

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

PC CIVIL APPEAL NO. 131 OF 2020

(From the Judgement and Decree of the District Court of Temake in Probate Appeal No. 73 of 2019 before Hon. K. T. Mushi R.M dated 13th November 2019)

ZAINAB K. ATHUMANI..... APPELLANT

VERSUS

IBRAHIM ATHUMANI MWINYIGOHA.....RESPONDENT

JUDGMENT

Date of last order: - 29/3/2022
Date of judgment: - 27/05/2022

OPIYO, J.

The appellant is dissatisfied with the decision of Temeke District Court in Probate Appeal no 73 of 2019, Hon. K. T. Mushi originating from probate cause no. 51 of 2019 Temeke Primary court, Hon. C. Mrema. She appealed on the following grounds:-

1. That, the District Court erred in law and facts in revoking the grant of



letters of administration to the applicant while it had no powers to do so in accordance with the law.

2. That, the District Court erred in law and facts in revoking the grant of letters of administration by basing on evidence which were not raised before the trial court rather was raised on appeal by way of written submission.

3. That, the district court erred in law and in facts in revoking the grant of letters of administration on the ground that there was no written consent of heirs.

The appeal was heard by way of written submissions. Both parties complied with the court order. In this matter, the applicant was represented by Joseph Y. Mbogela and respondent by Samwel Silanda.

On the first ground, Mr. Mbogela submitted that according to section 49 of probate and administration of estates Act Cap. 352 the District Court could not revoke the grant of letters of administration that was granted to the



appellant by the Temeke Primary court. He argued that, such revocation was wrong because according to the gist of this provision, the court that can revoke the grant is the one which granted the same. That means if the letters is granted by the district court it is revoked by the same District Court. Therefore, the letters that was granted by the primary court ought to have been revoked by the same primary court not by the district court as it has been done in this matter as per provision of 9(1) of Primary Court (Administration of Estates) Rules GN No. 49 of 1971

'Any creditor of the deceased person's estate or any heir or beneficiary thereof may apply to the court which granted the administration to revoke or annul the grant on any of the following grounds...'

Under the above rule the respondent's remedy was to apply for revocation before Temeke primary court which granted the letters to the appellant and not by way of appeal to the District court. He cited the case of **Antony Steven Mtetemela and another v Mary Florent Steven Mtetemela, Misc. Appl No. 51 of 2019 HC Mwanza** to substantiate his argument.



The holding in Mtetemela's case he preferred is at page where the court held that:-

'The construction by the counsel could operate against the parity of reasoning, which is to the effect that, he who granted is the only one that can take away what he granted. The logic here is not had to discern. It is simply that grant of probate or letters of administration comes with conditions whose implementation must be gauged by the grantor and see if such conditions are complied with. It will be ironic that such assessment should be done by a different body that did not impose conditions for the grant'

Mr. Silanda strongly objected that, holding tight on his stand that the district court was right in what it did. He submitted that the provision of rule 9(1) cited by the appellant is only applicable if the administrator misappropriates deceased properties, not when fraudulent manners are imputed as in this case. He therefore advocated for the dismissal of this ground.

Submissions of both parties have been dully considered. The brief facts of the matter is that sometimes in 2019 the appellant after being nominated by the clan meeting applied for grant of letters of administration of the

estate of the late Athumani Mohamed Mwinyigoha before Temeke primary court. After hearing the matter, the appellant was dully appointed as a sole administratrix of the deceased estate. Dissatisfied the respondent preferred an appeal to Appeal no 73 of 2019 to Temeke District court claiming fraud in appointment which upon hearing nullified the decision of Temeke Primary Court and revoked the appointment of the appellant.

From the facts above, it is my view that, indeed Temeke District Court had no powers to revoke grant of letters of administration granted by Temeke Primary court as correctly argued by the appellant under rule 9(1) quoted above. It is the court that granted the letters of administration or which has the mandate to revoke the same, not an appellate court in appeal as it was done in this case (see the wisdom of the court in Mtetemela's case (supra). For the reason this ground is upheld and the judgment and decree of Temeke District court in Probate Appeal No 73 of 2019 is hereby quashed and set aside. Whoever is still interested in pursuing the matter is advised to approach the proper forum for that. As this



ground alone is sufficient to dispose of the matter, I find no need to discuss the remaining grounds.

Appeal allowed.



A handwritten signature in black ink, appearing to be "M. P. Opiyo", written over a horizontal line.

M. P. OPIYO,
JUDGE
27/5/2022