

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

PC CIVIL APPEAL No. 16 OF 2021

AMI RASHIDI MTUMBUKA.....1st APPELLANT
SOFIA SALUM MTUMBUKA.....2nd APPELLANT
BAKARI MANDWANGA.....3rd APPELLANT
JAFARI HAMISI MTUMBUKA.....4th APPELLANT
MARIAM HAMIDU MTUMBUKA.....5th APPELLANT

VERSUS

MAULIDI HAMIDU MTUMBUKA.....1st RESPONDENT
AMINA HAMIDU MTUMBUKA.....2nd RESPONDENT
SALAMA HAMIDU MTUMBUKA.....3rd RESPONDENT
TWAIBA HAMIDU MTUMBUKA.....4th RESPONDENT

(Arising from the decision of the District Court of Temeke)

(Mushi, Esq- SRM)

Dated 16th December 2020

in

Civil Appeal No. 44 of 2020

JUDGEMENT

Rwizile, J.

This is the second appeal. The appellants herein have appealed against the decision of the District court of Temeke which re-appointed the 4th respondent as co-administratrix of the estate of the late Hamidu Athuman Mtumbuka. Undisputed facts of this case can be stated that in Probate Cause No.150 of 2009, the 4th respondent was appointed by Temeke Primary Court as an administratrix of the estate of the late Hamidu Mtumbuka. After about ten years, that is in 2019, one Zainabu Hamidu Mtumbuka on behalf of the other 6 heirs, complained against the 4th respondent for not distributing the estate to heirs, failure to file inventory in court and failure to consult beneficiaries of the estate when making decisions concerning the estate. In 2020 Mariam Mtumbuka, (5th appellant) applied for revocation of the letters of administration granted to the 4th respondent, and applied to be appointed the new administratrix of the estate. Her prayer was granted.

The respondents herein were aggrieved by the decision, they appealed to the District court of Temeke. The decision of the trial court was varied to the extent that, the District court re-appointed the 4th respondent as co-administratrix of the estate of the late Hamidu A. Mtumbuka. This time, the decision of the court aggrieved the appellants. They have decided to appeal before this court on the following grounds that;

- 1. That the district court of Temeke having been satisfied that the administrator had been acting in contravention of the terms of the grant and orders of the courts, it failed to uphold the decision of the primary court revoking the powers of one Twaiba Mtumbuka as administrator of the estate.*

2. *The district court of Temeke rightly found that Twaiba Mtumbuka neither had distributed the estate to the lawful heirs nor exhibit an inventory to the court for a period of ten years from the date of her appointment, but the court still failed to revoke the powers as administrator.*
3. *That the district court of Temeke erred in law and fact for failure to hold that the administrator of the estate has been acting against the interests of beneficiaries of the estate and in contravention of the terms of the grant*
4. *The district court of Temeke erred in law and fact for failure to find out that the administrator of the estate had derived pecuniary benefit from office.*
5. *That the district court of Temeke failed to consider the circumstances of the whole case and uphold the decision of the primary court which had revoked Twaiba Mtumbuka as the administrator of the estate.*

The appellants therefore prayed to this court to quash and set aside the re-appointment of Twaiba Mtumbuka as the administratrix of the estate and order Mariam Mtumbuka to be the sole administratrix of the estate of the late Hamidu Mtumbuka. At the hearing appellants appeared in person while for the respondents was Mr. Alex Enock learned advocate. This appeal was argued by written submissions on agreement by the parties.

In support of the appeal, the appellants argued only one ground of appeal, and abandoned the rest. Submitting on the same, they argued that, it was wrong for the district court to re-appoint the 4th respondent, since she had acted contrary to the terms of the grant.

They added that, re-appointment of 4th respondent contradicts rule 9(2)(b) of the Primary Court (Administration of Estate) Rules, GN No. 49 of 1971.

It was argued further that the district court failed to consider that, powers to administer the estate by Twaiba Mtumbuka was revoked, hence, they said it was illegal to re-appoint her. Instead, it was added, the district court could have ordered the 4th respondent to surrender all documents relating to the estate. They asserted more that, a person who failed to file inventory in court, his/her powers as administrator have to be revoked. They invited this court to refer to the cases of, **In the matter of an application for revocation of Grant of the letters of Administration to Daud Mahenge Kichonge**, Probate and Administration Cause No. 48 of 1996, **In the matter of the estate of the late Seleman Omary Kipwimbwi**, Miscellaneous Civil Application No.783 of 2016.

It was their prayer that, this court should consider decisions of the cited cases above, quash and declare part of the district court decision a nullity. Then declare that the re-appointment of Twaiba Mtumbuka as administratrix of the estate was illegal.

Disputing the appeal, the respondents argued that, it was proper for the District court to re-appoint the 4th respondent for the reason that, the 4th respondent has somehow failed to perform part of her duties because the appellants prevented her. According to her, they refused to convene a clan meeting when needed to do so.

It was submitted further that, in so many ways, the 4th respondent performed her duties as administratrix of the estate for the interest of all beneficiaries.

It was asserted that, she built 16 rooms which she rented for the interest of the heirs. They added that, she is living with and takes care of the widow, this according to them, qualified her to be re-appointed. To support their argument, the case of **Elizabeth Mohamed vs Adolf John Magesa**, Administration Appeal No. 14 of 2011, was referred. It was the respondents' prayer that this appeal be dismissed with costs and the decision of the District court be maintained.

When re-joining, it was the appellants' submission that, the issue before this court is the decision of the District court to re-appoint the 4th respondent despite the fact that it was proved, she acted in contravention of the terms of the grant. They said, respondents' arguments explaining what she accomplished does not matter. They stated further that the case of **Elizabeth Mohamed** (supra) cited by respondents is distinguished. Their prayer was to declare Mariam Hamidu Mtumbuka the sole administratrix of the estate of the late Hamidu Mtumbuka be granted.

Having considered the submission of the parties and records of the lower court. It is apparent from the proceedings that there is a question of a misjoinder of parties on part of the respondents, since some of them were not party to this case at the trial court. As the records show, at the trial court Zaina Mtumbuka and 6 others, who were Sophia Mtumbuka, Mariam and Jafari had complained and applied for revocation of letters of administration against the 4th respondent. It was at the district court where some of the parties were joined as appellants.

However, the law under Order I rule 9 of the Civil procedure Code, [Cap 33 R.E 2019] provides that, the suit shall not be defeated by reason of misjoinder or non-joinder of the parties. The wording of the said provision are that;

A suit shall not be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it.

It is prudent from the foregoing provisions of the law to determine the merit of this appeal. Because, I think, justices of this case would demand so. But it is the case that a person not party to the case at the trial level cannot join proceedings of the same case by way of appeal. This means, Ami Rashid Mtumbuka (1st appellant) and Bakari Mandwanga (3rd appellant), while for the respondents, Maulid Hamidu Mtumbuka (1st respondent), Amina Hamidu Mtumbuka (2nd respondent) and Salama Hamidu Mtumbuka (3rd respondent) who were not party to the case before cannot be entertained. They have in a way or another trespassed into the proceedings. The remedy therefore is to strike of their names from this appeal and so proceed to determine the appeal on merit.

It is undisputed that the trial court revoked letters of administration granted to the 4th respondent. Apparently, the reasons were clear. She failed to distribute the estate to heirs, file inventory and acted in contravention of the terms of the grant. It should be understood that, when the administrator is appointed, he has to administer the estate in accordance with Part XI of the Probate and Administration of Estate Act [Cap 352 R.E 2002] which provide for powers and duties of administrators

and executors. However, grant of letters of administration can be revoked for the reasons provided under section 49(1) of the Act, which reads as hereunder;

(1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

(d) that the grant has become useless and inoperative;

(e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or has exhibited under that Part an inventory or account which is untrue in a material respect

The appellants have complained that the 4th respondent failed to file an inventory, hence her powers were revoked by the trial court. The question to be determine is, was the District court wrong to re-appoint the 4th respondent to be a co-administratrix of the estate. With all due respect, I

am attracted to the negative answer, for the reasons to be stated hereunder but which appear to be different from the 1st appellate court.

first, it is the fact that at the trial court the appellants did not prove their allegations. It is on record that, they complained that they were not given their father's share of the estate contrary to what Zainabu had testified in court. The record shows, at page 4 of the hand-written proceedings that;

"...walikaa na tukaletewa karatasi zenye maelezo ya hesabu, pia na pesa Tsh. 65,000/= kila mmoja. Baada ya hapo hatujakaa tena kikao. Kikao hicho pia tuligawiwa chumba kimoja kimoja katika nyumba ya Mtoni...."

It is from the above that I am convinced that the appellants were given part of the estate. **Second**, the appellants complained also that, the 4th respondent built 16 rooms without them being consulted. I find this allegation unjustifiable and not a fit reason for revocation, since, I think they ought to prove that, rooms were the 4th respondent's personal property and that she misappropriated the estate of the late Hamidu Mtumbuka.

Section 99 of the Probate and Administration of the Estate Act provides that, an administrator once appointed is the legal representative of the deceased in which all powers as far as the estate is concerned are vested. It is my considered view that, building of the said rooms was not a bad thing to do, as long as the intention was to benefit the heirs to the estate.

Third, it was also their allegation that, the 4th respondent failed to file inventory and exhibit accounts of the estate in court.

This is true and it is illegal, because it is against the clear provisions of the law. Still, it is not in all cases where the inventory and final accounts of the estate are not filed, the administrator has to be revoked. There is no proof that the estate was misappropriated. As well, there is no reason to suggest that the 4th respondent neglected wilfully and without reasonable cause, to file inventory and exhibit the final accounts.

In fine therefore, I do not think revocation of the appointment based on the nature of this case was a viable solution. I therefore find no fault in the decision of the first appellate court. It is my view that, having rejected a revocation order, the court ought to have sanctioned the administratrix to file inventory and exhibit the final accounts. Since the estate has not been completely dealt with as of now and there must be an end to such a process.

For the foregoing reasons, I hold that, the district court's decision to re-appointing the 4th respondent as the co-administratrix of the estate was proper, since I have no doubt that basing on the evidence procured before the trial court. The respondent did not wilfully and without reasonable cause, fail to have the requirements of the law followed.

In the case of **Mercedes Mathias Masawe vs Sophia Mbagu**, PC Civil Appeal No. 06 of 2019, the court dismissed the appeal. It was on the grounds that part of the estate was administered already. I think, revocation of letters of administration becomes the proper cause of action to take, if there is evidence that the administrator and, in this case, the administratrix has sat on the estate for too long without reasonable grounds, or that she is misappropriating the estate. Which is not the case in this case.

This appeal lacks merit, it is therefore dismissed with no order as to costs but the administratrix is given 6 months to complete the exercise. Otherwise, the same should be dealt with as per section 107(3) of the Act first, before revoking her appointment.

AK Rwizile

JUDGE

16.07.2021



Recoverable Signature

X



Signed by: A.K.RWIZILE

