

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA – SUB REGISTRY**

**AT MUSOMA**

**MISC. CIVIL APPLICATION NO 18 OF 2021**

*(Arising from PC Probate Appeal No. 6 of 2020, in the High Court of Tanzania at Musoma)*

**MONICA MABULA ..... APPLICANT**

***VERSUS***

**LEOKADIAH SYLVESTER.... RESPONDENT**

**RULING**

15<sup>th</sup> September & 22<sup>nd</sup> October 2021

**F. H. MAHIMBALI, J.:**

The applicant herein, has been aggrieved by the decision of this court in Probate Appeal no, 6 of 2020 of HC- Musoma as per Galeba, J (a.h.w). Monica Mabula was appointed administratrix of the estate of the late Pius Paul Mwende, her husband who died intestate on 30<sup>th</sup> December, 2008.

According to the case record, the applicant having been appointed to administer the said probate case as administratrix, failed to discharge her duties as per law as she failed to collect the assets of the deceased and distribute them to appropriate heirs or to pay the deceased's debts since her appointment. Following her inaction as administratrix of the said estate, the respondent successfully challenged her appointment

before the same trial court of Primary Court of Musoma urban which then revoked her appointment as administratrix in the administration of the said estate. Aggrieved by this revocation order of the trial court, the applicant unsuccessfully challenged the said revocation before Musoma District Court and eventually at High Court. Still undaunted, the applicant expressed her interest of challenging the said revocation order before the Court of Appeal by lodging notice of appeal.

This application is by law a mandatory legal requirement as stipulated under section 5(2)(c ) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 that for this matter originating from primary court, its appeal to Court of Appeal is only permissible upon certification by the High Court that there is a point of law worth determinable by the Court of Appeal.

In convincing this court that there are points of law worth determinable by the Court of Appeal following the verdict of this Court as per Galeba, J (a.h.w), in her supporting affidavit, the applicant has listed three legal points which deserve the attention of the Court of Appeal, namely: -

- i) Whether the order to hold clan meeting before discharging the duties as administrator does not amount to interim order.

- ii) Whether failure to attach death certificate is sufficient reason to revoke the appointment of Administratrix of estate.
- iii) Whether it is necessary to have clan meeting proposing the appointment of the administrator of estate.

During the hearing of the application, the applicant was represented by Mr. Emmanuel Gervas learned advocate. The respondent on the other side who was duly served and aware of the application could not enter appearance on the date set for hearing of the application despite being present on the previous appearance. As she could not enter appearance on the due date and that there was no prior notice availed to court, Mr. Emmanuel Gervas prayed to proceed ex parte which prayer was granted by the court.

Submitting in support of the application, Mr. Emmanuel Gervas for the first point of law that "*Whether the order to hold clan meeting before discharging the duties as administrator does not amount to interim order*" argued that there were two orders issued by the trial court directing VEO to assist the applicant how to hold a clan meeting with the clan members upon there being difficulties in holding the same willingly. As it was a court order, the learned counsel submitted that it was supposed to be complied first as the convening of the clan meeting

was so important before distribution of the deceased's estate to the appropriate heirs. This legal point not been considered by the District and High Court in their appellate powers, it was a legal misnomer thus, it is only the Court of Appeal that can give the proper direction on this. Considering the fact that failure to distribute the deceased's estate had a legal implication of the District Court and High court in blessing the revocation of the applicant's appointment, as it was not caused by the applicant's inaction but rather non – compliance to trial court's directives by the VEO. The applicant was eager to wait for its compliance as ordered by the trial court for her to proceed with the distribution of the deceased's estate.

With the second point of law to be certified by the Court is whether failure to attach death certificate is sufficient reason to revoke the appointment of Administratrix of estate. Both the trial and first appellate court, ruled that failure to attach death certificate is sufficient reason to revoke the appointment of the applicant as administratrix of the deceased's estate. Unfortunately, the High Court didn't consider it at all. It was Mr. Emmanuel's submission that failure by the High Court to consider the same, it is now important for it to be certified as a point of law worth determinable by the Court of Appeal. He backed up his submission by making reference to the case of **Beatrice Brighton**

**Kamanga and Another V. Ziada William Kamanga**, Civil Revision No. 13 of 2020, HC Dsm (Mlacha, J) that existence or attachment of clan meeting's minutes and death certificate are important in the furtherance of probate proceedings in court as their existence assures the trial court and parties in narrowing down the disputes amongst the disputants. However, in the present matter, the High Court has failed to heed that view.

Submitting for the third point of law determinable by the Court of Appeal Whether it is necessary to have clan meeting proposing the appointment of the administrator of estate, the learned counsel submitted that this being one of the reasons the trial court used to revoke the applicant's appointment, however the circumstances prevailing the said case were so cumbersome that prevented the convening of the said meeting. Yet, those who prevented the convening of the said meeting are the ones revoking the applicant's appointment. He thus, calls upon this court now to certify that this is also a point of law worth determinable by the Court of Appeal. He also strengthened his submission by making reference to the case of **Beatrice Brighton Kamanga and Another V. Ziada William Kamanga**(supra), that that existence or attachment of clan meeting's minutes and death certificate are important in the furtherance of probate proceedings in court as their

existence assures the trial court and parties in narrowing down the disputes amongst the disputants.

With these arguable points, Mr. Emmanuel Gervas learned counsel prayed that this court to allow the application and certify that there exists points of law worth determinable by the Court of Appeal.

I have thoroughly considered the affidavit and submission by the applicant herein. It is indeed a requirement of the law that no appeal shall lie against a decision of the High Court originating from primary courts unless the High Court certifies that there are legal issues worth consideration of the Court of Appeal.

In applications to certify that there are points of law to be considered by the Court of Appeal in the intended appeal, in the case of **AH Vuai AH Vs. Suwedi Mzee Suwedi** [2004] TLR 110, the Court of Appeal held:

*"Certificate on a point of law is required in matters originating in Primary Courts; it is provided therein that an appeal against the decision or order of the High Court in matters originating in Primary Courts would not be unless the High Court certifies that a point of law is involved in the decision or order."*

In the case of **DORINA N. MKUMWA VERSUS EDWIN DAVID HAMIS**, Civil Appeal no. 57 of 2017, the Court of Appeal regarding application on certificate on point of law, emphasised that: -



*"It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when High Court receives applications to certify point of law, we expect Rulings showing serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court as point of law ..."*

The point of consideration by this court, is whether this application is worth of consideration for its grant. I have considerably digested the serious arguments by the applicant's counsel. As regards the last two proposed legal point for deliberation by the Court of Appeal, I have not got the legal sense in it. The applicant having been dully appointed as administratrix of the said estate, the preliminary issues of attachment of death certificate and holding of clan meeting proposing the appointment of administrator of deceased's estate does not arise any more. Thus, these two last points proposed to be legal points for deliberation are misplaced at this juncture. I say so because, the applicant had already been appointed as administratrix in the administration of the said estate. The reason why her appointment was revoked is due to the fact that she failed to discharge her legal duties as administratrix of the deceased's

estate which are knowing the deceased's debts and assets, discharge the debts, know the deceased's lawful heirs, distribute the assets accordingly, account the deceased's estate and then file an inventory to the trial court with a view of closing the probate matter in court. No one challenged the applicant in respect of her appointment basing on these two points: lacking death certificate and clan meeting's minutes. Having said so, the last two points don't qualify their certification as by law for their determination before the Court of Appeal in the circumstances of this case.

As regards the first point of law that whether the order to hold clan meeting before discharging the duties as administrator does not amount to interim order. In a proper consideration to this, I find the trial court's orders and letter not deserving to be legal restraint orders worth determinable by the Court of Appeal as well.

In my deep digest, in the circumstances of this case, I am failing to understand Mr. Gervas' argument as what should this court certify as point of law for determination by the Court of Appeal. What was the benefit of the applicant remaining as administratrix of the said estate while there is no any discharge of duty done for a period of over ten years now? By her revocation, she is not dispossessed of anything material but rather gives chance to the others but without affecting her



legal position as heir in that estate. Unless the applicant considers the administration duty as permanent employment, otherwise it is not a duty of high contest as it is reflected here. She having failed to discharge her administrative functions for a period of over ten years, the appropriate legal course was to resign or her appointment is revoked as rightly done. The Court of Appeal being the highest Court of justice in the country should be reserved to resolve matters of highest importance in the country for the development of legal jurisprudence, thus setting precedence. Certifying this proposed issue as a point of law for Court of Appeal's determination, is to make the High Court a conduit pipe to allow whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court of Appeal as point of law.

From the foregoing, I therefore reject all these grounds and certify nothing as pure legal points worth determinable by the Court of Appeal.

It is so ordered.

DATED at MUSOMA this 22<sup>nd</sup> day of October, 2021.



  
F. H. Mahimbali

JUDGE

22/10/2021

**Court:** Ruling delivered this 22<sup>nd</sup> day of October, 2021 in presence of the Emmanuel Gervas, advocate for the applicant, Daudi Mahemba, advocate for the respondent and Mr. Gidion Mugo, RMA.

Right of appeal is explained.



F. H. Mahimbali

JUDGE

22/10/2021