

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC. CIVIL APPEAL NO. 4 OF 2022

(C/F Civil Appeal No. 13 of 2021 in the District Court of Karatu, Originating from Probate Cause No. 15 of 2021 at Karatu Primary Court)

FLECHA GENES MEELA.....APPELLANT

VERSUS

ADELAIDA GENES MEELA.....RESPONDENT

RULING

13/05/2022 & 08/07/2022

GWAE, J

This is the second appeal. It presents one of the unusual phenomena in our African culture where sister and brother of the same biological parents are fighting over the administration of the properties of their elder sister, Benedicta Genes Meela (hereinafter "the deceased") who passed away on the 6th day of February 2021.

The dispute between the parties arose on the 10th March 2021 when the respondent appeared before the Karatu Primary Court (trial court) to

petition for letters of administration of her late sister who died intestate. It was also unfortunately that the deceased had left neither husband nor child.

On the 19th March 2021, the appellant entered a caveat or objection proceedings regarding the sought grant of letters of administration, the trial court determined the petition and the same was found without merit. Consequently, the respondent was appointed to administer the estate of the deceased.

Aggrieved by the decision of the trial court, the appellant filed an appeal in the Karatu District Court at Karatu where he also lost. He is now before this court for the second appeal as second bite with the following grounds of appeal;

1. That, the first appellate court erred in law by not nullifying the whole proceedings of the Karatu Primary Court on the sole ground of lack jurisdiction in terms of section 88 (2) of the Probate and Administration of Estate Act, Cap 352 R.R 2019.
2. That, the first appellate court erred in law and fact when it failed to hold that the primary court may hear matter relating to grant of administration of estate where it has jurisdiction, that is where

the law applicable is customary law or Islamic law, but not in this case where deceased professed Christian religion contrary to section 18 (1) (2) of the Magistrate Court Act Cap 11 Revised Edition, 2019.

3. That, the first appellate court erred in law and in fact by holding at page 3 of its typed judgment that the act of the respondent of misusing or misappropriation of the deceased's properties is premature.
4. That, the first appellate court did not properly analyze the evidence adduced at the trial court, hence arriving at the wrong decision.
5. That, the first appellate court erred law and fact in attaching less weight to the appellant's evidence adduced at the trial court and attaching more weight on contradictory to oral evidence of the respondent.

At the hearing of the appellant's appeal, both parties appeared in person, unrepresented. The appeal was ordered to be argued by way of written submissions which I am going to consider accordingly.

From the above grounds of appeal, this court finds that the 1st and 2nd grounds of appeal calls upon this court to determine whether the trial court had jurisdiction to determine the matter. Much as it can be clearly seen from the records that the issue of jurisdiction was never raised in the courts below, however, it being a question of jurisdiction, precedents have set a principle that a point of law challenging jurisdiction of the court can be raised at any stage and the same has to be determined first before proceeding with a determination of a substantive matter. Reference is made to decisions of the Court of Appeal of Tanzania in the case of **R. S. A Limited vs Hanspaul Automechs Limited Govinderajan Senthil Kumal**, Civil Appeal No. 179 of 2016 and **Peter Ng'homango v. Attorney General**, Civil Appeal, No. 114 of 2011 (both unreported).

Thus, since the jurisdiction to entertain any matter is a creature of statute, it is therefore the opinion of this court that, it is not invasive for the jurisdictional issue to have been raised at this appeal stage. Hence, this court proceeds to determine it as herein under;

The jurisdiction of the Primary Courts in administration of deceased persons' estates is provided under Rule 1 of the fifth schedule of the Magistrate Courts' Act (supra) which reads;

*"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 is mine)".*

Moreover, it has been the position of the law under section 18 (1) (a) of the Magistrates' Courts Act, Cap 11 R.E, 2019 that, the jurisdiction of Primary Court is limited only where the law applicable is Customary law or Islamic law.

This being a court of record, I have meticulously gone through the entire records of this appeal particularly the trial court records at Form No. 1 which is an application form for appointment of an administrator of the estate of a deceased person, at paragraph 7 it is vividly stated that the deceased professed Christian religion. For sake of clarity, the said paragraph is hereby reproduced;

"Marehemu alikuwa (eleza kabila) MCHAGA na alikuwa mfuasi wa dini ya MKRISTO."

From the records, it is undisputed fact that, the deceased at the time of her lifetime was professing Christian faith the fact that was also admitted by the respondent when probed by the court to address it on whether the deceased professed Christianity or not.

Nevertheless, Primary Courts may have jurisdiction in probate matters concerning Christians where it is proved that the deceased lived in customary mode or manner of life in which situation the question of professing Christianity does not interfere with the administration of his or her estate. The reason is that by a merely being a Christian does not necessarily mean one has been detached from his or her customary life. There must be evidence to support the assertion that the deceased's intent was to have his or her estate administered in accordance with Christian faith.

It is therefore clear that, there is a distinction between Christians who live and practice normal customary life and those who have professed Christian religion and either by a declaration or by their acts or manners of living. Therefore, there must be evidence establishing that they have professed as such and intended that their estate will be administered under the applicable law to Christians that is in accordance with provisions of

Section 88 of the Probate and Administration of Estates Act, [Cap. 352 R. E. 2002].

In **Rev. Florian Katunzi vs. Goodluck Kulola** PC. Probate Appeal No. 02 of 2014 (unreported) where this Court (Hon. Makaramba, J (rtd). held inter alia that: -

"It is however without dispute that the deceased Moses Samwel Maguha Kulola who was an Archbishop, not only professed the Christian religion but also practised Christianity. It cannot by any stretch of imagination be expected that by the manner of the life of the deceased he intended that his estate should be administered, either wholly or in part, according to any other law than the law applicable in Tanzania to the administration of the estates of persons professing the Christian religion. This being the case, therefore the Primary Court had no jurisdiction".

The above being said, I there find the 1st ground of appeal meritorious. Having determined the 1st ground of appeal as herein, I therefore do not see any reason to proceed determining other grounds of appeal as the court's finding above is capable of disposing of this appeal.

Consequently, the proceedings, judgments and decree of the trial court and those of the 1st appellate court are hereby quashed and set aside. The

parties are directed to file the matter to the court of competent jurisdiction.
The parties herein being blood relatives, I refrain from making order as to costs.

It is so ordered.

Dated and delivered at ARUSHA this 8th July, 2022




M. R. GWAE
JUDGE
08/07/2022