

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

PROBATE AND ADMINISTRATION APPEAL No. 02 OF 2021

*(Originating from Appeal No. 21/2020 Misc. Application No. 04/2020 and Civil Appeal 52/2019 D/C
Bukoba Civil Case Kassambya Primary Court No. 05/2013)*

EUSTIDIA LWEIKIZA MAJULA -----APPELLANT
VERSUS
JUSTICE NJUNWA MAJULA ----- RESPONDENT

JUDGMENT

*Date of last order: 03/12/2021
Date of Judgment: 03/12/2021*

Kilekamajenga, J.

The parties in this case are sibling who are battling over the administration of the estate of their father who died on 1st April, 1976. It is alleged that, immediately after the death of the deceased, a person called Joseph Majula applied for the administration of the estate vide Probate and Administration cause No. 8 of 1977. It is further alleged that, the deceased's estate was distributed in 1985 at Kashai Primary Court within Bukoba Municipality. In 2013, the appellant applied for the administration of estate of her late father Eustace Rweikiza Majula and she was so appointed by Kassambya primary Court vide Probate Administration Cause No. 5 of 2013. Since then she did not distribute the estates until in 2019 when the respondent approached the same Primary Court alleging that the deceased's estate was distributed way back in 1982 in Probate and Administration cause No. 08 of 1977. The respondent sought the revocation of



appointment of the appellant. On 11/11/2019, Kassambya Primary Court revoked the appointment of the appellant. The revocation was based on one major reason that, the appellant failed to comply with the order of the primary by not filing the inventory within four months. The Primary Court of Kassambya further ordered any interested person to file an application for administration of estate.

Being unhappy with the decision of the Primary Court, the appellant appealed to the District Court which also confirmed the decision of the Primary Court on the reason that the deceased's estates were distributed in 1982 and therefore the appellant would have no estate to distribute. Thereafter the appellant approached this Honourable Court armed with five grounds of appeal thus:

- 1. That, the Court erred in law and fact for failure to properly evaluate the evidence adduced before it. And that decided the matter by not considering the evidence of the Appellant. Thus unjust on part of the Appellant. And that the Trial Court hindered and misled the Appellant in accompolition of her duty regarding filing an inventory which were not considered by the first Appellate Court.*
- 2. That the first Appellate Court erred in law and facts to confirm the decision which in fact reached erroneously, as it considered the exhibits tendered which were not read its contents, were not given to Appellant to examine the documentary evidence to either object or accord their authenticity, and the decision reached on assuming the judgment or decision of Kashai Primary Court, No. 08 of 1977 which never tendered before the Trial Court.*

3. *That, the first Appellate Court erred in law and facts to uphold the decision of the Trial Court, by the reason that the Administration of the Estate of the deceased were ready done, but did not consider that the said Administration was nullity for being conducted in a wrong forum (court) Kashai Primary Court, while the deceased fixed place of abode at the time of death was Missenyi.*
4. *That, both Courts below erred in law and facts to revoke the appointed Administrator without legal reasons. And it was not proper for the first Appellate Court to be biased to make the decision relying on the age of the Appellant, regarding making the Application at the Trial Court.*
5. *That, both Court below erred in law and facts to reach the decisions basing on fabricated, hearsay evidence and speculative issues which in fact caused unjust on part of the Appellant.*

The court invited the parties to argue the appeal. The appellant was present in person and enjoyed the legal services of the learned advocate, Mr. Ibrahim Mswadick whilst the learned advocate, Mr. Lameck John Erasto appeared for the respondent. When submitting on the first grounds of appeal, the counsel for the appellant argued that the appellant filed an inventory at Kassambya Primary Court before her appointment was revoked. In fact, the appellant believed that the administration and especially the stage of filing the inventory was completed. He argued further that the revocation came after the appellant failed to file form number VI. The counsel prayed for the appellant be given time to file-in the form number VI instead of revoking her appointment.

On the second ground, Mr. Mswadick argued that form number IV tendered by the respondent was not read in Court and the appellant had no opportunity to object it. Failure to read the exhibit was an irregularity warranting its exclusion from the record of the court. He referred the Court to the case of **Gode Cleoplace v. Republic, Criminal Appeal No. 41 of 2019**. Mr. Mswadick also argued that, the respondent failed to tender any judgment to prove whether the administration was done in 1982. He assailed the respondent for doctoring the form number IV in order to win this case. Generally, the Primary Court of Kassambya lacked any proof on whether or not the administration of the deceased's estates was done in 1982. In his view form number IV is not among the documents that the Court may take judicial notice.

On the 3rd ground of appeal, Mr. Mswadick submitted that, the administration of estate in Probate and Administration Cause No. 08 of 1977 was a nullity because it was filed out of the deceased's place of domicile because the deceased lived at Kigarama at Kanyigo and the nearest Primary Court was Gera Primary Court and not at Kashai Primary Court. On the 4th ground, the counsel challenged the decision of the District Court for basing its decision on the length of time taken by the appellant before filing the case at the Primary Court while there is no time limit for filing probate and administration cases. On the 5th ground, the counsel reiterated the point on the dearth of tangible evidence proving the administration

of estates in 1982. He urged this Court to allow the appeal for the appellant to file the inventory and set aside the decisions of the two lower Courts.

Mr. Lameck John Erasto, on the other hand, had a long response in connection with the grounds of appeal. His argument was premised that, the appellant was given four months to file the inventory but she did not do so because the estate was distributed in 1982. On top of that, the appellant failed to comply with the order of the Court hence his appointment was revoked. The counsel further assailed the appellant for failing to administer the estate since her appointment in 2013. He urged further that exhibit D1 proved the administration of estate in 1982.

On the 2nd ground of appeal, Mr. Erasto was of the view that the Court wanted to do justice in this case than confining itself on technicalities. To bolster his argument, he invited the Court to the decision in the case of **General Marketing Company Ltd v. A Shariff [1980] TLR 60**. He further went on distinguishing the cases submitted by the counsel for the appellant. In his view, even if the exhibits were to be expunged, there is still evidence showing that the administration of estate was done in 1982. He disputed the allegation that form number IV was prepared for the purposes of this case. On the 3rd ground, Mr. Erasto averred that, the deceased lived in Bukoba though he originally came

from Kigarama; therefore the administration of the estate in 1982 cannot be nullified on the simple reason that the case was filed away from the nearest Primary Court. The two lower Courts agreed that the administration was done in 1982 and every beneficiary got his/her share.

On the 4th ground, the counsel refuted the allegation that the District Court decided the case based on the length of time taken by the appellant before filing the case. On the 5th ground, Mr. Erasto was of the view that the two lower Courts analysed every piece of evidence. He finally urged the Court not to disturb the concurrent findings of the two lower Courts.

When rejoining, Mr. Mswadick insisted that, exhibit D1 was not read nor tested in Court. He stressed on the need to expunge it and remain with the appellant's evidence which sufficiently proves that the estate was never distributed in 1982.

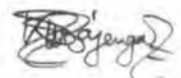
Having considered the grounds of appeal and oral submissions from the parties, there are two pertinent issues cropping-up from this appeal. First, whether the deceased's estates were distributed in 1982 as alleged by the respondent. Second, whether the appellant appointment was fairly revoked. In determining the first issue or point which encompasses the 2nd, 3rd and 5th grounds of appeal. On this point, there are two sets of argument. The appellant's argument is premised on the point that ever since the death of her father in 1976, there was

no administration of deceased's estate. Based on this fact, she was prompted to move Kassambya Primary Court in 2013 for her appointment to administer the estate.

On the other hand, the respondent's argument relies on exhibit D1 to prove that the deceased died in 1976. In 1977 Joseph Majula applied for the administration of estate and was so appointed vide Probate and Administration Cause No. 08 of 1977. To bolster his argument, the respondent tendered two documents which were all admitted as exhibit D1, i.e. form number IV from Kashai Primary Court which shows that Joseph Majula was appointed to administer the deceased's estate. Also, exhibit D1 contains minutes of the clan meeting which shows how the estate was distributed. Apart from the fact that the two documents were admitted and not read in court and therefore worthy to be expunged from the records of the trial Court, there are other information of concern in proving that the administration of estate in 1982. **First**, though form number IV may be proving that a probate and administration was filed in 1977 and Joseph Majula was appointed the administrator of estate, it does not suggest, at all, that, the estate was ever distributed to the heirs. **Second**, the minute of the clan meeting attached to form number IV does not, in anyway, suggest that the deceased's estate was distributed in 1982. **Third**, the two documents are copies of the original and there was no reason given why the court admitted copies instead of the original documents.


Therefore, on whether the estate was distributed in 1982, form number IV could not resolve this point. It is one thing to be appointed an administrator and it is another thing to distribute the estate to the heirs. Joseph Majula might have been appointed the administrator in 1977 but there is dearth of evidence whether he ever filed any inventory at Kashai Primary Court. Form number IV as said earlier, is different from an inventory. The minutes of the clan meeting are not inventory. Also, the documents showing withdrawal of money from the deceased's account does not prove distribution of estate. On this point, it was the respondent's obligation to avail the Primary Court with clear evidence to prove that the estate was distributed. In this case, the documentary evidence tendered by the respondent, does not suggest anything about the distribution of the estate in 1982. When such documentary evidence is expunged, the court remains with the oral evidence adduced by the respondent with his witnesses which also clashes with the appellant's evidence. In conclusion on this point, there is lack of evidence proving the distribution of the deceased's estates in 1982.

On the second issue on whether the appellant's appointment was fairly revoked by the Primary Court which accommodates the 1st and 4th ground, as already states earlier, the appellant was appointed as an administrator in 2013 she never filed any inventory before the Court despite being ordered to do so within four



months from the date of his appointment. The careful perusal of the file shows a proposed distribution in a form of minutes of the clan meeting. On this point, the appellant's counsel, Mr. Mswadick argued that, the appellant believed that, by filing the minutes of the clan meeting, there was no need to file an inventory. On his part, the trial Magistrate was justified in revoking his appointment because the inventory was not filed on time. But for the interest of justice as long as the appellant was not able to distinguish between the inventory and the minutes, she could have been ordered to file the inventory than revoking the appointment something which may further delay the distribution process. For the interest of justice and expedient distribution process, I allow the appeal, set aside the decision of the trial Primary Court and that of the District Court. I reinstate the appointment of the appellant as the administratrix of the estates of the deceased Eustace Rweikiza Majula and order the appellant to file the inventory within one month from the date of this order. No order as to costs. It is so ordered.



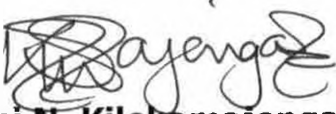

Ntemi N. Kilekamajenga
JUDGE
03/12/2021



Court:

Judgment delivered this 03rd December 2021 in the presence of the appellant present in person and her counsel, Mr. Ibrahim Mswadick (Adv); the respondent and his counsel, Mr. Lameck John Erasto. Right of appeal explained.




Ntemi N. Kilekamajenga
JUDGE
03/12/2021

