

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

HC.REVISION NO. 15 of 2020

(Arising from the Ilemela District Court in Civil Revision No. 04 of 2019)

ERICK EUGEN KALUGIRA APPLICANT

VERSUS

CHARLES KALUGIRA RESPONDENT

RULING

Date of Last Order: 10.03.2021

Date of Ruling: 10.03.2021

A.Z.MGEYEKWA, J

The genesis of this reference arises from a reference letter dated 30th November, 2020 written by one Hon. Sivonike, RM in Charge. The lower courts proceedings were placed before me following the directives of the Judge In Charge dated 04th January, 2021, from which a revision *suo mottu* was opened.

I find it apt to narrate the background material facts of the Revision as they can be gleaned in the reference letter from the Ilemela District Resident Magistrate In Charge which is before this court as follows; the matter originated

from Ilemela Primary Court in Probate and Administration Cause No. 30 of 2016 dated 22nd March, 2019. Following a Revision No. 4 of 2019, the District Resident Magistrate In Charge determined the matter and quashed, set aside and nullified the Primary Court order dated 3rd May, 2019 for the revocation was resulted from irregularities and illegalities and the court uphold the Ruling dated 22nd March, 2019 thus both parties remained as administrator of estate of the late Eugene Kalugira.

After the matter was remitted to Ilemela Primary Court for administrators to comply with the court order, on 18th August, 2020 one Rosemary Kalugira filed an application for revocation of Erick Kalugira, the applicant. In course of handling the matter Hon. Mjunangoma, RM noted that the deceased was a Christian, professing Lutheran rites. Therefore, the matter was forwarded to Hon. Sivonike for directives. In her view, Hon. Sivonike found herself *functus officio* to determine the matter. Hence he filed a reference before this court.

When the matter was called for hearing, Mr. Erick Kalugira, the applicant and Mr. Charles Kalugira, the respondent appeared in person, unrepresented.

Before determining the matter before me, I called upon the parties to inform them court that the District Court has filed a reference. I addressed them the whole scenario as stated above thereafter they had an opportunity to submit.

In their brief submission, they placed their reliance on the reference filed in this court and asked the Court to go through them and grant what is fit to be granted. They confirmed that the deceased was a Christian. Conversely, they had a concern that the matter is dragging in court since 2016, they urged this court to issue an order for expeditious hearing of the application in order to allow them to proceed with administration of estate of the late Eugene Kalugira.

After a brief submission of both parties and after going through the reference from Hon. Sivonike, I find that the approach taken by Hon. Sivonike was correct because she was avoiding to assume the jurisdiction which was not vested on her. Thus, Hon. Sivonike was *functus officio* to determine the matter because she had already determined the Civil Revision No. 4 of 2019 which involved the same parties.

In my view, since the parties have admitted that the deceased was a Christian thus the Primary Court had no jurisdiction to determine this matter. In accordance to section 18 of the Magistrate Court Act, Cap. 11 [R.E 2019] the Primary Court is vested with jurisdiction to determine all proceedings of civil nature where the law applicable is customary law and Islamic law. For ease of reference I produce the section hereunder: Section 18 of the Magistrate Court Act Cap. [R.E 2019] reads:-

“ 18.-(1) A primary court shall have and exercise jurisdiction (a) in all proceedings of a civil nature

(i) where the law applicable is customary law or Islamic law...”

Applying the above provision of law, it is clear that the Probate Cause was required to be instituted before a court which had jurisdiction to determine the matter. Therefore, I proceed to quash and set aside the decisions of the Ilmela District Court in Civil Revision No. 4 of 2019. I order the case to start afresh at the court vested with jurisdiction. I direct, the matter be given priority, hearing to end within three weeks from the date when the suit is instituted. No order as to costs.

Order accordingly.

Dated at Mwanza on this 10th March, 2021




A.Z.MGEYEKWA

JUDGE

10.03.2021

Ruling delivered in Chamber on 10th March, 2021 in the presence of both parties.


A.Z.MGEYEKWA

JUDGE

10.03.2021