

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL No. 150/2020**

(Originating from the Ruling and Order of the District Court of Kinondoni at Kinondoni Hon H. A. Kikoga, RM in Civil Revision No: 37/2019 arising from Probate Cause No. 174/2019 of Sinza Primary Court.)

**BETWEEN**

**EMMANUEL MNZAVA ..... APPELLANT**

**VERSUS**

**MHIDINI HYERA ..... RESPONDENT**

**J U D G M E N T .**

This appeal originates from the proceedings of Sinza Primary court in Probate Cause No. 174/2019 which was later adjudicated by the District Court of Kinondoni as Civil Revision No. 37/2019. Sinza Primary Court granted letters of administration of the estate of the late Dora Simgomba to Mhimid Hyera, the Respondent herein, on 7<sup>th</sup> August 2019.

Before grant of letters of administration, the Appellant unsuccessfully challenged jurisdiction of the Primary court in determining a probate case involving the estate of the late Dora Msigamba. He alleged that, the deceased professed Christianity, while the jurisdiction of Primary Courts is limited to estates administered in Islamic and customary laws as provided under section 18(1) of the Magistrates Courts Act, [Cap. 11 R.E 2019]. His challenge was preferred by way of a Revision Application in which he prayed to have the proceedings before Sinza Primary Court revised. The application was dismissed.

Aggrieved by the decision of the Kinondoni District Court in the Revision Application the Appellant preferred this Appeal on the following grounds;

1. That the Hon. Trial Magistrate erred in law and facts by failure to take into consideration evidence tendered by the Applicant/Appellant in the affidavit hence reaching to an erroneous decision.
2. That the trial Magistrate erred law by misconstruing and misapplying the principles laid down in Re Innocent Mbilinyi case hence arriving to an erroneous decision.

3. That the Hon. Trial Magistrate erred in law and facts in holding that the Applicant Appellant did not substantiate that at the time of death Dorah John Msigomba (deceased) was prophesying Christian faith thus, reaching a wrong decision.
4. That the Hon. Trial Magistrate erred in law in misconstruing the provisions of section 18(1) (a) is (b) and item 1 (1) of the 5<sup>th</sup> schedule to the Magistrates Courts Act, thus reaching to erroneous decision.

The appeal was disposed by way of written submission. The Appellant was represented by Advocate Leonard T. Manyama while the Respondent was represented by Advocate Robert O. Mlowe.

Submitting in support of the appeal, learned counsel for the Appellant consolidated all grounds of Appeal as he considered the same to have a single core issue that is whether the deceased person one Dorah John Msigomba was prophesying Christianity at the time of her death.

He submitted that, the District Court agreed at page 4 of the Judgement that, Primary Courts have jurisdiction to entertain and determine Probate and Administration Causes whose under Islamic and

Customary laws. However, the Court held that there is no evidence as to whether the deceased did in fact live a Christian life style.

The learned counsel argued that such evidence is available in the affidavit of the Appellant who was the Applicant before the District Court. He added that, the religion of the Deceased was not contested by the Respondent, thus, it was not necessary to load the Court with evidence on undisputed issues.

In his reply submission, the Respondent's counsel challenged the manner the Appellant challenged the jurisdiction of the Trial Court. He argued that, the Appellant preferred a Revision Application to challenge jurisdiction of the Court without even raising the issue before the Trial Court and have the same determined by the Trial Court.

He submitted further that revision as per S. 22(1) of Magistrates Courts Act vests powers in the District Court to revise proceedings and decisions of cases that has already being determined. To his surprise, the Appellant preferred a revision in respect of the suit which is not yet determined. He considers the same to be an irregularity that should not be blessed by this court.

On the issue of religion of the deceased, the learned counsel submitted that, the District Court correctly held that, there is no evidence that proves how the deceased lived her day to day life. He argued that, it is very important to establish the deceased mode of life so as determine whether she lived a Christian mode of life or she had a different mode of life. Without such evidence, the District Court correctly dismissed the Appellants Application. The Appellant had no rejoinder.

I have considered submission by both parties and Court record. According to Court record, the Appellant, preferred a revision application against the decision of Sinza Primary Court, declining to determine the issue of ownership of landed properties, houses, between the deceased and the Appellant who was the deceased husband. Court record establish clearly that, the Appellant had no issues regarding the Respondent being appointed to be the administrator the deceased's estate. He also had no issues with the Court in which the probate cause was instituted. The issue of jurisdiction of the Primary Court to deal with administration of the deceases estate emerged after the Primary Court correctly declined to determine the land dispute between the Appellant and heirs of the deceased. The Appellant claim to be the sole owner of the houses while the Respondent claimed the same to form part of the deceased's estate.

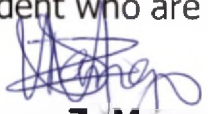
The Primary Court ruled out that it does not have jurisdiction to determine land disputes. The Primary Court was correct as primary court do not have jurisdiction to determine land disputes.

The issue of jurisdiction, of the primary court in respect of this matter was in my considered view correctly determined by the district court. It is true that prophesying a certain religion in itself does not establish the mode of life of a particular person. Evidence on how the deceased lived his day to day life is very important in establishing the deceased's mode of life. Unfortunately, as correctly noted by the District Court, the Court was not availed with any evidence to enable it determine the deceased's mode of life.

Despite that, the issue was raised wrongly. The Appellant did not raise the issue of jurisdiction of the Court before the Trial Court. He raised the same in the course of an application for revision which was preferred contrary to the law. The law, section 43(1) of the Magistrate's Courts Act, prohibits appeals and Revision Applications on orders that did not determine the matter to its finality. By the time the Appellant preferred his Revision Application, the Primary Court has not yet determined the Probate Matter before it. The Appellant, instead of challenging jurisdiction of the Court before the Court which sat to determine the matter, he

preferred a Revision Application merely to challenge jurisdiction of the Court that handles the matter. Such actions cannot be blessed by this Court as they tend to delay final determination of cases filed in Courts.

For those reasons, I find the appeal to unmeritorious and I hereby dismiss the same, given the need to maintain good relationship between the Appellant and the Respondent who are related, I do not award costs.



**Hon. Z. Mango**  
**Judge**  
**30/06/2022**

