

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**PC CIVIL APPEAL NO. 2 OF 2021**

**(C/F Civil Revision No. 9 of 2021 at Karatu District Court, Originating from Probate Cause  
No. 20 of 2021 at Karatu Primary Court)**

**MOSHI MANONGA.....APPELLANT**

**VERSUS**

**LOHAY NIIMA MUCHUNO.....1<sup>ST</sup> RESPONDENT**

**TSAXARA NIIMA MUCHUNO.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**15/07/2021 & 30/08/2022**

**GWAE, J**

This is the second appeal. It all began on 16/04/2021 when the appellant appeared before Karatu Primary Court (“trial court”) petitioning for grant of letters of administration of the estate of the late SIYAKI NIIMA MCHUNO who died intestate on the 17<sup>th</sup> June 2009.

On the 28<sup>th</sup> April 2021 a caveat was entered by the respondents, determined and the same was found with merit, consequently, the appellant’s petition was dismissed.

Aggrieved by the decision of the trial court, the appellant filed a Civil Revision to the Karatu District Court (“1<sup>st</sup> appellate court”) where he also

lost. He is now before this court for the second appeal with four grounds of appeal.

At the hearing of the appeal, parties appeared in person unrepresented. The appeal was disposed by way of written submissions. However, in the course of composing the judgment and when I made a careful perusal of the record, in particular the trial court's records, I have noted that the deceased, Siyaki w/o Niima Mchumo was a Christian. That being the position I required the parties to address the court as to the jurisdiction of the trial court.

It was the appellant's contention that being a lay person he does not know if the trial court had jurisdiction or not and that it was the duty of the trial court to properly advise them with regard to its jurisdiction. He went on to state that he was informed that the deceased was professing Christianity. On the other hand, the 2<sup>nd</sup> respondent maintained that, the deceased was not a Christian believer.

Much as it can be seen from the records that, the issue of jurisdiction was never raised in the courts below, however, it being a question of jurisdiction precedents have set a principle that, a point of law challenging jurisdiction of the court can be raised at any stage and the same has to be determined first before proceeding with determination of the

substantive matter. Reference is made to a decision of the Court of Appeal of Tanzania in the Case of **R. S. A Limited vs Hanspaul Automechs Limited Govinderajan Senthil Kumal**, Civil Appeal No. 179 of 2016 (Unreported)

Thus, since the jurisdiction to determine any matter is a creature of statute, it is the opinion of this court that it is not offensive for the same to have been raised at this stage, second appeal and this court proceeds to determine it as follows;

The jurisdiction of the Primary Court in administration of deceased's estates is provided under Rule 1 of the fifth schedule to the Magistrates' Courts Act Cap 11 Revised Edition, 2019 which reads and I quote;

*"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..."*  
(Emphasis is mine)

Moreover, it has been the position of the law under section 18 (1) (a) of the Magistrates' Courts Act that the jurisdiction of Primary Court is limited to only where the law applicable is Customary law or Islamic law.

This being a court of record, I have meticulously gone through the entire records of this appeal in particular the trial court records at Form No. 1 which is the application form for appointment of an administrator of the estate of the deceased at paragraph 7 where it is vividly stated that the deceased prophesied Christianity. For easy of clarity the paragraph is hereby reproduced;

*"Marehemu alikuwa (eleza kabila) MWIRAQ na alikuwa mfuasi wa dini ya MKRISTO."*

From the records this court is of the view that, it is with clear eyes that, the deceased person was prophesizing Christianity the fact that was also admitted by the appellant when probed by the court to address it on whether the deceased prophesied Christianity or not. It is for this reason that this court is of the firm view that, the trial court lacked jurisdiction to entertain the matter.


The above being said and done, this court does not see any reason to proceed determining other grounds of appeal as the issue of jurisdiction is capable of disposing of the appellant's appeal.

Consequently, both the proceedings, judgments and decrees of the trial court and the 1<sup>st</sup> appellate court are hereby quashed and set aside. I

further give no order as to costs taking into account that the issue of jurisdiction was raised by this court suo motto.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**30/08/2022**