

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

PC CIVIL APPEAL NO. 18 OF 2021

(Originating from Probate Appeal No. 6/2021, Original Mirathi Na. 4/2021)

FRANCISCA FRANCIS KIWIA APPELLANT

VERSUS

EMILIAN MICHAEL MPATERESPONDENT

29/3/2022 & 10/5/2022

JUDGMENT

MWENEMPAZI, J.

The Respondent herein named was appointed as an administrator of the estate of the late Julian Mreiye Mushi who died intestate on the 1st July 1985. It is very unfortunately for the parties; the demise of the late Julian Mreiye Mushi was not followed up with the appointment of the administrator of his estate. That remained so until in the year 2021 when the respondent was appointed as an administrator of the estate of the late Julian Mreiye Mushi.

The late Julian Mreiye Mushi was survived with three children namely Scolastica Julian Mushi, Yasinta Julian Mushi and Raphael Julian Mushi. The clan meeting which appointed the Respondent to apply for letters of administration was convened on the 29th December 2020. It was prompted by a land dispute No. 183/2019 in the District Land and Housing Tribunal



and Appeal No. 26/2020. Both were concerned with the landed property at Kosata Area, whereby it was decided that the area belonged to Raphael Julian Mushi.

At this point it is necessary to note that when (Probate and Administration Cause (Mirathi) No. 4 of 2021 was instituted by the Respondent, only Yasinta was still alive. Raphael and Scholastica Julian Mushi had already passed away.

In Probate and Administration (Mirathi) No. 4/2021, EMILIAN MICHAEL MPATE was appointed as an administrator of the estate of the late JULIAN MREIYE MUSHI. That was by a decision on 11th February, 2021.

In the course of executing the duties of his office, the administrator of the estate informed the court that he found a farm at Longuo "A" Block C Plot No. 17 Uru South Ward which he allocated it to Hyasinta Julian Mreiye. The appellant was dissatisfied; thus, she lodged an objection against the decision of the administrator by writing a complaint letter and registered it in the Primary Court on 23rd April, 2021, that the distribution did not do justice to grandchildren of the late Julian Mreiye Mushi.

A summons was issued and parties attended for hearing. In the objection by the appellant herein, she objected that there were two plots left by the deceased. One at Longuo A and another at Okaseni. Only the plot at Longuo A has been distributed. In the argument by the objector, since Raphael had no child, the properties of the late Julian Mreiye Mushi should be distributed to Scholastica and Hyasinta. And since Scholastica also passed away, then her children should be allocated her shares.

In the decision, the court ordered re-collection of properties of the deceased and redistribute afresh to the beneficiaries, children of the deceased or the grandchildren.

The appellant appealed to the District Court of Moshi against the decision of the Primary Court in regard to the objection. At this level I think it will be more relevant to quote the decision which was made by the Primary Court, then the subject of appeal in the District Court in its appellate Jurisdiction, the relevant part reads as follows: -

"...Hivyo basi mahakama hii inatamka msimamizi wa mirathi kufanya yafuatayo:-

- 1. Kukusanya mali zote za Marehemu Julian Mreiye Mushi na hii ni pamoja na kiwanja kilichopo Okaseni na Longuo A.*
- 2. Mgawanyo ufanyike kwa watoto wote walio hai na wasio hai kwa sababu wote ni watoto wa marehemu na wakati Marehemu anafariki watoto wake wote walikuwa hai, na kwa vile motto wa kiume wa Marehemu ambaye ni Raphael Julian Mushi alifariki bila kuacha mridhi yaani (watoto) basi mgawanyo ufanyike kwa Scholastica Julian Mushi ambaye amefariki lakini ameacha watoto agaiwe stahiki yake na watoto wake warithi kutoka kwa mama yao, vilevile kwa mtoto aliye hai ambaye ni Yasinta Julian Mushi agaiwe eneo lake na siku ambayo hatakuwepo duniani watoto wake wataridhi kutoka kwa mama yao."*



The District Court at the first appeal decided that the wording shows the trial magistrate stepped into the jurisdiction not vested to the court. The court ought to have guided the administrator on matters and factors to be considered when distributing the estates of the deceased. The appeal was allowed and the decision of the trial court quashed.

The administrator was then directed to conduct a meeting with clan members so that they can agree on the distribution of the properties of the estate and in case one is dissatisfied with the distribution, then the person may file a suit.

In this court the appellant is challenging the decision of the appellate court on three grounds:

1. That the Honourable Appellate Magistrate erred in law and fact by allowing the Appeal on the ground that the trial court distributed the estate of the deceased on behalf of the Administrator which led to the miscarriage of justice.
2. That the Honourable Appellate Magistrate erred both in law and fact by quashing the trial court's decision and ordered the appellant to conduct a meeting with clan members on how they will agree with the distribution of the estate, thus, interfered with the power of the administrator on the distribution of estate to the beneficiaries.
3. That the honourable Appellate magistrate erred both law and fact by not attending either ground of appeal which if dealt with could interpret the legal issues which arose at the trial, hence left parties with unsolved issues.

The first ground is that the Appellate court erred by holding that the Primary Court did distribute the properties of the estate. The counsel for the appellant submitted that the primary court did not distribute the properties. The fact that the appellant was not given any property made it necessary for the appeal. The Court has no jurisdiction to distribute properties of the estate. However, emphasis on need to collect all the properties was necessary but that remains to be the duty of administrator.

The records of the Primary Court shows that the administrator collects all the properties of the estate and redistribute to all beneficiaries. The Primary Court did not distribute properties but warned itself that is not the duty of the court. The foundation of an order is that the distribution had not yet been done. All the children of the late Julian M. Mushi had not yet been distributed. That was not done until 2021.

On the first ground of appeal, the counsel for the respondent submitted that they opined that the first appellate court was right to find that the trial court magistrate in Mirathi Na. 4/2021, truly erred by interfering with powers of the administrator in the distribution of the estate.

At page 7 of the decision of the first appellate court, the District Court took note of that which was wrong in the decision of the Primary Court. The relevant part is quoted. Particularly the wording: -

"Na hii ni pamoja na kiwanja cha Okaseni na longuo A."

How did the court know of the presence of the Plot and direct the administrator what to do. It was proper for the first appellate court to hold as it did. The respondent's counsel supported the argument with



the case of **Monica Nnyamakare Jigamba Vs. Mugeta Bwire Bakome and another, Civil Application No. 199/2019 CAT at DSM**, in this case Sahel, Judge of Court of Appeal at page 15 paragraph 3 - 4 observed it is an error for the court to step into the shoes of the administrator of the estate. The Court of Appeal went further and held that: -

*"The Probate or letters of administration court has no powers to determine the beneficiaries and heirs of the deceased. Similarly, it has no power to distribute the estate of the deceased. The law has vested that power to the grantee of probate or letters of administration. This is clearly provided under section 108 of the **Probate and Administration Act, Cap. 352 R.E.2019.**"*

That which has been observed by the justice of appeal has been seen in Probate Cause No. 4/2021. Also, in the reported case of **Ibrahim Kusaga Vs. Emmanuel Mwita [1988] T.L.R.26.**

*"A Primary Court ought not to distribute the estate
Of the deceased, that is the duty of the administrator
Appointed by the Court"*

The counsel for the submitted that they are supporting the decision made by the first appellate court decision.

On the first ground of appeal, the appellant in the first appellate court felt aggrieved and decided to appeal believing that his office has been

interfered with by the Primary Court in dealing with the objection. The District Court quashed the whole decision of the trial Court. We must recall we have an administrator who acted to guard against interference of the court to his powers. However, at this appeal, the fact that the appellant was not given any property made it necessary for the appellant to appeal. These problems must have arisen due to delay in institution of the Probate case after the demise of Julian Mreinye Mushi. Had it that the distribution was done at the earliest possible time there wouldn't be any problem.

As rightly argued by the counsel on both sides, distribution of the properties of the estate is not the duty of the court but the court has a duty to direct what should be done. The order demanding the administrator to collect and distribute properties of estate was wrongly interpreted. Of course, the trial magistrate over stated what had to be done to the extend of touching the powers of the administrator of the estate. He went further to state who should be allocated shares of the estate and how to go about. I think on the authorities cited above, the magistrate ought to have just directed the administrator to recollect the properties and distribute to all beneficiaries. There is this case the case of **Mariam Juma V. Tabea Robert Makange, Civil Appeal No. 38 of 2009(unreported)** was cited for the holding that:

*"The High Court Judge did not have any mandate to determine who should be a beneficiary from the deceased's estate. This role was to be prayed by the Administrator of the deceased's estate **appointed by the Court**"*



I would therefore also urge that to be the correct position which all the court below the Court of Appeal of Tanzania should follow including the parties in this case.

On the second ground, that the Primary Court erred in Law and fact by quashing the trial court's decision and ordered the appellant to conduct a meeting with Clan Members on how they will agree with the distributing of the estate, thus interfered with the powers of the administrator on the distribution of estate to the beneficiaries.

The counsel for the appellant submitted that it is their view that the order of the first appellate court to direct a meeting interfered with the powers of the administrator of the estate. The administrator was supposed to collect properties, distribute and account to the court.

The Clan meeting has a role in appointing the administrator but no duty in handling or execution of the duties of the administrator of the estate.

Mr. Urlick Shayo, Counsel for the respondent prayed the second ground of appeal be dismissed with costs on the reasons that the first appellate court directed that the relatives seat in a meeting discuss on how to distribute through the administrator no more. The administrator had already been appointed and that he knows her duties. That is a procedure to administer the estate but not the Clan to direct what and how to be distributed.

The administrator was not interfered with anyhow by the members of the Clan. At page 8 of the first appellate court decision, it was recorded: -

A handwritten signature in black ink, appearing to read 'D. M. ...', is located in the bottom right corner of the page.

"I therefore allow this appeal and quash the decision of the trial court, the Appellant should conduct a meeting with the Clan Members so that they can agree on the distribution of the estate and in case one is dissatisfied with the distribution, then that person may file a Civil suit to the court with competent jurisdiction."

That was the opinion of the first appellate court in this appeal. The court has shown the way forward for any member who is dissatisfied. He prayed the second reason to be dismissed with costs.

I have no doubt the principles recorded in this judgement on the first ground of appeal has a role to play in determining this ground as well. In my view, the details on how to conduct the administration of the estate is interference so to say given that the Magistrate is a person of authority over the administrator of the estate. It was enough to give the directives to collect, distribute and account which are the main roles of the administrator of the estate. The rest is not required as it is an interference to the office of the administrator of the estate. Therefore, the ground succeeds as explained.

The power to collect, distribute and account to the court remains in the hands of the administrator of the estate. An aggrieved party should claim against the administrator.

In a way, I find there was indeed a need to quash the decision to clear the parties including the court of the misleading directives which interfered with the role of administrator. In my view therefore the directives and or

declarations made in deciding on the objection raised by the appellant was right because they had a tinge of interference in some areas. However, I think also, it was proper to direct the whole job to be done afresh as there were dissatisfactions among the beneficiaries of the estate.

As a way to conclude, I think the third ground of appeal has no effect given the position taken by this court on what was done. The decision to quash the decision on objection is upheld to the extent explained and it is directed that the administrator now should collect all properties, distribute to the beneficiaries afresh and account to the court. Any aggrieved party should follow proper procedure according to the prescription of the law governing administration of estates. The appeal succeeds as explained above with no order as to costs. It is ordered accordingly.

Dated and delivered at Moshi this 10th day of May, 2022.




T. M. MWENEMPAZI
JUDGE

Judgement delivered in Court in the presence of the appellant and Mr. Emmanuel Karia, her advocate and the Respondent and Mr. Urlick Shayo, his advocate this 10th day of May, 2022.


T. M. MWENEMPAZI
JUDGE