

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

(PC) CIVIL APPEAL NO.60 OF 2021

***(C/f Civil Appeal No.17 of 2021 at the District Court of Babati at Babati,
Original Probate and Administration Cause No.5 of 2021 at Bashanet Primary
Court)***

MARY SIRILYAPPELLANT

Vs

LUCIA THEOFILRESPONDENT

(Administratrix of the estate of the late Joseph Firmini Qamara)

JUDGMENT

Date of last Order:29-6-2022

Date of Judgment 28-7-2022

B.K.PHILLIP,J

A brief background to this appeal is as follows; The appellant herein petitioned before Bashanet Primary Court for appointment as the administratrix of the estate of the late Joseph Firmini Qamara vide Probate and Administration Cause No.5 of 2021. The respondent objected to the petition . The matter was heard on merit and at the end of the day, the Primary Court appointed the respondent herein as the administratrix of the estate of the late Joseph Firmini Qamara. Aggrieved by the decision of the Primary Court, the appellant appealed to the District Court of Babati at

Babati. Her appeal did not sail through. It was dismissed. Undaunted, the appellant lodged this appeal on the following grounds;

- i) That the First appellant Court erred in law and in fact for failure to make a finding that parties hereto, being Christian believers, Bashanet Primary Court had no jurisdiction to entertain and determine Probate and Administration Cause N. 5 of 2021.
- ii) That, the first appellate Court erred in law and in fact for failure to see to it that the trial Court grossly erred in law and fact for failure to evaluate evidence adduced by the parties thereby reaching an erroneous decision at law.
- iii) That the first appellate Court erred in law and fact as it did not observe that the trial Court grossly erred in law and in fact to decide in favour of the respondent while the said respondent has no interests in the estate of the late Joseph Firmini because she is not a biological daughter of the late Joseph Firmini.

The appellant prays that the decision of both lower courts be quashed and set aside, and the appeal be allowed with costs.

Both parties were unrepresented. The appeal was heard viva voce. In her submission the appellant said the following; That the late Joseph Firmini was a Christian. His burial ceremony was conducted in accordance with Christian rituals. Thus, the Primary Court had jurisdiction to determine Probate and Administration Cause No.5 of 2021. The District Court did not take into consideration the testimonies of the witnesses and the minutes of the clan meeting she tendered before the Court which indicated that

she was appointed by the clan members to be the administratrix of the deceased estate. The respondent is not a family member. Finally, she implored this Court to allow this appeal.

On the other hand, the respondent conceded that the late Joseph Firmini Qamara was a Christian and his burial ceremony was conducted in accordance with Christian rituals. She went on submitting as follows; That the Primary Court took into consideration the evidence adduced and she was rightly appointed as the administratrix of the estate of the late Joseph Qamara Firmini. The late Joseph Firmini Qamara was her grandfather. The appellant's claims are devoid of merit since she wants to interfere with the properties left by her father, the late Theophil Firmin Qamara. She prayed for the dismissal of this appeal with costs.

In rejoinder, the appellant reiterated her submission in chief.

Having analyzed the submission made by the parties, let me proceed with the determination of the grounds of appeal. The 1st ground of appeal, requires this Court to determine whether or not Bashanet Primary Court had jurisdiction to entertain the said Probate and Administration Cause No. 5 of 2021. It is a common ground that the late Joseph Firmini Qamara was Christian and was buried in accordance with Christian rituals. The jurisdiction of Primary Courts in Probate and Administration matters is provided in section 18 of the Magistrate Court's Act ("MCA") and Rule 1 of the fifth schedule to the MCA. For clarity let me reproduce the same hereunder;

Section 18.-(1) A primary court shall have and exercise jurisdiction

(a) in all proceedings of a civil nature-

(i) where the law applicable is customary law or Islamic law: Provided that no primary court shall have jurisdiction in any proceedings of a civil nature relating to land;

(ii) for the recovery of civil debts, rent or interests due to the Republic, any district, city, municipal or town council or township authority under any judgment, written law (unless jurisdiction therein is expressly conferred on a court or courts other than a primary court), right of occupancy, lease, sublease or contract, if the value of the subject matter of the suit does not exceed fifty million shillings, and in any proceedings by way of counter-claim and set-off therein of the same nature and not exceeding such value;

(iii) for the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value; and

(b) in all matrimonial proceedings in the manner prescribed under the Law of Marriage Act.

(c) in all proceedings in respect of which jurisdiction is conferred on a primary court by the First Schedule to this Act;

(d) in all proceedings in respect of which jurisdiction is conferred on a primary court by any other law; and

(e) in all proceedings in which the Attorney General's right of audience is excluded.

*(2) The Chief Justice may, by order published in the Gazette, confer upon a primary court jurisdiction in the administration of deceased's estates **where the law applicable to the administration or distribution of, or the succession to, the estate is customary law or, save as provided in subsection (1) of this section, Islamic law.***

(Emphasis is added)

Rule 1 of the fifth schedule to the MCA;

"1.-(1) 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:

Provided that, nothing in this paragraph shall derogate from the jurisdiction of a primary court in any proceedings transferred to such court under Part V of this Act".

(Emphasis is added)

From the above quoted provisions of the law, it is obvious that Primary Courts have jurisdiction in matters involving administration of the deceased estates if the law applicable is either customary law or Islamic law. (Also see the case of **Scolastica Benedict Vs Martin Benedict, Civil Appeal No.26 of 1988, (1993) T.L.R.1**)

In the case in hand, both parties have confirmed that the late Joseph Firmini Qamara was a Christian . Under normal circumstances, neither customary law nor Islamic law shall be applicable in the administration of his estate. Therefore, I am inclined to agree with the appellant that Bashanet Primary Court had no Jurisdiction to entertain Administration and Probate Cause No.5 of 2021. My finding hereby suffices to dispose of this appeal. Thus, I will not proceed with the determination of the remaining grounds of appeal.

In the upshot, this appeal is allowed. I hereby nullify the proceedings of the Primary Court and set aside the decision, and orders made by both lower Courts. This being a matter involving family issues , I give no order as to costs.

Dated this 28th day of July 2022



A handwritten signature in black ink, appearing to read "B.K. Phillip", is written over the printed name.

B.K.PHILLIP

JUDGE