceased professed before met his death. This is important because the Primary Court has no jurisdiction to entertain the application of administration of the estates of the deceased who died while professed Christianity.*

This in my considered view, has disposed the second ground of appeal.

Going to the first ground of appeal, the main complaint is grounds towards disqualification which the Appellant's view is that, there was none. As stated above, there are mainly two. Noninvolvement of the Respondent

in the clan meeting nominating the Appellant for administration purposes and two, is the inclusion in the estate, properties not owned by the deceased. In the decision of the Primary Court regarding objection proceedings on involvement of the Respondent, the Court observed as follows:

*"Pingamizi lina mashiko zaidi ya hoja za upande wa mjibu pingamizi. Hii in baada ya ukweli kwamba mpingaji hakuhusiswa vilivyo kwenye kikao cha ukoo cha kumteua msimamizi wa mirathi, yaani Julias Magessa. Kwani, Mahakama imeangalia orodha ya majina ya wana ukoo waliohudhuria siku hiyo na kutoona jina la mpingaji ili hali naye ni mwana ukoo. Na hakuna uthibitisho wowote uliowasilishwa hapa ili kuonyesha kuwa mpingaji aliitwa na kukataa kwa makusudi kufika kwenye kikao hicho. Ambapo kutohusishwa kwake kwenye kikao wakati ni mwana ukoo ni kinyume na utaratibu na matakwa ya sheria ya mirathi."*

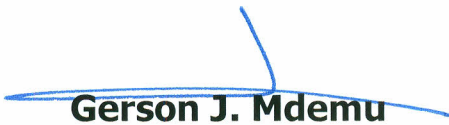
In my considered view, there is ample evidence that the Respondent never took part in the clan meeting. It cannot be inferred, as the first appellate court did that, as long as other 21 members of the clan attended, then the Respondent deliberately ignored the meeting for reasons best

known to himself as he had notice of the meeting. The trial court was therefore justified in its observation that, the Respondent had no notice to participate in the clan meeting and in fact, did not participate in the nomination of the Appellant for appointment as an administrator of the estate of the late Kalele Makambi@Mlangale.

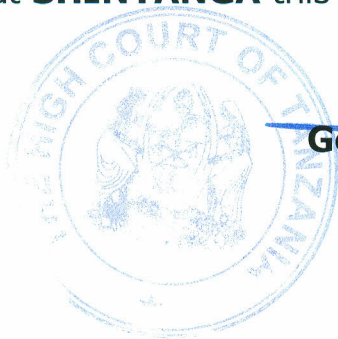
As to the inclusion of the properties of the Respondent; in my view, the right forum was the meeting that the Respondent did not attend. As observed by both courts below, the objection under the premises had merits. I associate myself with the position of the first appellate court at page 4 of the ruling that:


*"In my view, the trial magistrate ought to have concentrated on the application for the appointment of the administrator of the estate of the deceased and if there was ant dispute about the property of the deceased, then the same ought to be challenged by the administrator of the estate of the deceased. Equally, if there is any person who want to make any claims from the deceased property, he must do so through the administrator of the estate of the deceased."*

In that stance, the trial court was justified to dismiss the application of one Julius Magessa, the Appellant for the appointment as an administrator on the basis of the objection raised by the Respondent. That is to say, grounds for disqualifications of the Appellant on that appointment were obvious and sounding. The 1<sup>st</sup> grounds of appeal therefore fails and thus the whole appeal fails. The appeal is accordingly dismissed with costs. It is so ordered.

  
**Gerson J. Mdemu**  
**JUDGE**  
**5/02/2021**

**DATED** at **SHINYANGA** this 5<sup>th</sup> day of February, 2021.



  
**Gerson J. Mdemu**  
**JUDGE**  
**5/02/2021**