

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA DISTRICT REGISTRY)

AT IRINGA.

PC PROBATE APPEAL NO. 01 OF 2021

(Arising from Probate Appeal No. 01 of 2020 Iringa District Court at Iringa which originated from Probate and Administration Cause No. 48 of 2020 of Bomani Primary Court).

ONOLINA J. MAKETA.....APPELLANT

VERSUS

METHEW CHRISTOPHER SANGA.....RESPONDENT

Date of last order: 22/03/2022

Date of Judgement: 27/07/2022

JUDGEMENT

MLYAMBINA, J.

The late Methew Christopher Sanga (henceforth the deceased) passed away intestate since 2002. No one lodged for the petition of the administration of his estate. The deceased had five children from two woman. The first one was the Respondents' mother who is no more and the second woman is the Appellant herein known as Onolina J. Maketa. After the demise of the late Methew Christopher Sanga, the Appellant and the Respondent successfully petitioned before Bomani Primary Court

(hereinafter referred to as the Trial Court) through *Probate and Administration Cause No. 28 of 2020* to be appointed as Administrator and Administratrix of the estate of the deceased. Their cause was granted and they were appointed on 30th April, 2020.

Surprisingly, on 5th day of May, 2020, only four days from their appointment, the Respondent herein filed a letter in which he prayed for the Court to revoke the Appellant appointment as Administratrix of the estate of her late husband entered by the same Court on the ground that the Appellant failed to cooperate to administer the estate. Also, he prayed for re-appointment of another person who will be willing to accomplish the task assigned to them by the Trial Court.

The Appellant opposed the Respondent complain via her letter dated on 12th June, 2020. The Trial Court adhered to the Respondent complain and revoked not only the Appellant but also the Respondent appointment entered on 30th day of May, 2020. The Trial Magistrate went further to appoint the Iringa District Commissioner to be the Administrator General who will be responsible on administering the deceased estate.

Being aggrieved with the afore mentioned decision, the Appellant unsuccessfully appealed to Iringa District Court (herein after referred to

as the First Appellate Court) where the Court upheld the decision of the Trial Court, hence this appeal based on six grounds, thus:

- 1. The first Appellate Court greatly erred in facts and law by believing that the revocation of the Administrators of the deceased estate could be done by basing on filed letters without hearing the parties as was done by the Trial Court.*
- 2. The first Appellate Court greatly erred in law by not appreciating that the Appellant has a life interest in the deceased estate which the Trial Court erroneously ordered for disposal.*
- 3. The First Appellate Court greatly erred in law by allowing the decision of the trial Court which in turn did not take into account the Appellants greater and immediate interests in the deceased estate in priority to lesser or more remote interest.*
- 4. The First Appellate Court greatly erred in law even after referring to the authority in the cited case law,*

by believing that the District Commissioner of Iringa Region (sic) is the Administrator General.

5. The trial Court acted per incuriam in appointing the district commissioner of Iringa municipal (sic) to administer the estate of the deceased's estates, and;

6. In the alternative to the foregoing paragraph, the Trial Court acted un-procedurally and contradicted the law in appointing the District Commissioner of Iringa Municipal (sic) to administer the estate of the deceased's estate.

By parties' consent, this appeal was argued by way of written submission. The parties enjoyed the service of learned Advocates. Mr. Rwezaura Kaijage, for the Appellant while the Respondent was represented by Mr. Erick Nyato, Advocate.

Submitting in support of the appeal, the Counsel for the Appellant told the Court that the First Appellate Court greatly erred in facts and law by believing that the revocation of the Administrators of the deceased estate could be done by basing on filed letters without hearing the Parties as it was done by the Trial Court. The Counsel for the

Appellant went on to submit that, the law is apparent as to when, how and why the Administrator /Administratrix may be unveiled of his/her duty as such; that is, the revocation of the letter of administration. He referred this Court to *section 49 (1) of the Probate and Administration of Estate Act [Cap 352 R. E. 2002]*.

The Appellant's Counsel further contended that the Appellant is a widow of the deceased with her children. The first wife died long time ago. Neither her nor her children ever lived in the property at issue. The Appellant lived together with the deceased to the last day of his life. Therefore, it was the view of the Appellant's Counsel that it cannot be safely said that the Appellant has no interest upon the property which now was ordered by the Trial Court to be disposed of. He cited *section 22 (1) of the Probate and Administration of Estates Act (supra)* which require the Court to take into account *inter alia* the life interest of a Party to the estate of the deceased. The Respondent and his siblings are not living in the property at issue. The Appellant lived there since 1990 with her children and the deceased, even after her husband passed away. If not for the pending caveat lodged by the Appellant before the second appellate Court, the Respondent was already taking a move to dispose the property.

Moreover, the Appellant's Counsel submitted further that *section 33 (2) of Cap 352 (supra)* confers discretion to the Court to be selective while granting the letter s of administration. However, the discretion must be exercised as per the requirement of the law. The Court must observe the greater and immediate interest in the deceased estate in priority to lesser or more remote interest. He insisted that the Appellant has greater interest in the estate of the late Sanga as compared to the Respondent and his siblings.

The Counsel faulted the appointment of Iringa District Commissioner as the new Administrator of the estate of the late Sanga. He contended that the appointment the Officer mentioned above was unprocedural and offended the provision of the law specifically *section 75 of Cap 352 (supra)*. Therefore, it was a nullity. He prayed this appeal to be allowed with cost, the judgement of the First Appellate Court be quashed and the Trial Court ruling to be upheld for proper administration of the estate of the deceased for the future life of the widow.

In opposing the appeal, the Counsel for the Respondent submitted that the Trial Court was justified to nullify the appointment of joint Administrators because of lack of cooperation between the Appellant

against the Respondent. He supported his submission with *item 2 (a)(b) of the 5th schedule of the Magistrate Court Act [Cap 11 R. E. 2029] [henceforth MCA]*.

The Counsel for the Respondent argued that the Appellant was mere a concubine of the deceased. The legal widow was the late Respondent's mother who is a deceased too. She is the one who lived in the disputed property with the deceased till her death. The Appellant was sent by Elastus Mwihomeke Sanga, the deceased brother. Hence, the Appellant has no interest upon the property, that's why the trial Court ordered for the property to be disposed of and there is no anomaly for that.

The Respondent denied the Appellant's allegation that the Respondent makes a move to dispose that disputed property. To him, that is mere a statement because he has no *locus standi*, as the administration of the estate is in hand of the Administrator General who is the District Commissioner.

The Respondent contended that the Appellant act of instituting multiplicity of suits in different Courts amount to technical delay to weaken beneficiaries to acquire distribution of the proceeds from the deceased estate.

On the issue of the appointment of the Iringa District Commissioner as a new Administrator of the estate of the late Christopher Sanga, should not be faulted because the appointment was procedural as per *item 2 (a) (b) of the 5th Schedule of the MCA (supra)*. He prayed this appeal to be dismissed for want of merit.

In his rejoinder, the Counsel for the Appellant reiterated his submission in chief, and argued that the Respondent failed to demonstrate on the reasons as to why the trial Magistrate took the initiative to revoke the joint Administrators of the estate in which the principle of *audi alteram partem* was not adhered to. He insisted that the Trial Magistrate ignored the law as to when, how and why there was revocation of the administration. It was his view that *Paragraph 2(a)(b) of the 5th schedule of the MCA* is distinguishable with the issue before the Court because it has nothing to do with the issue of revocation of the letters of the administration.

Further, the Appellant insisted to have great interest on the disputed property compared to the Respondent and his sisters. The Appellant has been living in the disputed even after her husband demised in 2002 and she has no any other alternative accommodation. On contrary the Respondent and his sister were brought to the disputed

property in 1998 by their aunt and they stayed for two weeks only and never stayed there again.

On the allegation that the Appellant was mere a concubine of the late Sanga, the Counsel for the Appellant submitted that it was the decision of the late Sanga to live with the Appellant. They have lived together for 12 years before he met his demise, if he was not satisfied, he could have separated from her before his demise. The Respondent and his Counsel are ignorant of *section 160 of the Law of Marriage Act [Cap 29 R. E. 2019]*.

It was a strong submission of the Appellant that the Respondent and her Counsel are trying to strangle the law by stating that the wife of the deceased was the late Kalista Joseph. The deceased cannot be a widow of another deceased. When the Appellant started to live matrimonial life with Sanga, Kalista was already dead long time ago. Therefore, the Counsel faulted the Respondent Counsel argument in his 4th paragraph of the submission. The Appellant had lived for more than 12 years uninterrupted unlike the Respondent and his sisters. He further insisted that these are contentious matters and the Trial Magistrate could have been in a better position of making justice had he given forum to the Appellant.

The Counsel for the Appellant faulted the appointment of the Area Commissioner to be the Administrator of the estate of the late Sanga because the Trial Magistrate did not give any justification for his action of appointing the Commissioner. It did not comply with *paragraph 2(a)(b) of the 5th schedule of the CMA (supra) read together with section 74 of Cap 352 (supra)*. The idea is; whether the appointed Administrator could be mindful to regard any wishes which may have been expressed by the deceased. He lived with the Appellant for 12 years before his demise. If he could resurrect, he could have wished to expel the Appellant from the house so that it can be sold. He added that, the Primary Court had no jurisdiction to appoint the Commissioner to be new Administrator of the estate of the deceased. Therefore, his appointment was *per incuriam*. He insisted that the appeal be allowed with cost and any other reliefs prayed in the appeal.

After considering the arguments from both sides and going through the records of the lower Courts, I'm of the findings that the issues for determination in this matter are: *First*; whether the Trial Court revocation of the joint letter of administration of the estate of the deceased was proper. *Second*; whether the Trial Court was right for failure to consider the interest of the Appellant into the deceased estate;

and *Third*; whether appointment of the Administrator General as a new Administrator of the estate of the deceased complied with the law.

Starting with the first issue, from the record, there is no dispute that the Appellant and the Respondent herein were appointed by the trial Court to administer the estate of the deceased. Thereafter, their letters of administration were revoked by the same Court. The trial Court is vested with the mandate to appoint the Administrator/ Administratrix via application or *suo moto* as per *paragraph 2 (a) (b) of the fifth schedule to the CMA*. For easy of reference *paragraph 2 (a) (b)* provides:

2. A primary Court upon which jurisdiction in the administration of the deceased's' estates have been conferred may-

(a) either of its own motion or on an application by any person interested in the administration of the estate *appoint one or more person interested in the estate of the deceased to be the administrator thereof*, and in selecting any such administrator, shall unless for any reason it considers inexpedient so to do, have regard to any wishes which may have been expressed by the deceased;

(b) either of its own motion or an application by any person interested in the administration of the estate, *where it considers that it is desirable to do for the protection of the estate and the proper administration thereof, appoint an officer of the Court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under subparagraph (a). [Emphasis added]*

From the above quoted passage, I noted, as rightly as submitted by the Counsel for the Appellant, *paragraph 2(a)(b)* has nothing to do with the issue of revocation but rather the mandate vested to the Trial Court is to appoint, to add or to replace the administrator for the protection of the estate of the deceased. For the issue of revocation *paragraph 2(c)* provide that:

2 (c) Revoke any appointment of an administrator for a good and sufficient cause and require the surrender of any document evidencing his appointment. (Emphasis added)

Thus, from the record at hand, the Trial Magistrate revoked the letters of administration which was granted to the Appellant and Respondent in respect to the estate of the deceased based solely on the

letters filed to Court by the Parties. The said letters were filed 5 days only after being granted the administration letter. The law allows the Court to revoke the letter of administration but they have to be a good and sufficient cause to do so. From my perspective point of view, I think the Trial Magistrate was supposed to cause the matter so that the Complainant could call the witness and evidence available to prove the same. *Section 112 of the Evidence Act [Cap 6 R. E. 2019]* requires any person who wishes the Court to believe certain facts exists, he has to prove to Court the facts he alleges exists. Taking into consideration that there is misunderstanding between the Appellant and the Respondent, the Court could have not rushed into revoking the letter of administration without having tangible evidence to prove the complaint.

The second issue is, whether the Trial Court failed to consider the interest of the Appellant into the deceased estate. It must be recalled that a paramount duty of the Administrator is to deal with the estate of the deceased. Paragraph 5 of the 5th schedule to the CMA provides that:

An administrator appointed by the primary Court shall, with reasonable diligent, *collect the property of the deceased and the debts that were due to him, pay the debt of the deceased* and the debt and costs of the

administration and shall thereafter *distribute the estate of the deceased* to the person or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary Court. [Emphasis mine]

It follows clearly that the estate which have to be distributed is the deceased estate and not otherwise. The Appellant lived with the deceased for more than 12 years. They acquired different properties jointly but the only property which has to be distributed has to the deceased share exclusive of the Appellant share. I'm minded to observe that, the Appellant deserves her contributed share towards acquisition of the said matrimonial property plus equal share of the deceased share along with other lawful heirs. Therefore, the Trial Court, if it could have taken a trouble to call upon the witnesses and evidence, it was in a position to know the truth as to the statement used by the Respondent that the Appellant "*refused to cooperate*" in administering the estate of the deceased. Apart from that, if I may repeat, it was just five days since they have been granted the letters of administration. It was premature to determine the weakness of the Administratrix.

Thirdly, the issue is; whether appointment of the Administrator General as a new Administrator of the estate of the deceased complied

with the law. The Trial Court appointed the Administrator General to administer the estate of the late Sanga. After he revoked the joint letter of administration of the estate un-procedurally.

It is the findings of this Court that anything which comes from illegal source is illegal with an exception of children who are born out of wedlock. They are legitimate like other fellow siblings sharing the same biological father. Indeed, they are born in the image of the Almighty Father like any other person. Therefore, this issue is answered in affirmative that the law was not complied.

In the upshot, the appeal is hereby allowed to the extent of the revocation of the Appellant and the Respondent as Administrator/ Administratrix of the estate of the deceased. The judgement, proceedings and all orders from both lower Court are also nullified. For the purpose of enabling fair distribution of the estate of the deceased to all lawful heirs, the Court do hereby order this case to be heard afresh with utmost extremely urgency before a different Magistrate with competent jurisdiction from where the caveat was filed by the Respondent. Each party will bear his/her own costs. It is so ordered.



Y. J. MLYAMBINA

JUDGE

27/07/2022

Judgement pronounced and dated 27th day of July, 2022 through Virtual Court in the presence of Counsel Rwezaula Kaijage for the Appellant and Erick Nyato for the Respondent. Both Parties were stationed at the High Court of Tanzania Iringa District Registry's premises. Right of Appeal fully explained.



Y. J. MLYAMBINA

JUDGE

27/07/2022