

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TEMEKE HIGH COURT SUB-REGISTRY)
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE**

CIVIL APPEAL NO. 14 OF 2021

(Arising from Kinondoni District Court in Probate and Administration Cause No. 126 of 2020 before Hon E. A. Mwakalinga – SRM)

GODWIN MARTIN KALIHOSÉ.....APPELLANT

VERSUS

ABDUL ATHUMAN HIMBA.....RESPONDENT

JUDGMENT

14/06/2022 & 04/07/2022.

I.C. MUGETA J,

This appeal was heard by way of filing written submissions. When I sat to composed the judgement, I realized that the case commenced as intestate probate and administration cause while there is a will. On that account, I re-opened the proceedings to let the parties address me on whether it was proper to do so without compliance with section 19 of the Probate and Administration of Estates Act [Cap 352 R.E 2002] which requires that where there is a will and the executor is inactive, any person interested in the estate or creditor may cite the executor of the will to accept or renounce his executorship.



On the hearing date, the appellant was represented by Musa Daffa who conceded that the requirement of the said section was ignored which vitiates the proceedings. Evarist Martin for the respondent held a view that since after filing the petition a caveat was filed, the rules under the Civil Procedure Code applied, therefore, section 19 of Cap. 352 became applicable.

It is my view that Mr. Evarist's view is erroneous. The requirement to cite the executor is primary to filing the petition, therefore, the petitioner was to issue the citation before filing the petition. I find that it was an error on part of the trial court to admit and proceed with the hearing of the petition without first citing the executor. This error renders the proceedings a nullity.

Another irregularity which I required the parties to address me is on the trial court's determination of the caveat without framing issues. However, since the first error, non-citation of the executor, has rendered the proceedings a nullity, I find no reason to decide on this issue.

For the foregoing, I nullify the proceedings of the trial court and quash the subsequent judgment. Interested parties may file a fresh petition upon compliance with the legal requirement per the prevailing condition at the time of the subsequent petition. I have passed these orders under the

revisional powers of this court under section 44 (1) of the Magistrate Courts Act [Cap. 11 R.E. 2019]. No orders as to costs.



I.C. Mugeta

I.C. MUGETA

JUDGE

04/07/2022

Court: - Judgment delivered in chambers in the presence of the appellant and his advocate, Ezekiel Mwasumbi, holding brief for Musa Daffa and in the absence of the respondent.

Sgd: I.C. MUGETA

JUDGE

04/07/2022