

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

CIVIL REVISION NO. 10 OF 2021

BEATRICE MANGALE MKINA.....APPLICANT

versus

1. EMMANUEL THOMAS

2. WINIFRIDA SAANANE BUDODI.....RESPONDENTS

RULING

5th & 18th August, 2021

RUMANYIKA, J.:

Pursuant to decision and orders of Nyamagana district court dated 17/05/2021 in which the proceedings of the probate Mkuyuni primary court were, for reason of want of the late Thomas Sambo Mkina family/ clan meeting approval nullified, Beatrice Mangale Mkina (the applicant) was not satisfied, vide her complaint letter dated 18/02/2021 of even reference number, in ordinary course of business as the judge in charge I directed for opening of the instant suo moto revision proceedings.

Like the applicant, Emmanuel Thomas and Winifrida Saanane Mkina (the 1st and 2nd respondents) appeared in person. By way of audio

teleconference I heard them through mobile numbers 0754 907 106, 0787 888 240 and 0752 295 809 respectively.

Essentially, but in a nutshell the applicant complained about delaying tactics being played by the respondents, taking advantage of the cumbersome procedure in civil litigation also in her back and at the detriment of the majority heirs the respondents continued disposing of part of the estate and they converted the proceeds to their personal use much as the applicant was now desperate and ready to surrender the letters of administration according to records duly granted to her on 13/12/2019. That is all.

The 1st respondent one of the survivor children/heirs told the court that the applicant was a liar as she had never been proposed by family/clan members to administer the estate nor was she willing to attend any meeting for that purposes convened by them.

The 2nd respondent submitted that the selfish applicant was a liar because in fact there were 13 of the survivor children not only 8 as presented by her also one having had fled from the matrimonial home for

the previous 15 years before the demise death of the husband that she (2nd respondent) was the only legally survivor widow. That is all.

The central issue is whether Civil Revision No. 1 of 2021 that gave rise to the impugned decision was tenable at law in the first place. With greatest respect it was not. Here the main reasons;

One, with respect to the present 2nd respondent, as recorded for want of interest, but without leave to re file having had withdrawn Probate Appeal No. 1 of 2019 on 31/03/2020. be it by way of revision or something she should not have come back to court much as, not only as far as the applicant's locus standi was concerned she was done since, but also the principle of law is well settled that revision proceedings was no appeal in disguise (case of **SOUTH ESSO V. THE PEOPLE BANK OF ZANZIBAR & ANOTHER** (2001) TLR 43 in fact the revision should have been struck out at the earliest.

Two; the applicant's petition for the letters of administration may have had not been blessed by family or clan meeting yes, but however interested might be the respondents had no locus under the circumstances because not only they were not the sole clan/family members but also only

the purported chair or secretary of the meeting if not together with the respondents should have, in any way challenged the present applicant at least for by passing the other and majority clan/family members. Like the applicant complained, possibly the minority respondents had such ill motive.

Three; only for reasons known to the deceased and the applicant the latter may have had fled from the matrimonial home therefore separated for that long yes, but none of the respondents had not proved that the applicant was no longer legal widow much as again it wasn't the respondent's contention that the deceased and applicant had not contracted Christian therefore a monogamous marriage. In fact like it was well argued in the probate court, the 2nd respondent should not even have paused as wife of the late Thomas Sambo Mkina in the first place irrespective of the interest that the said Alex Sambo Mkina (the minor) may also have had in the estate at issue because agreeably such interest's also had been taken on board by the present applicant.

Four; Now that for the above stated reasons the applicant's letters of administration were still valid until such time it was to the contrary held, the letters bind on the respondents and the rest of the world I suppose. It

was therefore safe, and I hereby hold that the list of property presented in the probate court presupposed that it was but blessed by the family/clan and, logically so Court Broker one Silas Isangi according to records appointed on 26.11.2020 along with the applicant. It means therefore that any property (part of the estate) if at all sold, or in any way in the back of the administrate disposed by the respondent(s), their agents , assigns or any other person on their behalf claiming any right, such transactions were but void ab'initio.

Had the learned resident magistrate considered all what I have herein above endeavored to discuss he should have arrived at a different conclusion much as, like with greatest one was in the impugned decision on cross road correctly so in my considered opinion, it is general rule that at times clan/family meeting and resolution wasn't a requisite for one to be granted letters of administration of the estate.

As I am now winding, I think it is equally pertinent to say it here that every case should at the earliest possible opportune get to finality yes, but if I was to classify the cases, probate proceedings were amongst priority cases. It follows there that save for peculiar circumstances judicial officers should only order fresh hearing and only where they reasonably had to.

In the upshot, the impugned proceedings and orders of the district court are quashed and set aside respectively. The applicant and the said Silas Isangi (Court Broker) are, with immediate effect ordered to fully administer the estate and present the inventory within thirty (30) days of this decision so much so that the probate court shall, at the earliest opportunity possible mark Probate Cause No. 78 of 2018 closed. Each party shall bear their costs. It is so ordered.

Right of appeal explained.


S.M. RUMANYIKA

JUDGE

15/08/2021

The ruling delivered under my hand and seal of the court in chambers on 18/08/2021 in the absence of the parties.




S.M. RUMANYIKA

JUDGE

18/08/2021