

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL REVISION NO. 21 OF 2021

(Emanating Probate and Administration Cause No.27 of 1979 before this court, Probate and Administration Cause No. 32 of 2010 before the Kariakoo Primary Court, and Civil Revision No. 26 of 2010 before the District Court of Ilala)

LATIFA MAHBOOB (As Administrator of the Estate
of the Late Mehboob Fidahusseini Fazal Rawji.....**APPLICANT**
VERSUS
MURTAZA FIDAHUSEEIN FAZAL RAWJI.....**RESPONDENT**

RULING

Date of Last Order: 28/10/2021
date of Ruling: 25/11/2021

MASABO, J.:-

The ruling is in respect of a revision instituted *suo motto* by this court under section 44(1)(a) of the Magistrate Courts Act [Cap 11 RE 2019] at the request of the Resident Magistrate In charge of the District Court of Ilala at Kinyerezi following a complaint by LATIFA MAHBOOB (Administrator of the Estate of the Late Mehboob Fidahusseini Fazal Rawji) who is for convenience and easy of reference designated as the applicant.

In brief, this matter has its genesis in the demise of the late Fidahusseini Fazal Rawji (the deceased), who died interstate on 2/4/1979 being survived by several heirs, including the respondent herein and the applicant's husband who is now deceased. The record has it that, after the demise of Fidahusseini

Fazal Rawji, his son Mehboob Fidahusseini Fazal Rawji petitioned for letter of administration of the estate in Probate and Administration Cause No.27 of 1979 before this court. The petition was not contentious and after completion of all the necessary procedures, he was successfully appointed as administrator.

Further revelations from the record are that, upon the appointment, the administrator proceeded to execute his statutory duties and on 3rd November 1980 he filed an inventory exhibiting the liabilities and assets falling under the estate which included among others, shares in a company called Fidahusseini & Company Limited. On 14th September 1981 he filed the accounts of the estate of the estate showing that, the estate has been distributed to the heirs who included, the deceased's father one Fazal Rawji Somji; the deceased's widow, Mrs. Shirin Fidahusseini Fazal; four sons (including, Murtaza Fidahusseini Fazal) and four daughters.

In an unexpected turn of events, about 29 years later, Murtaza Fidahusseini Fazal Rawji, the respondent herein, who is one of the four sons of the late Fidahusseini Fazal Rawji resurrected the probate. He filed a fresh application in Probate and Administration Cause No. 32 of 2010 before the Kariakoo Primary Court praying for appointment as administrator of the estate of his late father Fidahusseini Fazal Rawji. Upon learning that there has been a fresh appointment for an administrator of the estate he had administered, Mehboob Fidahusseini Fazal Rawji, filed revision before the District Court of Ilala in Civil Revision No. 26 of 2010. The application ended futile as it was

dismissed for want of proof. In 2015, Mehboob Fidahussein Fazal Rawji died. His wife, Latifa Mehboob, became the administrator of his assets.

Meanwhile, the respondent who had been appointed administrator vide Probate and Administration Cause No. 32 of 2010 before the Kariakoo Primary Court, filed exhibited neither an inventory nor accounts of the estate until in 2021 (about 11 years since his appointment), when he wrote a complaint before Kariakoo Primary Court alleging that his administration has been impeded by Mehboob Fidahusein Fazal who had appropriated the assets falling under the estate. The complaint, culminated into orders made by the Kariakoo Primary court on 12/5/2021 directing the Zonal Crimes Office and the Director of Criminal Investigation to investigate the administrators of the estate of Mehboob Fidahuseein Fazal, and two other persons who are Mushtakali Gulamabbas Fazal and Mohamed Hussein Mehboob. From this background, the revision has been instituted to investigate the legality of Probate and Administration Cause No. 32 of 2010 before Kariakoo Primary Court and subsequent proceedings and orders.

Upon the revision being instituted, the court invited the parties to address it on Probate and Administration Cause No. 32 of 2010 before Kariakoo Primary Court and subsequent proceedings and orders. Both parties had representation. Latifa Mahboob had the service of Mr. Shehzada Walli, leaned counsel whereas the respondent was represented by Mr. Daimu Halfan and Mr. Odhiambo, learned counsels.

Their address to this court which were in written form were very illuminating and timely filed. I commend all the counsels for their thoroughness and dedication to details. Both parties made detailed account of the background of the application which I need not reiterate for avoidance of repetition. On the merit of revision, save for submissions as to effect of the final account filed by the late Mehboob Fidahussein Fazal and counter allegations of fraud and ill motive which I find less relevant at this stage, a consensus was formed by both parties conceding that the appointment of the respondent as administrator of the estate and all the orders consequential to Probate and Administration Cause No. 32 of 2010 are a nullity as they involved an estate which had already been administered. Both requested that, the proceedings in Probate and Administration Cause No. 32 of 2010 and all the consequential orders be quashed and set aside for being a nullity. They also opined that, a similar fate should befall the decision of Ilala District Court in Civil Revision No. 26 of 2010.

I have carefully and thoroughly perused the records placed before me. As stated above, the records vividly reveal that there were two administrators for the same estate. The first administrator, Mehboob Fidahussein Fazal Rawji was appointed by this court in a non-contentious Probate and Administration Cause No. 27 of 1979, and the second administrator, Murtaza Fidahusein Fazal, was appointed 31 years later in Probate and Administration Cause No. 32 of 2010 before Kariakoo Primary Court. From these facts, it is crystal clear that the probate and administration cause leading to the grant of letters of administration to Murtaza Fidahusein Fazal was a nullity as once

an administrator for estate has been appointed, there can be no a subsequent appointment by the same court or by any other court save where, the first appointment has been revoked by an order of the court under section 49(1) of the Probate and Administration of Estates Act, Cap 352 RE 2002 or where, the administrator has been suspended or removed under section 49(2) for purposes of proper administration of the estate and preserving the interests of the beneficiaries.

It is in the context, section 56(1)(f), imposes a prerequisite requirement for a person petitioning for appointment as administrator of estate to state whether proceedings for grant of administration have been commenced/entertained in any other any other court or authority. The requirement mainly serves to assist the court to assess and determine the competence of the application before it.

As the proceedings from Probate and Administration Cause No. 32 of 2010 are silent on this issue, it is presumed that the court proceeded oblivious of the existence of Probate and Administration Cause No. 27 of 1979. Whether the concealment of this fact was bonafide or deliberately calculated to mislead the court, it was fatal as it rendered the proceedings a nullity.

In the upshot and without dwelling on the counter allegations as to fraud and irregularities which I find to be prematurely raised, I invoke the powers vested in this court by section 72 of the Probate and Administration of Estates Act, Cap 352 RE 2002 read together with Section 79(1)(c) of the Civil

Procedure Code, Cap 33 RE 2019, revise the record of Probate and Administration Cause No. 27 of 1979 and Civil Revision No. 26 of 2010 and quash and set them aside for being a nullity. The consequential orders made from these proceedings are similar quashed and set aside.

With regard to costs, much as I have noted Mr. Wallii's prayer for costs, I could not comprehend to who should the costs go as this matter was instituted *suo motto* by court. For this reason, I decline the invitation to impose costs on respondent. Each party shall bear its respective costs.

DATED at DAR ES SALAAM this 25th day of November 2021.

X



Signed by: J.L.MASABO

J.L. MASABO

JUDGE

