

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

(PC) CIVIL APPEAL No. 1 OF 2020

*(Arising from the District Court of Bukoba at Bukoba in Civil Appeal No. 22 of 2017
and Kassambya Primary Court in Civil Case No. 5 of 2017 & Original Probate and
Administration Cause No. 1 of 2017)*

ELIZABETH KINTU ----- APPELLANT

Versus

WILLIAM FRANCIS ----- RESPONDENT

JUDGMENT

06.07.2021 & 06.07.2021

Mtulya, J.:

A petition of Appeal in **(PC) Civil Appeal No. 1 of 2020** was filed in this court by learned counsel Mr. Peter Joseph Matete for Ms. Elizabeth Kintu (the Appellant) to protest the decision of the **Bukoba District Court at Bukoba** in **Civil Appeal No. 22 of 2017** (the Appeal) which quashed proceedings, orders and judgment of the **Kassambya Primary Court** (the primary court) in **Misc. Civil Case No. 5 of 2017** (the civil case). On 29th May 2017, the primary court in the civil case had revoked letter of administration of estates of the late Mr. Christian Kintu granted to Mr. William Francis (the

Respondent) by the primary court in **Probate & Administration Cause No. 1 of 2017** (the probate cause).

Today evening when the appeal was scheduled for hearing in Civil Session Cases and after lengthy submissions and perusal of the records of the three named cases, the dual learned counsels of the parties Mr. Peter Joseph Matete for the Appellant and Mr. Ali Chamani for Mr. William Francis (the Respondent) detected irregularity in the record of the primary court in the probate cause.

The fault is on Form Number III with regard to trustees of the Respondent during the application for the letter of administration. The Form was not filled with either the names or signature of the trustees. Noting of the defect is not part of his registered grounds of appeal, Mr. Matete prayed this court to invite section 30 (1) (b) (ii) of the **Magistrates' Courts Act** [Cap. 11 R.E. 2019] (the Act) to revise the proceedings in the record of the probate cause.

The prayer was not resisted by Mr. Chamani and this court revised the record and found the irregularity. As part of the right to be heard, this court invited the learned counsels to state on the status of the letter of administration obtained from such irregularity, as part of cherishing article 13 (6) (a) of the **Constitution of the**

United Republic of Tanzania [Cap. 2 R. E. 2002] (the Constitution) and precedent in **Judge In charge, High Court at Arusha & The Attorney General v. Nin Munuo Nguni** [2004] TLR 44.

According to Mr. Matete the irregularity is fatal as it led to miscarriage of justice and shows that the letter of administration was obtained by fraud. Finally Mr. Matete prayed decision of the district court in the Appeal be quashed and decision of the primary court in the civil case be restored as it ordered the parties to convene clan meeting which will notify all clan members, including the Appellant who is beneficiary of the estates of her deceased grandfather, as per requirement of the law in Rule 9 (1) (a) of the **Primary Courts (Administration of Estates) Rules, GN. No. 49 of 1971** (the Rules).

On his part Mr. Chamani thought that the irregularity is not fatal and does not cause miscarriage of justice as per decision in **Dickson Kamala V. Republic**, Criminal Appeal No. 422 of 2018. According to Mr. Chamani in every procedural irregularity the crucial question is whether it has occasioned a miscarriage of justice. Mr. Chamani submitted further that the Form is supposed to be issued and filled by the court and that it was an oversight emanated in the primary court and the Respondent cannot be blamed for the omission.

It is fortunate that in the present appeal learned minds are in agreement that there is irregularity in the record of probate cause decided by the primary court. However, the dual learned counsels are departing on whether the fault caused miscarriage of justice. To my opinion, I think, in probate suits filed in our primary courts, all necessary steps must be complied as per requirement of the law regulating probate matters. If the law is not complied, there would be complaints on irregularity or fraud, like in the present appeal, where the Form was not filled necessary names and signatures to identify the trustees of the Respondent during the process of granting the letter.

Having said so and considering this is a court of record mandated to ensure proper application of the law by lower courts, it cannot let vivid irregularity exist in the record (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). For the sake of certainty of this dispute and the need to convene clan meeting for purposes of consulting all clan members concerned, I have decided to quash the judgment and set aside any orders derived from the **Bukoba District Court at Bukoba** in **Civil Appeal No. 22 of 2017** and restore the decision of the **Primary Court**

at Kassambya in Misc. Civil Case No. 5 of 2017. I award no costs in this appeal as the parties are relatives and there is possibility of sitting down to convene a clan meeting to end their differences.

It is so ordered.




F.H. Mtulya

Judge

06.07.2021

This judgment was delivered under the seal of this court in chambers in the presence of the Appellant's learned counsel Mr. Peter Joseph Matete and in the presence of the Respondent, Mr. William Francis, and his learned counsel Mr. Ally Chamani.




F.H. Mtulya

Judge

06.07.2021