

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

AT BUKOBA

PROBATE AND ADMINISTRATION CAUSE APPEAL NO. 3 OF 2021

(Arising from Muleba District Court in Civil Appeal No. 46 of 2020 and original Probate and Administration Cause No. 7 of 2019 of Kashasha Primary Court)

EMMANUEL ALPHONCE.....APPELLANT

VERSUS

**1. NTEGIRWAOI ANDREA KITUNZI }RESPONDENTS
2. ALBOGAST KYELYALA }**

JUDGMENT

Date of Judgment: 29/09/2021.

Mwenda, J.

The appellant, who is the administrator of the estate of the late Ntegirwoi Andrea Katunzi is appealing against the decision of the District Court of Muleba which upheld the decision of Kashasha Primary Court in Probate and Administration Cause No. 7 of 2019 where the appellant duty as administrator was revoked.

The appellant filed a memorandum which contain 7 grounds of appeal and the second respondent did not file any reply thereof. When this matter was called for hearing the appellant and the second respondent appeared in person without any

legal representation. When invited to address the court in support of the grounds of appeal the appellant submitted that he was appointed by clan members as administrator of the estate of the late Ntegirwoi Andrea Katunzi and undertook his responsibility to its finality and when he sent a feedback to Kashasha Primary Court they did not accept it and the Honourable Magistrate informed him that his duties as administrator have been revoked and in lieu thereof, the second respondent was appointed by Hon. PCM. He was dissatisfied and filed an appeal before Muleba District Court Where he also lost and appealed before this court.

The appellant said that he is not pleased with the revocation of his position as administrator of the deceased's estate and he prayed justice before this court.

On his part, the second respondent submitted that he is not a clan member and he is just a village chairman of Ijumbi Village who was appointed by Kashasha Primary Court as administrator of the estate of the Late Andrea Ntegirwoi Katunzi. He said he know nothing in respect to the present conflict within the deceased's family and that he is not yet confirmed as administrator as he has not collected Form No. IV from Kashasha Primary Court. He concluded by submitting that he would be comfortable with any just decision by this court.

In rejoinder, the appellant said that he has nothing to add.

In this matter the issue is whether this appeal is meritorious.

From the record, the late Andrea Ntegirwoi Katunzi died intestate and was survived with two wives and eleven children. Following his death, the clan council convened and appointed the appellant to be the administrator of the deceased's estate. He filed a Probate Cause No. 7 of 2019 where, having gained support of two clan members he was confirmed as the administrator following satisfaction by the court that he qualified to be so appointed. The court also appointed a Ward Executive officer for Ijumbi as his co administrator. It is important to note here that during hearing of this matter the appellant informed the court that the deceased had died interstate and that he was survived with a widow and 12 children. Following his endorsement as administrator, he was then tasked to collect and distribute the deceased's property, pay debts and remit an inventory to the court on how the properties were distributed in four months' time.

The record show that the appellant did not perform his duties properly as there were poor cooperation between the administrators as it is alleged that the appellant was side lining his co administrator and that one Adrian Andrea, one of the deceased's children lodged a formal complaint against the appellant in that he was favouring one of the widow's children. The appellant and his co administrator were summoned on 10/9/2019 before the court and the parties were heard and the court concluded that the appellant is the one who was delaying the distribution process and that he was favouring one groups of the children. The administrators

were then ordered to set a date which they would finalize the process. Soon thereafter one of the co administrator, WEO, wrote a letter of intention to withdraw himself from the duty as administrator following the appellant's refusal to cooperate with him and failure to take any action to finalize the exercise of administering the deceased's estate. The court, on 17/9/2019 deliberated to strip the appellant of his position as administrator and also ordered him to handle all the necessary administration papers, the said order was read on 24/9/2019. On top that the court appointed one Francis katunzi and Ignas kinabo (WEO of Ijumbi) to take charge. Shortly thereafter wards another complaint letter was received where some of the family members objected the second respondent from engaging in the task as administrator. Following this complaint he then withdrew himself and the first administrator remained. Later a formal hearing of objection against him was heard and the court officially stripped him from that position and appointed the second respondent who is a village chairman for Ijumbi as administrator. The court assigned reasons that the appellant was creating conflict among the heirs by taking sides with one group of children and their mother leaving the other, secondly the court lost faith/trust with him following his statement that he would divide the properties according to the deceased's will while at first he said the deceased died intestate, and that he spent much time without finalizing the exercise and in so doing the court invoked section 2(c) of

the Magistrate's court Act, [Cap 11 RE 2019] in revoking him his powers as administrator of the estate .

Following that decision the appellant filed civil appeal No. 46/2020 and upon hearing the submissions by the parties the Honourable Magistrate dismissed the appeal and upheld the primary court's decision in that the appellant was rightly stripped off his position following his failure to distribute the deceased's properties in time.

In the present appeal, this court went through the record and got satisfied that the lower courts were justified in their findings. Since his appointment as administrator the appellant has done nothing. Until now the deceased properties are not distributed. It is important to remind the appellant that the duty of the administrator is only to facilitate distribution of the deceased's properties and not to agitate conflicts among heirs or delay the process. Also being an administrator, it does not mean one becomes a heir. An administrator can be a family member or even a stranger as long as he undertake his duties according to the law.

Under Part II of 5th Schedule, 5 of the Magistrate's Court Act, [Cap 11 RE 2019] general duties of the administrator are stated as follows:

"An administrator appointed by a primary court shall, with reasonable diligence, collect the

property of the deceased and the debt that were due to him, pay the debt of deceased and the debt and costs of the administration and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties shall give effect to the direction of the primary court.”

Since the appellant failed to undertake his duties above the primary court was justified to revoke and appoint a new administrator vide Part II, PARA 2(c) of 5th schedule to Magistrate’s Court Act which read as follows:

A primary court upon which jurisdiction in the administration of deceased's estates has been conferred may-

(a)N/A

(b)N/A

(c) *“revoke any appointment of an administrator for a good and sufficient cause and require the surrender of any document evidencing his appointment”.*

The appellant having been revoked, the administration of the estate had to proceed and the trial primary court’s magistrate was justified to appoint a neutral

person to undertake this important exercise as the law is very clear especially Para. 2(c) of the Part II OF 5th Schedule to The Magistrate Court's Act which state as follows:

A primary court upon which jurisdiction in the administration of deceased's estates has been conferred may-

a) N/A

b) "either of its own motion or on application by any person interested in the administration of the estate, where it considers that it is desirable so to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under sub-paragraph (a)".

From the foregoing analysis this court finds no reasons to faults the lower court's findings and their decisions are hereby upheld.

His appeal therefore is dismissed with costs.

It is so ordered.

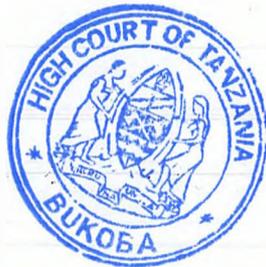



A.Y. Mwenda

Judge

29.09.2021

Judgment delivered in chamber under the seal of this court in the presence of the appellant Mr. Emmanuel Alphonse and in the presence of the 2nd respondent Albogast Kyelyala.




A.Y. Mwenda

Judge

29.09.2021