

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

PC CIVIL APPEAL NO 42 OF 2020

ZAWADI MUSTAPHA

(Administrator estate of Annastazia Kibho Waraka) APPELLANT

VERSUS

PASCHAL MAGANGARESPONDENT

(Arising from Civil Revision No. 07/2020 in the District Court of Musoma, originating from
Probate Cause No. 73/2008 Musoma Urban Primary Court)

JUDGMENT

17TH March, 12TH May, 2021

Kahyoza, J

Zawadi Mustapha appealed to this Court against the decision of the District Court in favour of **Pascal Maganga**. The appellant raised five grounds of appeal as follows:-

1. That, the trial court erred in law and fact for failure to determine that an application for revision of probate matter cannot revoke the appointment of administratrix appointed by primary court.
2. That, the trial tribunal erred in law and facts failure to determine that once the administrator of estate appointed by primary court failed to file inventory report, the administrator appointment revoke (sic) automatic (sic) by operation of law.

3. That, the trial tribunal erred in law and fact for failure to determine that an application for revision to revoke the appointment of an administrator who appointed by primary court cannot be used as substitute of an appeal to revoke administrator without filling first the application for revocation within (sic) the primary court first which appointed the appellant as administratrix.
4. That, the trial tribunal erred in law and fact for delivering a judgment on application for revision without giving the appellant the right to be heard in the application for execution.
5. That, the trial court erred in law and fact that the administrator of estate is title recognized by the law and not personification character of a certain person.

The genesis of this matter is that Zawadi Mustapha applied to the primary court to administrate the estate of Anastazia Kibho Wakara. The primary court appointed her. The deceased's property was a house located at **Plot No. 49 Block J Rutigingwa – Musoma**.

Pascal Maganga, the respondent applied to the District Court to call the proceedings of the Primary Court to find out its legality. The District Court after hearing the parties, found out that one **Anastazia Kibho Wakara** died intestate in 2008. After **Anastazia Kibho Wakara's** death **Patrick Amani Mbarika** applied to administer the late Anastazia Kibho Wakara's estate. **Patrick Amani Mbarika** was appointed to administer

the estate vide **probate No. 73/2008** Musoma Urban Primary Court. The administration of the estate of the late Anastazia Kibho Wakara was entangled in litigations. **Patrick Aman Mbarika** in his power as the beneficiary of the estate of Anastazia Kibho Wakara, sold the house to **Pascal Maganga**. The District Court found the proceedings in Probate No. 83/2019 irregular as the same were conducted without due regard to proceedings in **probate No. 73/2008**. The District Court quashed the proceedings of probate cause **No. 83/2019**. Aggrieved **Zawadi Mustapha** appealed to this Court.

There are undisputed facts from the records of this matter. **One**, it is settled that **Anastazia Kibho Wakara** died in estate on the 16/1/2008. Two, **Patrick Amani Mbarika** was appointed to administer the estate of the deceased. On the 14/6/2019 **Patrick Aman Mbarika** distributed the house to himself and filed in court Form No. VI. Three, **Patrick Aman Mbarika** sold the house to **Pascal Maganga**. Four, **Zawadi Mustapha** applied on the 17/6/2019 to be appointed the administratrix of the deceased's estate. Five, **Zawadi Mustapha** was appointed the administratrix on the 26/7/2019. Six, **Zawadi Mustapha** applied to be appointed to administratrix after **Patrick Aman Mbarika** had already distributed the estate of Anastazia Kibho Wakara.

It is against the above established facts, before parties could argue the appeal, I invited them to address me whether **Probate No. 83/2019**

was properly instituted and whether there was anything to be administered by the administratrix appointed in **probate cause No. 83/2019**.

The appellant's advocate **Mr. Emmanuel** contended that Probate No. 73/2008 appointed **Patrick Amani Mbarika** to administer the estate of **Anastazia Kibho Wakara** and probate No. 83/2019 appointed Zawadi to administer the estate of **Anastazia Kibho Wakara**. To him both applications were proper and both, the administrator and the administratrix were properly appointed.

The appellant's advocate prayed this Court to invoke its powers under section 44(1) (b) of the **Magistrates Court Act**, [Cap 11 RE 2019) to examine records of the District Court and quash the proceedings as the District Court error in the way the case was conducted.

The respondent's advocate Mr. Makawe submitted that Probate No. 73/2008 was closed on the 14/6/2019. He added that any probate instituted in respect of the estate of **Anastazia Kibho Wakara** after that date was a nullity. He submitted that Probate No. 83/2019 filed on the 17/6/2019 had nothing to proceed with. He contended further that the District Court quashed the proceedings in Probate NO. 83/2019 as it could not stand.

Mr. Makowe submitted further that there was nothing to administer.

In his rejoinder, the appellant's advocate submitted that he was representing interest of **Zawadi Mustapha** and that the procedure of revoking the administrator was not followed.

I will start by pointing out that the primary court appointed **Patrick Aman Mbarika** to administer the estate of the late **Anastazia Kibho Wakara** who filed the final statement of account of on the 14/6/2019. The appellant was aware of the fact that **Patrick Amani Mbarika** was the administrator of the late Anastazia Kibho Wakara's estate. She knew also that **Patrick Amani Mbarika** had disposed the said house. The fact that Zawadi knew that **Patrick Aman Mbarika** was appointed to administer the estate of **Anastazia Kibho Wakara** is found in the minutes of family members filed to support her petition. The minutes read:-

"Wanauko kwa pamoja wamekubaliana kumtengua Patrick Amani kutokana na msimamizi huyo kufanya ubadhilifu wa mali ya Marehemu kwa kuuza mali hiyo na kula pesa yote."

The appellant did not only know that **Patrick Amani Mbarika** was the administrator of the deceased but also, she knew that **Patrick Amani Mbarika** had disposed the house, the property of the deceased. She had neither legal right to file a fresh petition for letters of administration of the **Anastazia Kibho Wakara** nor a right to apply for revocation of the appointment of **Patrick Aman Mbarika**. The reason behind that is at the time **Zawadi Mustapha** went to court the administration of estate of **Anastazia Kibho Wakara** was complete. The administration of estate

was concluded on the 14/6/2019 when **Patrick Amani Mbarika** filed the statement of accounts of the estate of **Anastazia Kibho Wakara**.

It is trite law that revocation or annulment of the administrator or the administratrix cannot be granted when the administration of estate is complete. See the case of **Ahmed Mohamed AL Laamar V. Fatuma Bakari and Asha Bakari** Civil Appeal NO. 71/2012 CAT (unreported), where it was held that:-

"In our respective opinion, both common sense and logic dictate that one can only annul, repeal, vacate, put to an end etc, what was previously granted or passed and still operative or existing. Nothing which has already come to an end can be put to an end or vacated".

In the present case **Zawadi Mustapha** petitioned for letters of administration of the deceased's estate well-aware that the administration was complete. There was no estate to administer. The appellant's petition was void *ab initio*. The appellant's right was to claim for her share from the administrator of the deceased's estate as one of the heirs but not to petition for letter of administration of the deceased's estate.

In the end, I find that the appellant had no right to institute Probate No. 83/2019 seeking to administer the estate of **Anastazia Kibho Wakara**, while she knew that there was another administrator already

appointed vide Probate 73/2008. Thus, Probate No. 83/2019 was wrongly instituted in the primary court and at that time the estate of **Anastazia Kibho Wakara**, was already administered, the distribution of the estate concluded after Form VI was filed and court order issued on the 14/6/2019. For that reason, there was nothing to left to administer. It was wrong for the primary court to entertain the appellant's petition of letters of administration of the estate which had already been put to an end. The District Court was therefore justified to quash the proceeding in Probate No. 83/2019 before Musoma Urban Primary Court and set aside the appointment of **Zawadi Mustapha** as the administratrix.

I uphold District Court decision to quash the proceeding and set aside the appointment of **Zawadi Mustapha**. Consequently, I dismiss the appeal with costs, as it stemmed from the nullity proceedings in the Primary Court. The appellant's advocate should take a note that the district court did not revoke the appointment of the appellant but quashed all the proceedings in Probate No. 83/2019 in the primary court.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

12/5/2021

Court: The judgment delivered in the presence of the appellant's relative Ms. Sesina Stephen, the respondent in person and Mr. Mligo Advocate holding Mr. Makowe's brief for the respondent. B/C Catherine present.



J. R. Kahyoza

JUDGE

12/5/2021