

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SONGEA

AT SONGEA

REVISION APPLICATION NO. 01 OF 2020

(Originating from Probate and Administration cause No. 10 of 2020 at District Court of Mbinga at Mbinga)

JANETH OSCAR MAPUNDA APPLICANT

Versus

PETER ERNEST NGAHY..... RESPONDENT

RULING

Date of Last Order: 14/12/2020.

Date of Judgment: 23/02/2021.

BEFORE: S.C. MOSHI, J.:

The applicant has filed this application under section 44 (1)(b) of the Magistrates' Court Act Cap. 11 R.E 2019. He prays the court to revise the records of the District Court of Mbinga at Mbinga in Probate and Administration Cause Na. 10 of 2020, costs of the application and any other relief the court deem fit to grant. The application is supported by an affidavit of Janeth Oscar Mapunda.

The application was heard *ex parte* by way of written submission since the counter affidavit was found defective. The applicant was represented by Mr. Raphael Matola, advocate.

Mr. Matola stated *inter alia* that there is an error material to the merit of the case involving injustice as the respondent's Probate and Administration cause No. 10 of 2020 was illegally entertained and determined. The trial court (District Court of Mbinga at Mbinga) lacked jurisdiction. The petitioner (the respondent in this application) wrongly moved the court as the pleadings show that he moved the District Delegate Court of Mbinga at Mbinga.

He argued that, the Probate and administration of Estates Act, Cap 352 R.E 2019 provides for different jurisdictional powers on probate and Administration of Estates matters to various courts. He said that generally section 3 of the Act confers general jurisdiction in all matters relating to probate and administration of deceased estates to the High court.

The case at hand was entertained and determined by a District Court of Mbinga at Mbinga; its jurisdictional power is provided for under section 6 (1) of the Act of which among other things sets a mandatory requirement that the District court shall have jurisdiction in the administration of small estate where the deceased died within the jurisdiction of the court.

He said that section 2(1) of the Act defines small estates as an estate the gross value of which a court, district court or other authority having

jurisdiction in probate or administration is satisfied does not exceed a hundred million shillings. He argued that looking at the second page paragraph 4 of the petition and 2nd page of the ruling of the trial court it is clear that the approximate summation of the deceased's estate is one hundred sixty million (160,000,000/=). He argued that, with this gross value the district court of Mbinga entertained the matter before it without jurisdiction.

He argued further that section 6 of the Act apart from limiting the jurisdiction of the District court to small estate, it requires the same to consider the place of death of the deceased person. The district court is vested with Jurisdiction if the deceased died within the geographical jurisdiction of the court (District court). He said that in the case at hand the deceased died at Morogoro on 23rd day of January 2020. Therefore, it was wrong for the District court of Mbinga to assume jurisdiction not vested by the law. He invited this court to nullify the whole proceedings and order for being a nullity. He cited the case of **Ashura Masoud vs, Salma Ahmad**, PC. Civil Appeal 213 of 2004, High Court of Tanzania at Dar es salaam (Unreported).

He contended further that the jurisdiction of the District delegate is derived under section 5 (1), (2) of the Probate Act subsection 2 which puts a mandatory requirement among other things that a district delegate can grant letters of administration of the estate if the deceased at the time of his death had his fixed place of abode within the area which the delegate is appointed. He said that, in the case at hand the deceased's last known place of residence was Nanyumbu, Mtwara as per 5th column of a death certificate. Therefore, neither the District court of Mbinga nor District Delegate of Mbinga had jurisdiction in this case.

The issue to be determined is whether the District court of Mbinga had jurisdiction to determine the petition of the probate and administration cause number 10 of 2020.

Jurisdiction means courts power and limit within which it can entertain a certain matter. The issue of jurisdiction is of great importance as failure to observe it will render the proceedings a nullity. In the case of **Masoud Mbita and 2 others Vs Daria Rutihinda**, Miscellaneous Civil Application No. 85 of 1998 High Court of Tanzania at Moshi (Unreported) Munuo J, as she then was stated that: -

"The issue of jurisdiction is fundamental and lack of jurisdiction renders proceedings a nullity".

Section 3 of the Probate and Administration of Estate Act Cap 352 confers jurisdiction in all matters relating to Probate and Administration of deceased's estate and power to grant probates of wills and letters of administration to the High court. However, under section 5 (1) of the same Act, the Chief Justice has powers from time to time to appoint such magistrates as he thinks fit to be District Delegates. Section 5 (2) of the Act confers jurisdiction upon District Delegates in all matters relating to probate and administration, if the deceased had at the time of death, a fixed abode within the area for which a District Delegate is appointed in non contentious cases. Exercising these powers, the Chief Justice through circular No. 1 of 2018 issued in January, 2018 appointed all Magistrates in District Courts and courts of Resident Magistrate to be District Delegates.

Furthermore section 6 of Cap. 352 provides that the District Court presided over by a District Magistrate has jurisdiction to appoint administrators of small estates if the deceased at the time of death was within its jurisdiction. Small estates is defined under section 2 of Cap. 352 as amended by section 55 of the Written Laws (Miscellaneous

Amendments) Acts, No. 2 of 2016 to mean an estate the gross value of which a court, district court or other authority having jurisdiction in probate or administration is satisfied that it does not exceed one hundred million shillings.

Back to the case at hand, I at the outset point out that there is no court which is designated as District delegate court, hence I agree with Mr. Matola that the court was wrongly moved.

As pointed out above, under section 6 of cap 352 District courts have jurisdiction over small estates which its value does not exceed one hundred million shillings. In the case at hand the value of the deceased estate was estimated to the tune of one hundred sixty thousand shillings, meaning it is above the amount stated by the law. Therefore, the District Court of Mbinga lacked jurisdiction over the same.

The applicant's advocates submitted that the deceased died in Morogoro and that the last known place of his residence was Nanyumbu Mtwara, hence District court of Mbinga had no jurisdiction. With due respect to Mr. Matola, jurisdiction of the court in probate and administration of estates is where the deceased domiciled or where his real properties are situated. Therefore, since the deceased estates is situated at

Mbinga, District Court of Mbinga had jurisdiction. See paragraph 4 of the petition where the respondent stated that the deceased had some properties at Mbinga being one trees farm situated at Mkumbi Village at Kipika within Mbinga Town Council and a farm measuring five acres situated at Kihungu village at Mbinga District.

In the case of **Masoud Mbita (supra)**, the deceased who was husband of the respondent whose estate was being contested by the parties was domiciled at Moshi and he had real property at Iringa. It was held that the District Court had jurisdiction to determine the probate and administration cause for the matter could be filed at Moshi or at Iringa.

Therefore, in the case at hand, if the value of the deceased estate was below one hundred thousand the District court of Mbinga could have been vested with jurisdiction over the same. But since the estate is above the pecuniary jurisdiction then it lacked jurisdiction, its proceeding is a nullity.

That said I find the application meritorious, I allow the application without cost taking into account the parties relationship.

Right of appeal explained.



S. C. MOSHI

JUDGE

23/02/2021