

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

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 82 OF 2021

*(Originating from Probate Appeal No. 20 of 2020, Ilala District Court and
Probate Cause No. 38 of 2016, Kariakoo Primary Court)*

AMIE SADICK SANGA.....APPELLANT

VERSUS

LUCIAN SAMSON SANGA.....RESPONDENT

JUDGMENT

Date of Last Order: 4/11/2021
Date of Judgement: 1/7/2022

LALTAIKA, J.

This is the second appeal by the appellant **AMIE SADICK SANGA** who is dissatisfied with the decision of the Ilala District Court in Probate Appeal No. 20 of 2020. She has appealed to this court with two grounds of appeal as here under;

- 1. That, the appellate magistrate erred in law and in fact for failure to exercise its supervisory power in determining that the Kariakoo Primary Court had no territorial jurisdiction in determining the matter.*

2. That the appellate magistrate erred in law and in fact for failure to address the grounds of appeal raised by the appellant in the judgment.

By order of this court the matter was fixed for hearing by way of written submissions. The appellant was represented by Mr. Mbilin'gi, learned advocate whereas Mr. Ndazi, learned advocate appeared for the respondent.

Submitting in support of the appeal Mr. Mbilin'gi in respect of the first ground of appeal submitted that, the deceased had fixed place of abode within Kigamboni District however the application for grant of letters of administration were filed at Kariakoo Primary Court within Ilala district. He clarified that section 19(1) (c) read together with paragraph 1(1) of the fifth schedule to the Act requires application for probate or letters of administration in primary court having geographical jurisdiction where the deceased had a fixed place of abode. Mr. Mbilin'gi is of the view that the issue of jurisdiction is fundamental as it goes to the root of the matter, thus it can be raised at any stage of proceedings where in the matter at hand it is evident that the trial court has no jurisdiction to entertain the matter. He considered the fact that the deceased had properties in Dar es Salaam and Mbeya thus the High Court is seized with jurisdiction to entertain the matter and not the primary court as the case in this the matter at hand.

Further to his submission Mr. Mbilin'gi is of the view that the trial court vested itself with the jurisdiction not conferred by the law. He therefore urged this court to nullify the proceedings and decision of the trial court and the first appellate court for want of jurisdiction. In amplifying his

argument on this ground of appeal, Mr. Mbilin'gi cited the cases of **Beatrice Brighton Kamanga & Amanda Brighton Kamanga vs Ziada William Kamanga**, Civil Revision No. 13 of 2020, HC at Dar es Salaam and **Masoud Mbita & 2others vs Daria Ruthinda** (1998) HC.

With regard to the second ground of appeal, Mr. Mbilin'gi submitted that a judgment must contain the points for decision and reasons for the decision, he explained that the appellate magistrate failed to discuss the grounds of appeal with submissions by both parties thereto, but a reproduction of submissions by both parties without reason of her findings. To strengthen his argument Mr. Mbilin'gi cited the following authorities;

- i. **Hassan Said Chonga vs Yasini Mohamed Mnengelea, HC**
- ii. **Rajabu Dibagula vs Republic, [2004] TLR 196.**
- iii. **Dotto s/o Ikongo vs Republic, Criminal Appeal No.6 of 2006**
- iv. **Dinkerrai Ramkrishana Pandya vs Republic (1957) EA**

Replying to the appellant's submission Mr. Ndazi with regard to the first ground of appeal submitted that the issue of deceased place of abode is not a pure point of law but a question of fact which needs evidence to prove the same. He also argued that the appellant's counsel submission is from the bar. To clarify his argument, he by cited the case of **Rosemary Stella Chambejairo vs David Kitundu Jairo**, Civil Reference No.6 of 2018.

On the second ground of appeal Mr. Ndazi submitted that the record of the first appellate court speaks for itself. He referred this court to page 14 of the typed judgment which gleans that the appellate magistrate

considered the grounds of appeal from both parties. In that regard Mr. Ndazi is at one with the decision of the first appellate court considered the grounds of appeal and submissions by both parties and arrived to the decision which he finds just.

In his rejoinder Mr. Mbilin'gi submitted that the respondent has failed to grasp the gist of the appellant's submission he thus maintained his submission in chief.

Having carefully considered the rival submissions of the parties from the outset it is important to note that, this is a second appeal, thus this court is tasked to deal with matters of law and not of facts, see the case of **Anthony Jeremiah Sorya vs Republic**, Criminal Appeal No.52 of 2019. I shall now revert to consider the grounds of appeal. I propose to begin with the second ground of appeal for reasons to be noticed in due course. Upon perusal of the complained judgement by the first appellate court, I have found that the appellate magistrate has given a summary of submission by counsels from both sides. Her conclusion at page 14 of the judgment after the summary of submissions reads as follows;

This court has gone through the arguments of both parties and has discovered that the appellant has no acceptable reasons to revoke the letter of administration granted to the respondent.

The appellant has failed to prove on how the administrator misuse the deceased's assets while all the wealth is under the signatories of the family account.

Hence this appeal is dismissed with cost. The trial court decision upheld.

I am in agreement with Mr. Mbilin'gi that the appellate magistrate failed to consider the grounds of appeal and re-evaluate the evidence which was before the trial court and came up with its own findings. I am fortified by the decision of the court the case of **Simon Edson @Makundi vs Republic**, Criminal Appeal No.5 of 2017 CAT the court made the following observation;

"The appellate court is bound to consider the grounds of appeal presented before it and in so doing, need not discuss all of them where only a few will be sufficient to dispose of the appeal. It is also necessary for the first appellate court to re-evaluate the evidence on record before reaching to its conclusion. With respect, the impugned judgment fell far below the required standard and for that reason, it was not a judgment known in law. It was a nullity. For the stated reasons, we invoke our revisional powers under section 4 (2) of the AJA and nullify the purported judgment"

Similarly in the case of **Cheyonga Samson @ Nyambare vs Republic**, Criminal Appeal No.510 of 2019 CAT the court held that;

"We agree with the learned State Attorney that the failure by the first appellate court to consider the grounds of appeal which the appellant presented through his petition of appeal was a fatal irregularity calling for the exercise of our power of revision under section 4(2) of the AJA"

The applicability of the above decisions of the court falls squarely in the matter at hand, I have considered the fact that it is glaring from the judgment of the first appellate court that the court failed to consider the grounds of appeal, I therefore exercise the revisionary powers under

section 31 (2) of the Magistrate's Courts Act and nullify and quash the judgment of the appellate court.

Embarking on the first ground of appeal pertaining the issue of jurisdiction of the trial court to entertain the probate matter which this appeal stems, it is trite law that jurisdiction of the court is the creature of statute. The court cannot assume the jurisdiction not conferred by the law. In the case of **Yohana Balole vs Anna Benjamin Malongo**, Civil Appeal No.18 of 2020 CAT the court deliberated the concept of jurisdiction where it was stated that;

*"It is common ground that jurisdiction of courts is a creature of statute and is conferred and prescribed by the law and not otherwise. The term "Jurisdiction" is defined in Halsbury's Laws of England, Vol. 10, paragraph 314 to mean: -"...the authority which a court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for Its decision. **The limits of this authority are imposed by the statute; charter or commission under which the court is constituted, and may be extended or restrained by similar means.** A limitation may be either as to the kind and nature of the claim or as to the area which jurisdiction extended or it may partake of both these characteristics. "[Emphasis added].*

See also the case of **Aloisi Hamsini Mchuwau & Another vs Ahamadi Hassani Liyamata** Criminal Appeal 583 of 2019 CAT

In this matter the jurisdiction of the primary court is derived from the provisions of section 3 and section 19 of the 19(1) (c) of the

Magistrates' Courts Act read together with paragraph 1(1) of the fifth schedule to the Act provides that;

*"The jurisdiction of a primary court in the administration of deceased's estates, where the law applicable to the administration or distribution or the succession to, the estate is customary law or Islamic law, may be exercised in cases where the deceased at the time of his death, **had a fixed place of abode within the local limits of the court's jurisdiction. (Emphasis added)***

Guided by the above cited provision of the law and case laws, I find it apt to assess whether the trial court had jurisdiction to entertain the probate cause no.38 of 2016 before endeavouring to the merit of application for revocation of administrator of the deceased estate. That probed me to revisit the records of the probate cause no.38 of 2016, specifically the death certificate of the deceased shows that the deceased place of abode was Kigamboni. To this end, I am in agreement with Mr. Mbilin'gi's submission, that the trial court did not have the territorial jurisdiction to entertain the matter on the ground that the deceased place of abode was not within the geographical limits of Ilala District. At this juncture I am persuaded by the decision of this court in the case of **Hyasinta Kokwijuka Felix Kamugisa vs Deusdedith Kamugisha**, Probate Appeal No. 4 of 2018, HC where the court held that;

"Therefore, the primary court established within the district has geographical jurisdiction within the whole district where it is established. It follows therefore that a person may institute a case in any primary court within the district where the deceased at (sic)a fixed abode at the time of his death."

I therefore find the trial court seized itself with the jurisdiction not conferred by the law. It suffices also to hold that the question of jurisdiction is a matter of law as it goes to the root of the matter thus it may be raised at any stage as rightly submitted by Mr. Mbilin'gi. On this point Mr. Ndazi misdirected himself when he submitted that the question of jurisdiction is the matter of fact which needs evidence to prove the same. He has also submitted that the appellant is challenging the application of revocation of letters of administration granted to the respondent and not the grant of letters itself. I am of the considered view that the question of jurisdiction goes to the root of the matter. As discussed above, the question of jurisdiction can be raised at any time of proceedings, since the letters of administration were obtained from the court lacking jurisdiction it is not worth it to determine the grievances arising from the impugned decision of the trial court.

In the foregoing analysis, the first ground of appeal is meritorious. Therefore, I hereby nullify and quash the proceedings and decision of the primary court of Kariakoo in probate no.38 of 2016 for want of jurisdiction.

The parties if may so wish, can institute another petition before the court with requisite jurisdiction to entertain the same. I make no orders as to costs.

It is so ordered.



E.I. LALTAIKA

JUDGE
1/7/2022