

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(TEMEKE HIGH COURT SUB-REGISTRY)  
(ONE STOP JUDICIAL CENTRE)  
AT TEMEKE  
PC. CIVIL APPEAL NO 9 OF 2022**

**JANE FRANSISCA MWAMBENE .....APPELLANT  
VERSUS  
TUMAINI JOHN MWAMBENE.....1<sup>st</sup> RESPONDENT  
WINNER RWEZAURA CHRISTIAN .....2<sup>nd</sup> RESPONDENT  
ANNETH SAMWEL SWAI .....3<sup>rd</sup> RESPONDENT**

**JUDGMENT**

*12/07/2022 & 14/07/2022*

**I.C. MUGETA, J**

When the Primary Court (the PC) registered the Probate cause subject of this appeal, the petitioner (now appellant) had stated in form No. I that the deceased was a Christian. Since in terms of section 18 (1) (a) (1) and paragraph 1 (1) of the 5<sup>th</sup> schedule of the Magistrates' Courts Act [Cap. 11 R.E 2019], the PC has jurisdiction in the administration of the estate where the law applicable is customary or Islamic Law, the PC had to reject admission of the application as it does not fall in the said categories of law.

The above stated question of jurisdiction is not among the grounds of appeal in this appeal which was heard by way of filing written submissions. I noticed

the challenge of the jurisdiction of the PC in the course of composing the judgment. Consequently, I summoned the counsel for the parties to address me on whether the probate court had jurisdiction.

Stella Rweikiza, counsel for the appellant said it had no jurisdiction. Hilal Hamza for the respondents held a different view. He submitted that since after his Christian marriage the deceased lived with another woman, he is deemed to have abandoned Christianity, therefore, his estate should be dealt with under customary law as decided by the PC in its judgments. Assuming the learned counsel is right, I probed him to address me on the validity of the will and the jurisdiction of the PC over the will made not in conformity with the requirement of the Local Customary Law (Declaration) No. 4 order, 1963. The deceased, allegedly, left a will conforming with the requirement of the Indian succession Act 1925 and the PC accepted it as a valid will. The learned counsel conceded that in that regard the will cannot be valid and still be administered by the PC.

Strangely, the probate court having clothed itself with jurisdiction and after finding that the said will is valid, it without assigning reasons, appointed the appellant to administer the estate instead of the executor mentioned in the will. This is uncommon but due to the nature of the orders I intend to make,

I shall refrain from commenting on the issue. Therefore, in this decision I shall confine myself to the question of jurisdiction.

With respect, the learned magistrate erred. Jurisdiction of the court in probate causes is determined at the earliest possible moment not at the final decision. All petition for probate or letters of administrate forms (No. 1 in PC and Nos. 18, 20, 25, 26, and 27 in High Court) has a paragraph where the petitioner must state the religion of the deceased. This is for purposes of determining the jurisdiction at admission stage. Therefore, once form No. 1 stated that the deceased was Christian, the PC ought to have rejected the petition and ordered the same to be filed in the proper court. The question of life style which was used to determine jurisdiction at the judgment stage is a matter of evidence. Jurisdiction of the court had to be determined in accordance with information supplied in the petition before hearing commenced.

Consequently, I hold that the primary court determined the case without jurisdiction. This error escaped the attention of the district court. I nullify the proceeding and judgment of both lower courts for being invalid.

Due to the complexity of the nature of the matters involved in this case, I direct that a fresh petition be filed in the High Court taking into account the

fact the deceased, allegedly, left a will. I further direct that in case in the executor of the alleged will does not petition for probate within 30 days from the date of this order, whoever interested in the estate can take action line with the provisions of section 19 of the Probate and Administration of Estates Act [Cap. 352 R.E. 2002].

Finally, since the question of jurisdiction was not raised in the grounds of appeal, orders made herein have been taken at the instance of the revision powers of this court under section 44 (1) of the Magistrates' Courts Act [Cap. 11 R.E. 2019]. I give no orders as to costs.



  
**I.C. MUGETA**

**JUDGE**

**14/07/2022**

**Court:** - Judgment delivered in chambers in the presence of appellant who appeared in person and Hilal Hamza advocate, for the respondents.

**Sgd: I.C. MUGETA**

**JUDGE**

**14/07/2022**