

**IN THE HIGH COURT OF TANZANIA**  
**AT BUKOBA**  
**(PC) CIVIL APPEAL NO. 47 OF 2020**

**EDDA MWOMBEKI.....APPELLANT**

**VERSUS**

**MAGRETH KIIZA.....RESPONDENT**

(Appeal from the decision of Muleba District Court  
in Civil Appeal No. 45 of 2020)

**JUDGMENT**

**19 & 20 July, 2021**

**MGETTA, J:**

On 20/7/2020, the applicant one Magreth G. Kiiza (henceforth the respondent) did apply, before Muleba Mjini Primary Court (henceforth the trial court) for the appointment as administratrix of the estate of her husband, the late Chrisant Kamugisha (henceforth the deceased) who passed away intestate on 11/6/2020 at the age of 62 years. The respondent and the deceased celebrated their marriage in accordance to Christian rite in Roman Catholic Church.

Together with Form Na. 1 titled "*Maombi ya kuteua msimamizi wa mirathi*", the respondent also submitted to the trial court a deceased death certificate, burial certificate and minutes of clan meeting which sat at Elius Kamugisha's residence on 27/6/2020. The following clan member attended

that meeting. These included Magreth G. Kiiza (wife), Helga Kamugisha (daughter), Albert M. Kamugisha (son), Elius R. Kamugisha (son), Datus M. Kamugisha (son), Anitha K. Sevyuma (member) and Marygoreth Rwechungura (member). Unanimously, the respondent was proposed to be administratrix of the deceased estate. As earlier stated herein, she then went to the trial court and applied for the grant of letter of administration.

When the application was set for hearing at the trial court, the applicant testified as witness No. 1, Deogratius Rwekaza as No. 2, Didas Aloyce as No. 3, Edda Mwombeki as No. 4 and Erick Kamugisha as witness No. 5.

It is on the record that, for the first time, Edda Mwombeki, (henceforth the appellant) appeared as witness, not as applicant for appointment as administratrix of the deceased estate. In the course of testifying, she got an opportunity to claim that she was also a widow as she was a second wife of the deceased and their marriage was blessed with two issues called Eumachius and Crysplan. At the time, she was testifying, she asked the trial court that she be recognized as a second wife of the deceased and therefore be also appointed as co-administratrix of the deceased estate.

Acting on the prayer submitted by appellant in the course of giving testimony, the trial court simultaneously granted letters of administration to both the respondent, Magreth as well the witness, Edda purposely, as she submitted, to protect the interest of her two children during the distribution of the deceased estate.

The respondent was aggrieved by the trial court decision, made on 24/5/2020. She then appealed to Muleba District Court (henceforth the district court) which analyzed the trial court evidence and then came to the conclusion on 27/10/2020 by nullifying the whole proceedings of the trial court, setting aside the trial court judgment and its orders for want of jurisdiction. Furthermore, the District Court Magistrate advised the parties to file a fresh probate proceeding before a court with competent jurisdiction. The appeal before the District Court was allowed only to that extent.

Dissatisfied with the above decision, the appellant preferred an appeal to this court to which she came equipped with generally two ground of appeal namely: that the District Court erred in law to entertain the appeal whereby the parties were not the same from the original records of the trial court; and, that the District Court erred in law to entertain the

appeal as a fresh case at the appellate level. She therefore agreed with the finding of the trial court, but disagreed with the district court decision. She asked this court to adopt what contained in her petition of appeal and then proceed to allow the appeal.

In his submission supporting the decision of the District Court, Mr. Abel Rugambwa, the learned advocate for the respondent (Magreth Kiiza), stated that it is true that the matter before the trial court did not involve customary and/or Islamic law as reflected from right from Form No. 1 which the respondent submitted before the trial court seeking to be appointed as administratrix of the deceased estate. He cited to me the case of **Ibrahim Kusaga versus Emanuel Mweta** [1986] TLR 26 to support his argument. In Mweta's case (*supra*) this court held *inter alia* that:

*"A primary court may hear matters relating to grant of administration of estate where it has jurisdiction, ie where the law applicable is customary law or Islamic law"*

He further submitted that it is true that the deceased had love affairs with the appellant as a concubine and not as married wife, because the deceased had still with existing marriage celebrated in accordance to

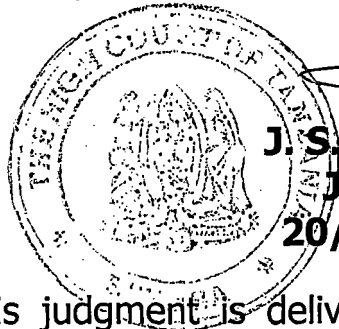
Christian rites. The respondent was aware of that fact. In addition, the respondent knew that concubinage relationship, the appellant and deceased were blessed with two issues born out of wedlock. As a result, the two children born out of wedlock will be treated equally with other children born within wedlock and shall have shares in the deceased estate.

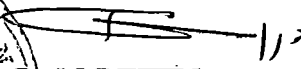
It is my conviction that the appellant appeared at the trial court as witness to protect her children's right. She asked the trial court to be recognized as second wife of the deceased and be joined as co-administratrix of the deceased estate. Her prayer was easily and readily accepted by the trial court which followed the law that such matters would only entertain in a different forum, not in the primary court. That was the reason that pushed the respondent to go to the district court for remedy by way of appeal.

Taking in mind the foregoing, I am inclined to totally agree with the finding of the District Court, as submitted by Mr. Abel that the trial court lacked jurisdiction to entertain the matter. It was also proper for the district court to advise any party before it to institute a case before a court with competent jurisdiction.

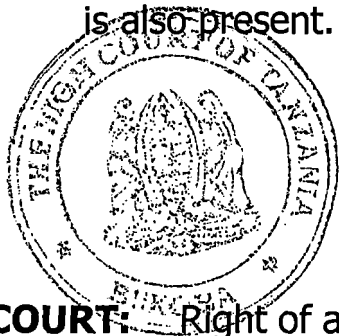
For the reasons stated herein above, I find the appeal before me without merit. I dismiss it. In the circumstances of this appeal, I order that each party has to bear its own costs.


It is accordingly ordered.



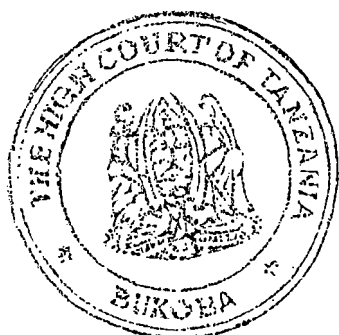
  
**J. S. MGETTA**  
**JUDGE**  
**20/7/2021**


**COURT:** This judgment is delivered today this 20<sup>th</sup> July, 2021 in the presence of the appellant in person and in the presence of Mr. Abel Rugambwa, the learned advocate for the respondent, who is also present.



  
**J. S. MGETTA**  
**JUDGE**  
**20/7/2021**

**COURT:** Right of appeal to the Court of Appeal is fully explained.



  
**J. S. MGETTA**  
**JUDGE**  
**20/7/2021**