

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

AT DAR ES SALAAM

Civil Revision No. 22 of 2019

(Arising from Misc. Probate Application No. 001 of 2019)

CREPINA JOSEPH NGUMBI..... APPLICANT

VERSUS

JULIUS NGAUYA.....RESPONDENT

RULING

6/09/2021 & 17/11/2021

N.R. MWASEBA, J.

The applicant, Crepina Joseph Ngumbi has brought this application under Section 44 (2) (a) and (b) of the Magistrate Court Act, Cap. 11 (R.E 2019) Section 79 (1) (a) and Section 95 of the Civil Procedure Code, Cap. 33 (R.E 2019) seeking for the following orders:

- 1. The court to examine and revise the proceedings before the district court of Morogoro at Morogoro and subsequently issue appropriate orders and directions to re-establish within those proceedings, propriety, consistency, rationality and justifiability of the procedures adopted, the conduct of the proceedings and the ruling issued by the district court of Morogoro and its*

consequent orders in Misc. probate application No.01 of 2019 between the parties. This includes:

i.The procedure adopted by the district court of Morogoro (Hon. I. Msacky-RM) in handling and arriving at the decision the said misc. probate application;

ii.The legality and credibility;

iii.The decision reached in the hearing of the said application which was regarded as very unjust to the applicant herein; and

iv.The said procedure which the court has used to neglect and deny the applicant's legal claims.

2. Any other relief this court may deem fit and just to grant.

Her application has been accompanied by an affidavit of Johnson Adolf Msangi learned counsel who had been representing the applicant at the district court and before this court.

Before this court, both parties had been attending, but later, the respondent stopped attending in court. The efforts for notifying him about the matter proved futile. So, the matter proceeded exparte.

Mr Msangi learned counsel for the applicant told the court that the applicant is the deceased's wife while the respondent is the administrator of the estate of late Jonas Ngauya. On 24th December, 2018 he filed Misc Probate Application No.1 of 2019 in the District court

of Morogoro at Morogoro seeking for transfer of Probate and Administration Cause No.193/2007 from Morogoro Town Primary Court to Morogoro District Court. However, the respondent raised a preliminary objection which was filed in court on 14/2/2019 to the effect that the applicant was suing a wrong party who lacks locus stand to step into the shoes of the estate of the late Joan Ngauya. It was ordered that the preliminary objection be disposed of by way of written submission. In the course of composing a ruling on the preliminary objection the magistrate found himself to have no jurisdiction to try the matter based on large estate. So he did not determine the preliminary objection but rather, dismissed the application for transfer of the case for want of jurisdiction. This is a subject matter of the application at hand that there were irregularities when the district magistrate dismissed their application for want of jurisdiction, without addressing the preliminary objection raised by the respondent and the issue of transfer of the case. The counsel for the applicant submits that the purported ruling which directed the file to be remitted to Morogoro Urban Primary Court for further legal action touches the root of the matter and caused miscarriage of justice to the applicant.

After going through the pleadings and the submission of the learned counsel for the applicant the issue to be determined is whether the procedure adopted by the district court of Morogoro in handling application no 1 of 2019 was backed up with irregularities.

It is articulated in Section 47.-(1) of the Magistrates' Courts Act, Cap 11 R.E 2019 that where any proceedings have been instituted in a primary court, it shall be lawful, at any time before judgment, for-

*(a) the primary court, with the consent of **the district court or a court of a resident magistrate having jurisdiction**, to transfer the proceeding to such district court or court of a resident magistrate or to some other primary court. (Emphasis added).*

The above provision allows transfer of the case to the court with jurisdiction to try the matter. It should be noted that jurisdiction is a fundamental issue to be considered by a Judge or Magistrate before hearing any matter. Before assuming powers to entertain any matter, Judges or Magistrates are supposed to ensure that they have the requisite jurisdiction to do so. This is what transpires in the district court record. At page 2 of the ruling the resident magistrate stated that:

"...the issue of jurisdiction caught my attention as I was preparing to write this ruling based on the preliminary objection raised by the respondent, thus I find it pertinent at this juncture to address on this issue, on whether this court has jurisdiction to entertain this instant application or not, leave alone the preliminary objection raised by the respondent."

I appreciate this finding of the Resident Magistrate which has a spirit of not retaining people in court for the matters which are obvious like this one of lacking jurisdiction. For instance, in the case of **Shyam Thank and others V. New Palace Hotel** (1972) HCD No. 92 it was held that:

"All the courts in Tanzania are created by statutes and their jurisdiction is purely statutory."

The district court cited sections 5 and 6 of the Probate and Administration of Estates Act which vest the district court with the jurisdiction to determine probate cases. **Section 6 of the Probate and Administration of Estate Act** stipulates that:

*"A district court presided over by a district magistrate shall have jurisdiction **in the administration of small estates**, with power to appoint administrators of small estates using the form specified in the Fourth Schedule to this Act, where the deceased died within the jurisdiction of the court."*
(Emphasis added)

The word "small estate" has been defined under **section 2(1) of the Probate and Administration Act**, Cap 352 R.E 2002 as amended by **the Written Laws (Miscellaneous Amendments) Act** No.4 of 2016

"Small estate" means an estate the gross value of which a court, district court or other authority having jurisdiction in probate or administration is satisfied, does not exceed one hundred million shillings"

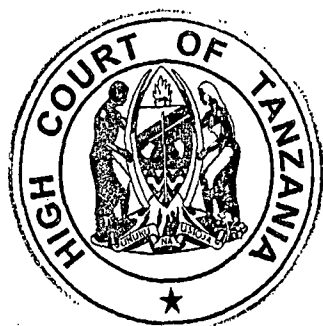
The matter at hand exceeds one hundred million shillings as the deceased left a number of movable and immovable properties according to the list of properties filed before the primary court. With that regard, the district court had no jurisdiction to try the matter. The issue of

lacking jurisdiction bared the appellate magistrate from entertaining the matter even by dealing with the preliminary objection. Therefore the issue raised is answered in negative.

Having so said, I see no irregularities which needs my intervention to the ruling and proceedings of the district court. Thus, this application for revision has no merit. It is dismissed forthwith. No order as to costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 17th Day of November, 2021.



N.R. MWASEBA

JUDGE

17/11/2021