

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**PC PROBATE APPEAL NO. 2 OF 2022**

*(Arising from Probate and Admin. Appeal No. 5 of 2021 of the Ukerewe District Court. Original  
Probate and Admin. Cause No. 13 of 2021)*

**MGALA D/O MANUMBU.....APPELLANT**

**VERSUS**

**ELIAS MANUMBU MALELO.....RESPONDENT**

**JUDGMENT**

**29<sup>th</sup> March & 4<sup>th</sup> April, 2022**

**DYANSOBERA, J.:**

This is the second appeal in which the appellant is impugning the decision of the first appellate District Court in Probate Appeal No. 5 of 2021 which dismissed her first appeal.

In order to fully appreciate the points involved in this matter, a brief history of the matter need be stated. The appellant and respondent are siblings. They were born of the same father one Manumbu Malelo Malelo who passed away on 9<sup>th</sup> day of July, 2017. The deceased died intestate and was survived with a widow one Mektilda Membo Ngabo and fourteen children, the parties to this case inclusive. The deceased

left behind a landed property situated on Plot No. 83 Block "G" Nakatunguru area in Ukerewe District. On 4<sup>th</sup> day of June, 2021, the respondent who is resident of Nyamagana Mwanza applied before the Primary Court of Ukerewe District at Nansio to be appointed administrator of the deceased's estate. However, before the respondent had filed the Probate and Administration Cause and before he was granted letters of administration, the said landed property was sold to the buyer one Wambura Daud Mabura at Tshs. 30, 000, 000 (say Tanzanian Shillings Thirty Million). The sale transaction which was witnessed by the trial Magistrate one A.A. Mrisho, RM. It is on record that on 16<sup>th</sup> day of June, 2021, the respondent was granted letters of administration.

The appellant was aggrieved and she filed her first appeal to the District Court on four grounds challenging the competence of the respondent as the administrator of the deceased's estate and the legality of the sale of the said landed property.

In his judgment dated 22<sup>nd</sup> day of October, 2021, the learned Resident Magistrate dismissed the appellant's appeal on the ground that her complaints lacked merit.

Aggrieved, the appellant has filed this appeal on the following two grounds of appeal, that is:-

1. That the first appellate court magistrate erred in law and fact by upholding the decision of Nansio Primary Court which contravenes the law by initiate illegal sale of the deceased's house by the respondent before being appointed as administrator of the of the estate of the late Malelo Malelo.
2. That, the first appellate Court Magistrate erred in law and in fact by upholding the decision of Nansio Primary Court which contravenes the law by blessing premature distribution of proceeds made on 16<sup>th</sup> day of February, 2021 to other heirs and excluding the other heirs misdirecting himself on determining the matter.

The appeal was resisted by the respondent who filed a reply to memorandum of appeal.

Before me, the hearing of the appeal proceeded by way of oral submissions. Both the appellant and respondent appeared in person and were unrepresented.

Supporting the appeal, the appellant submitted that the respondent was yet to be appointed as administrator of the deceased's estate and there was no clan meeting held to appoint him before he rushed to court. She contended that the trial Magistrate prepared the contract and he is also the one who conducted the case. The appellant complained that the first appellate District Court erred both in law and fact in endorsing the trial court's judgment which was illegal as the respondent had no power to sell the landed property and other heirs were not involved.

On his part, the respondent told this court that on 16<sup>th</sup> day of February, 2021 Mbaga Peres Manumbu, Asia Manumbu and he, the respondent escorted their mother one Mektilda Membo Ngabo to court so as to sell the house. They were with Wambura Daud, the buyer. According to the respondent, the buyer was with the money and wanted the money which had been withdrawn from the bank to be handed over to them before the grant to him of letters of administration. The trial Magistrate agreed the payment before appointing the respondent as administrator. Thereafter, the procedures of appointment were made

and the respondent was later appointed administrator of the deceased's estate.

As to whether or not there was misdirection, the respondent told the court that he was not the court as such he was bound to follow court's directions.

According to the complaints raised by the appellant both at the District Court and before this court, the issues calling for determination are: first, whether the respondent was duly appointed as administrator of the estate of the late Manumbu Malelo Malelo and two, whether the sale of the landed property made on 16<sup>th</sup> day of February, 2021 was, in the eyes of law, proper.

On the first issue, after going into details of the proceedings before the trial Primary Court, I have not found anywhere, in the proceedings, indicating that the respondent was appointed administrator of the deceased's estate. According to the record of the trial court, the Probate and Administration Cause No. 5 of 2021 was filed in court on 4<sup>th</sup> day of June, 2021. The matter was adjourned for mention to 14<sup>th</sup> June, 2021 seven days' citation was ordered to be issued. On 14<sup>th</sup> day of June, 2021,

the three heirs namely Feada Manumbu, Mgala Manumbu and Enock Manumbu appeared and raised an objection on the respondent's petition on the ground that no family meeting had been convened to appoint the respondent as administrator and were not involved in knowing the deceased's estate that was to be administered. The respondent told the trial court the following:

'Hawa wote waliitwa ila hawakuja kwenye kikao, hivyo pingamizi lao halina msingi'.

The court made an order that the matter should be heard a civil case. The respondent informed the court that he had two witnesses. The respondent was the first witness to testify whereby he told the court that he was seeking to be appointed administrator of the estate of the late Manumbu Malelo. He said that they had convened a family meeting which appointed him as administrator of the deceased's estate as the deceased had before the death directed him and that is why he was in possession of some documents. According to him, the deceased had sixteen children; two of them namely Naomi Manumbu and Fredy Manumbu were dead. The deceased was also survived by one widow and left behind one house situated on Plot 83 Block G, Nakatunguru

area. Further that all the objectors are the deceased's children and were not present during the family meeting which was convened thrice and Feada Manumbu gave them leave to go ahead in her absence.

On cross-examination, the respondent denied to have sold the deceased's house and argued that he had called them through a phone call but they failed to attend despite the meeting being adjourned. Dickson Manumbu supported this evidence.

The respondent then prayed for adjournment so that he fetched a witness. The matter was adjourned to 15<sup>th</sup> June, 2021. On that day (15.6.2021), the objectors were heard. Feada Manumba said, *'tumekaa kikao na kumpitisha mwombaji kuwa msimamizi. Tofauti zetu zimeisha'*. Also Mgala Manumbu said, *'tumeamua kukubaliana mwombaji awer msimamizi wa mirathi ya baba'*. Likewise, Enock Manumbu stated that, *'Nami nimekubali pamoja na familia mwombaji awe msimamizi.'*

*The trial court remarked:-*

*'Mah: kesi ya mwombaji imefungwa. Kwa kuwa wapingaji wameondoa pingamizi lao, hakuna kesi ya upande wao.*

*Amri:*

- 1. Hukumu 15/6/2021*
- 2. Wadaawa wafike*

The trial court's record does not show what transpired on 15<sup>th</sup> day of June, 2021 but on 21<sup>st</sup> June, 2021, the respondent told the trial court that he had brought a minute of the meeting on the distribution of the property of the deceased. The trial court then ordered the heirs to attend. When the matter came up on 3<sup>rd</sup> day of August, 2021, the appellant opposed the distribution on two grounds; one, she was not involved in the distribution and two, she was against the sale of the landed property as the administrator had no power to sell the property. The respondent then said:

*'Msimamizi: haya hote tulikubaliana kwenye kikao ndiyo maana wote walinielewa an kukubali magao wa shilling 850, 000/= kwenye gharama za uendeshaji ni kutokana na mimi kutokuwa mkazi wa Ukerewe na mara nyingine huacha shughuli zangu kuja hapa kwenye shauri ndiyo maana ninaomba nikubaliwe kwenye hizo gharama.*

The court made the following finding:

***Mahahakama:*** tumeona kuwa msimamizi amegawa mali ya marhehumu vizuri pamoja na warithi wengi kukubali mgao huo.



*Swala la mjane kuwa na fungu kubwa zaidi tunaona ni sawa kwani kama alivyoeleza, ni kuwa naye alikuwa na mchango kwenye upatikanaji wa mali hii.*

*Mahakama inaona kuwa si sawa mjane kuwa na mgao mara mbili kwenye mali hiyo hiyo. Tunaunga mkono hoja ya Mbagi na Enock kuwa Shs. 850,000/= ilipaswa kuwa ndani ya mgao wake na si vinginevyo. Hivyo, Shs. 850, 000/= ni fedha ambayo ilitakiwa kuwa ya mgao wa wote hivyo igawanywe sawa kwa sawa kwa warithi wote.*

*Kwa upande wa gharama tunakubaliana kuwa kisheria mirathi ndiyo inatakiwa kulipa gharama za mirathi. Hivyo ni haki kwa msimamizi kupata mgao lakini msimamizi hajatoa mchanganuo wa fedha hii kitu ambacho kinaleta utata kwenye ukweli wa matumizi haya. Mahakama hii inapitisha gharama ya Shs. 350, 000/=tu, hivyo fedha yote ya ziada kwenye gharama za usimamizi nayo igaiwe kwa warithi wote waliobaki.*

***Amri:*** *Mgawanyo ambao utakuwa na marekebisho kama Mahakama ilivyoshauri unapokelewa. Mirathi imefungwa.*

I must admit at that the proceedings before the trial court is interesting and unfortunate. In the first place, the respondent was not

appointed administrator of the estate of the late Manumbu Malelo Malelo. The whole record of the trial Primary Court is silent of its appointing the respondent to be administrator. The letter of administration found in the record has no basis and is ineffectual as its genesis is not reflected in the proceedings. It is not clear how the trial court issued that letter without appointing the respondent. The provisions of the Fifth Schedule to the Magistrates' Courts Act [Cap. 11 R.E.2019] and the case laws, namely **Yahaya Jawewa and 4 others v. Said Jawewa**, Civil Revision No. 44 of 2018 and **Mohamed Hassani v. Mayasa Mzee and Mwanahawa Mzee** [1994] TLR, 225 alluded to in the judgment of the first appellate District Court were cited out of context as the respondent was never appointed by the primary court as administrator of the deceased's estate.

On the second issue, that is whether the sale of the landed property was lawful, the law is clear. Under paragraph 2(a) of the Fifth Schedule to the Magistrates' Courts Act [Cap 11 R.E.2019], the primary court is mandated to appoint any party interested to the estate of the deceased *suo motto* or on an application by any party interested in the administration. So, the rights of an administrator of the deceased's

estate are derived his being appointed by the court. The effect of the grant of letters of administration under the law is to grant all the rights of the deceased to the administrator from the moment of the death of the deceased. This is the gist of what the Court of Appeal observed in **Mark Alexander Gaetje, Wiebke Gaetje and Hedda Heedegen v. Brigette Gaetje**, Civil Revision No. 3 of 2011, CAT-Dar es Salaam at page 9 (unreported).

In the instant case, the respondent, as indicated above, was not appointed administrator of the estate of the deceased in which the landed property was comprised. In her first and second grounds of appeal, the appellant is complaining that the first appellate court first appellate court magistrate erred in upholding the decision of Nansio Primary Court which contravened the law by initiating illegal sale of the deceased's house by the respondent before being appointed as administrator of the of the estate of the late Malelo Malelo and that he also contravened the law by blessing premature distribution of proceeds made on 16<sup>th</sup> day of February, 2021 to other heirs and excluding the other heirs hence misdirecting himself on determining the matter. I think the appellant is right on both complaints.

First, the sale of the property was made by unqualified persons, namely Elias Manumbu Malebo (respondent), Mektrida Membo Ngabo, Asia Manumbu Malelo and Mbagga Peres Manumbu. These people were not administrators of the estate of the late Manumbu Malelo Malelo appointed by the primary court. they had no power to sell the said property.

Second, the sale of the property was conducted even before the Probate and Administration cause had been instituted in a court of law. According to the record, the Probate and Administration Cause No. 13 of 2021 was filed in the primary court on 4<sup>th</sup> day of June, 2021 while the sale transaction was conducted on 16<sup>th</sup> day of February, 2021, that is the sale of the house was conducted four months before the respondent instituted the Probate and Administration Cause.

Third, the contract of sale was prepared by the trial Magistrate one A.A. Mrisho who not only witnessed the very sale but also sat in Probate and Administration Cause No. 13 of 2021 and tried it to its conclusion.

Fourth, the first appellate court was wrong in endorsing the trial court's decision which was in blatant usurpation of the powers of the

administrator as the court administered the estate instead of the administrator who was not even appointed.

This procedure adopted by the trial court and condoned by the first appellate court novel and unusual to our jurisprudence and judicial practice. Such practice should be deprecated.

In view of the aforesaid, I allow the appeal, quash and set aside the judgments of both the trial Primary Court and the first appellate District Courts. The sale of the landed property made by Elias Manumbu Malebo (respondent), Mektrida Membo Ngabo, Asia Manumbu Malelo and Mbagu Peres Manumbu to Wambura Daud Mabura is nullified.

I direct that the administration of the estate of the late Manumbu Malelo Malelo to commence afresh according to the law.

Order accordingly.



*[Signature]*  
**W.P. Dyansobera**  
Judge  
5.4.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 5<sup>th</sup> day of April, 2022 in the absence of the applicant and the respondent.



*[Signature]*  
**W.P. Dyansobera**  
Judge