

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM

CIVIL REVISION NO. 24 OF 2021

(Originating from the District Court of Morogoro in civil Revision No. 02 of 2021)

MAIMUNA MAHAGATILA APPLICANT

VERSUS

NURU ISSA MAHAGATILA..... RESPONDENT

RULING

Last Court Order on: 9/11/2021

Ruling date on: 19/11/2021

NGWEMBE, J:

The applicant Maimuna Mahagatira is a senior citizen having advanced age but managed to lodge this application for revision with a prayer to call upon the records of the trial court of Morogoro District Court and revise them accordingly. The applicant came up with seven grounds including, declaration of the rightful owner of the suit land.

The genesis of this application traces back to 1950s before demise of the original owner Fukano Magona who died in year 1951. According to the



available records, the suit land was surveyed and a title deed was issue in favour of the original owner Fukano Magona. It seems, to date such land is still in the name and title of Fukano Magona (deceased).

There is another side of the story that upon demise of the original owner, she survived two children namely Omary Nasibu and Manase Nasibu. Those two heirs sometimes in year 1967 sold the landed properties of their late mother to Issa Mahagatila, who developed it into twelve (12) roomed house covered with corrugated iron sheets. That fact is not disputed by either party, but also is not vividly disclosed by the applicant, save only by the respondents.

Since 1951 (a year when the original owner died) to 2017, the suit land never had any dispute. Even if we can trace from 1967 (when the heirs of the original owner sold it to Issa Mahagatira) up to 2017, the family of the late Issa Mahagatira occupied the suit land undisturbed. Accounting from demise of the original owner in year 1951 to 2017 is equal to 66 years or from the developer of the suit land in year 1967 to the date when the dispute erupted in year 2017 is equal to 50 years, these years tells a lot to this court.

The endless litigation of this application commenced in year 2017, after demise of the original owner (Fukano Magona) in year 1951; the first heirs of the suit land, that is, Omary Nasibu and Manase Nasibu (on undisclosed year of their death); and upon demise of the developer of the suit land (Issa Mahagatira) on undisclosed year). Therefore, in this application the disputants are third generation from the original owner.

In probate matters, the law is clear that in order for anyone to step in the shoes of the deceased properties must successfully, employ section 100 of Probate and Administration of Estates Act Cap 352 R.E. 2019 is quoted hereunder:-

"An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for recovery of debts due to him at the time of his death, as the deceased had when living."

Notably, *Locus standi* in probate cases is fundamental and cornerstone to whoever claims to have powers over the deceased properties.

In essence the applicant or plaintiff must demonstrate that he/she has *locus standi* over the disputed matter. In respect to the deceased properties, must be a holder of letters of administration appointed by a competent court of law. The issue of *locus standi* was well considered by Malawian Supreme Court in the case of **Attorney General Vs. the Malawi Congress Party and another, civil appeal no. 22 of 1996**, which same was adopted by our court in the case of **Lujuna Shubi Balonzi Vs. Registered Trustees of Chama cha Mapinduzi [1996] T.L.R. 203.**

This position is based on the principle of law that; courts must be certain on the identity of the parties with a view to avoid entertaining fictitious or dishonest persons. The court does so in order to assure that at the end of trial, entitlements and rights should go to the rightful persons. Likewise, liabilities, if any, should go to a liable person.



Moreover, courts can only accord protection to a person having an interest recognized by law. On the other side, courts will not determine an academic or hypothetical or premature or dead dispute, any dispute before the court must be real, affecting rights of an individual which right is recognized by law. The reason is obvious, that a court of law is a court of justice and not an academy of law or court of sympathy and morality. Therefore, to maintain an action before a court of law, a litigant must assert interference with or deprivation of, or threat of interference with or deprivation of, a right or interest, which the law takes cognizance.

Having referred on those basic principles of law, the question remains, who among the disputants has *locus standi* over the subject matter? To answer this question, it is obvious, the record is clear that this dispute has travelled quite a long distance until it arrived into this court. The record indicates that the applicant sought *locus standi* over the alleged property of Fukano Magona by instituting a probate case No. 178 of 2017 at Morogoro Urban Primary Court, seeking to be appointed an administrator of the deceased estate. The application was encumbered by an objection from Nuru Issa Mahagatira. At the end the court held:-

"Mahakama inaona upande wa pingamizi umeshinda na hivyo mahakama hii inayatupilia mbali maombi ya mwombaji Maimuna Mahagatila Kambi.Kuhusu hati ya nyumba mahakama hii inamkabidhi mtoto wa marehemu aitwaye Nuru Issa Mahagatira. Na kama Nuru Mahagatira ataona itamletea usumbufu anapaswa aiache hapa mahakamani hati hiyo kwa



maandishi mpaka hapo watakapo kamilisha kufungua kesi upya ya mirathi"

That decision was made on 29/12/2017. For clarity, Maimuna Mahagatira was denied *locus standi* over the suit land.

However, the applicant was dissatisfied with that decision of primary court in probate No. 178 of 2017, hence appealed to the District Court which appeal was registered as civil appeal No. 5 of 2018. upon hearing both parties, the 1st appellate court at page 5 held:-

"The primary Court's decision is hereby upheld.

The appeal is accordingly dismissed with costs"

In regard to the *locus standi* of Nuru Issa Mahagatira, the record speaks louder that she instituted probate No. 158 of 2018 before the same Morogoro Urban Primary Court. This time, the application for administration of the deceased estate of Issa Mahagatira was not objected, hence the court on 10/9/2018 held:-

"Mahakama hii kwa pamoja na kwa kuzingatia maelezo ya Mwombaji na kwa kuwa kulikuwa hakuna pingamizi lolote. Hivyo basi mahakama hii imemteua mwombaji Nuru Issa Mahagatila kuwa Msimamizi wa mirathi hii kama alivyoomba"

The law is well developed in this area, that whoever aggrieved with the appointment or order of the District Court, may appeal to the High Court. Section 83 of Probate and Administration of Estate Act is party quoted:-



"Subject to the Probate Rules, every appointment, direction, or decision of a district court under this part shall be subject to appeal to the High Court"

Therefore, whoever aggrieved with the appointment of an administrator by the district court may appeal to the High Court. In any event it is evident that, an administrator of the estate of Issa Mahagatira is Nuru Mahagatira who on 20th January, 2021 wrote a complaint letter addressed to the Resident Magistrate Incharge of District Court (Hakimu Mkazi Mfawidhi Mahakama ya Wilaya) in respect to probate No. 178 of 2017. The center of her complaint was on the where about the title deed of the suit land of plot No. 139 Block "T" Karume B, Morogoro. Such complaint triggered the district court to call for and revise its previous decision. Prior to its decision, the court proceeded to invite both parties and heard them. At the end, the court ruled as follows:-

"The court directs the applicant Nuru Mahagatira to move the Court in probate No. 158 of 2018 to order Maimuna Mahagatila Kambi to hand her the said title deed because her appointment has not challenged by any person"

Following that decision, the applicant moved this court under section 44 (1) of Magistrate Court Act Cap 11 R.E. 2019 inviting to revise the court ruling made on 11th June, 2021 in revision No. 2 of 2021.

I have passionately traced the genesis of this dispute with a view to understand the gist of this application for revision. Undisputed, this court has unlimited supervisory jurisdiction over subordinate courts, but always



such supervision must be in line with the applicable laws. The section cited by the applicant to move this court is section 44 of Magistrate Court Act, which is quoted hereunder for ease of reference:-

Section **44**. -(1) "In addition to any other powers in that behalf conferred upon the High Court, the High Court-

(a) shall exercise general powers of supervision over all district courts and courts of a resident magistrate and may, at any time, call for and inspect or direct the inspection of the records of such courts and give such directions as it considers may be necessary in the interests of justice, and all such courts shall comply with such directions without undue delay;

(b) may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit"

This section is read together with section 79 of the Civil Procedure Act, Cap. 33 R.E 2019. Equally the section states, *inter-alia*:

Section 79- (1) 'The High Court may call for the record of any case which has been decided by any court subordinate to it and **in which no appeal lies thereto**, and if such subordinate court appears:-

a) To have exercised jurisdiction vested in it by law; or



- b) To have failed to exercise jurisdictions so vested; or
- c) To have acted in the exercise of its jurisdictions illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

(2) Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates Courts Act."

It is clear from the above sections that revision is exercised only where there is no right to appeal. I would therefore, add that, this court may exercise its revisional jurisdiction only when the decision of the trial court or subordinate court is, **first** not appealable as a matter of right, and by operation of law; **second** the right to appeal is blocked by judicial process; **third** the right to appeal is not opted by the aggrieved person for sufficient reason; and **four** parties should always know that on revision the court does not determine evidences adduced during trial, rather determines **propriety** of records and proper application of laws.

The one who is moving this court to exercise its revisional jurisdiction must disclose in clear terms, pinpointing illegalities, irregularities, incorrectness or inappropriateness of the proceedings or decision of the trial court. The applicant cannot, argue issues which are capable of being determined on appeal, such as sufficiency of evidences adduced by either party to the suit. To the best such issues are arguable on appeal not on revision.

In this application, unfortunate, the applicant did not disclose any reason leave alone sufficient reasons supporting this application for revision



instead of appealing against the decision of the District Court. Revisional jurisdiction is not an alternative to appeal. Whoever opt to move this court to exercise its revisional jurisdiction, must disclose sufficient reasons.

The question is, who is the applicant in this application? What is her *locus standi*? More so, whether the ruling delivered by the district court in revision No. 2 of 2021 is capable of being revised or appealed against? These questions are relevant in the final determination of this application. I have already answered the first issue that whoever intends to step in the shoes of deceased estate, must first be appointed as administrator of his/her estate as per section 100 of Probate and Administration of Estates Act cited above. Otherwise, it is illegal for any person to assume jurisdiction over the estate of the deceased person. In this application, the applicant is not among the administrator of the estate of neither Fukano Magona nor Issa Mahagatira.

Since the applicant lacks *locus standi* over the deceased estate, she cannot claim any powers to administer it. The one who has *locus standi* by virtual of being appointed an administrator is Nuru Mahagatira over the estate of Issa Mahagatira.

The last issue is on viability of the application itself. As I have already stated herein above. The ruling of the district Court in Revision No. 2 of 2021 is appealable as of right. To apply for revision while the decision is appealable is tantamount to misuse of court's powers.



In this application, I find compelled to remind all advocates to observe their noble duties of assisting the court to the ends of justice. Advocates are prohibited to mislead the court, but to defend to the best of their knowledge and ability their clients without misleading the court. In this application, whoever assisted the applicant to come to this court with an application for revision, intended to mislead the court.

In totality this application lacks merits in four aspects, first the applicant Maimuna Mahagatira lacks *locus standi* to claim or administer any property of neither Fukano Magona nor Issa Mahagatira for the reasons stated above and in accordance to section 100 of Probate and Administration of Estates Act; second the decision of the District Court in revision No. 2 of 2021 is appealable as of right to whoever aggrieved, this application for revision is not backed with reasons as to why the applicant decided to move this court to exercise its revisional jurisdiction instead of appellate jurisdiction; third the decision of the District Court was in line with the applicable laws thus enforceable and executable; fourth, the decision of the trial court is valid and capable of being executed.

In conclusion and having so said, this application is dismissed with costs.

Order Accordingly.

Dated at Dar es Salaam this 19th November, 2021


NGWEMBE J
JUDGE
19/11/2021

Ruling is delivered on 19th November, 2021 in the presence of Mr. Richard Kinawari learned advocate for the applicant and Mr. Fortunatus Maricha holding brief for E.E. Wamunza advocate for respondent.

Right of appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to read "Ngwembe J.", is written above the printed name.

NGWEMBE J,

JUDGE

19/11/2021