

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL REVISION NO 55 OF 2020

(Arising from Misc. Civil Application No.84 of 2020)

GLORY DAUDI KIMARO.....APPLICANT

VERSUS

FESTO GERALD NG'OWO.....RESPONDENT

RULING

14/12/2021 & 9/03/2022

N.R. MWASEBA, J.

This application for revision has been made under Section 79 (1) (c) of the Civil Procedure Code, CAP 33 R.E 2019 and Section 30 (a) & (b) of the Magistrate Courts Act CAP 11 R.E 2019. The applicant herein prays for the following orders:

- a) The High court be pleased to call for the District Court's record and perceive the correctness, legality, propriety and or otherwise of ruling of the district court magistrate for Temeke at Temeke Hon. O.M Madili, RM dated 25th day of

September,2020 the same issued to the Applicant on the 7th October,2020 in Misc. Civil Application No.84 of 2020.

- b) The High Court be pleased to make such other interlocutory orders as may appear to the court to be just and convenient.
- c) Costs of this application be borne by the respondent.
- d) Any other reliefs that the honourable court may deem fit and just to grant.

The application has been accompanied by an affidavit of Glory David Kimaro (the applicant herein) stating the grounds upon which the application is made. Before this court the application was determined *exparte* as the respondent's whereabouts is not known to the applicant. The matter was disposed of by way of written submission.

In her submission, the applicant adopted her affidavit to form part of her submission. Briefly, the applicant submitted that she is the daughter of the late Halima Somoye Sonje who died on 22/04/2017 in Temeke district. She states that before her death, the deceased and the applicant lived a happy life at Kitomondo Wailes area in Temeke District in Dar es Salaam region from 1996, and later on they moved to Mbagala

Majimatitu within Temeke district and erected a house and lived therein together until her demise.

She says in 2015, the respondent was hired by her late aunt as a *shamba* boy from Iringa, purposely for maintaining the deceased's cattle and other works surrounding the house.

That, after the death of her late aunt, on 11th November, 2017 the respondent and the applicant were involved in the meeting of the probate of the late Halima Somoye Sonje, whereas they were both appointed as administrators of the deceased's estate. Copy of the minutes appointing them as co-administrators was annexed to her affidavit as annexure GDK1.

She further says that she tried to look for the respondent and convince him to collaborate with her in going to the court for instituting the probate application in vain; The respondent was not available for them to proceed with probate proceedings. She later came to realize that the respondent secretly instituted Probate Cause No. 241 of 2019 at Mbagala Primary Court presenting another minutes of 23rd June, 2019, which, among other things, appointed him as a sole administrator and forged the will purporting to have been bestowed all the deceased's estate. These facts are said to be false, and they were used by the

primary court as the basis for granting the respondent as sole administrator of the deceased's estate. A forged will and minutes of 23rd June, 2019 were appended to her affidavit and marked annexure GDK2 collectively.

Upon learning that, the applicant lodged a complaint to Mbagala Primary Court administration, and on 26th August, 2019 she filed a caveat, whereas, the Primary Court Magistrate in charge wrote a letter to Temeke Primary Court inquiring/verifying magistrate's signature signed on the will presented by the respondent at Mbagala Primary Court. The magistrate in charge for Temeke Primary Court replied that there was none of the primary court magistrates who witnesses to the said will. Copy of the letter of the Mbagala Primary Court magistrate in charge and reply from Temeke Primary Court magistrate in charge were collectively appended to her affidavit and marked as annexure GDK3.

As a consequence, the same primary court magistrate Hon Tamambele, revoked the letter of administration granted to the respondent in Probate Cause No. 241 of 2019, and ordered the respondent to submit all the documents appointing him as an administrator.

The respondent being aggrieved by the decision of 6th September, 2019 he appealed to the Temeke District Court, Civil Appeal No. 95 of 2019.

On the 14th January, 2020 Hon Ndossy RM, ordered for trial *de novo* and that the applicant and respondent should conduct a new and proper family meeting. Copy of the judgment and drawn order were appended to her affidavit as anannexure GDK5.

She further submitted that the respondent, without involving her, secretly went to Temeke District Court and applied for letter of administration, and on the 7th May, 2020, the District Court granted the respondent with the letter of administration. Copy of the letter of administration granted to the respondent in Probate Cause No. 2 of 2020 was attached to her affidavit annexure GDK6.

Upon those facts, the applicant filed Misc. Civil Application No. 84 of 2020 for revocation of letter of administration granted to the respondent illegally in Probate Cause No. 2 of 2020. However, on the 25th September, 2020 the same magistrate dismissed her application for revocation on the ground that she failed to prove her relation with the deceased.

She further alleges that, Hon C. M. Madili RM, made decision in favour of the respondent ignoring or without considering the previous courts' decisions regarding the deceased's estate in relation to the history of the

respondent's forgeries purporting to be a sole beneficiary, the facts which are false.

That, the error and material irregularity by Hon C. M. Madili RM, go to the root of the whole proceedings before the primary and district court in processing the probate of her late aunt illegally.

After going through the pleadings and the submission of the applicant which was determined ex parte, I decided to have a deep perusal of the court record. I managed to observe that both parties are claiming to be related to the deceased in one way or another. The applicant pleaded that she is a daughter and sole heir of the deceased's estate and sometimes she says the deceased is her aunt and she had been living with her since 1996 up to her demise. The respondent says the deceased shares the same tribe with his mother so she took him when he was 6 years and had been living with him until her demise. The record shows that the deceased who was an Education Officer who did not have any close relative. So, the respondent had a will which is purported to be left by the deceased recognising him as a sole heir.

Several case files had been instituted regarding the deceased's estate. First, in Mirathi No 241 of 2019 before Mbagala Primary Court where the

respondent herein was appointed the executor of the will and last testament of the deceased's estate. Soon after granting the applicant filed a caveat which was determined in the absence of the respondent and the court revoked the appointment.

Dissatisfied, the respondent appealed to the district court via civil appeal No 95 of 2019 whereby the court ordered *trial de novo* and ordered the parties to conduct a new and proper clan meeting.

Through this decision the respondent filed an application No 2 of 2020 before the district court of Temeke in which he was granted to administer the deceased's estate. Having observed this, the applicant filed Misc application No 84 of 2020 asking the district court to revoke the grant of letters of administration which was granted to the respondent. Her application was dismissed hence this application for revision.

Before going to the merit of an application for revision which challenges the correctness, legality and propriety of the ruling of Temeke District Court of in Misc. Civil application No. 84 of 2020, I will first determine the issue as to whether the application for revision is proper before this court. I am saying this because the law is now settled that revisional powers of the court are not an alternative to its appellate jurisdiction.

This has been explained several times by the Court of Appeal when the parties knock the court doors by way of revision as an alternative to the appellate jurisdiction.

In the case of **Hassan Ng'anzi Khalfan Versus Njama Juma Mbega (Legal Representative of the late Mwanahamisi Njama) and Jambia Ng'anzi Khalfan**, Civil Application No. 218/12 of 2018, a Court of Appeal decision sitting at Tanga relied on its previous decisions in **Halais Pro-Chemie v. Wella A.G.** [1996] TLR 269, **Moses Mwakibete v. The Editor - Uhuru and two others** [1995] TLR 134 and **Transport Equipment Ltd v. Devram P. Valambhia** [1995] TLR 161 where the court of appeal held that:

"Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court."

Further, it was the holding of the Court of Appeal in the case of Mwakibete (supra) that:

"A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process."

In the case at hand the applicant had the opportunity to appeal. This being a probate matter instituted at the district court where the probate rules apply, **Rule 83 (1) of the Probate Rules** states that:

"Subject to the Probate Rules, every appointment, direction, or decision of a district court under this Part shall be subject to appeal to the High Court."

Being guided by the above provisions, it goes without saying that the application before this court is incompetent and bad in law. The applicant decided to opt for revision with no justification.

Thus, the application before this court is incompetent and bad in law for being preferred as an alternative to an appeal. For that reason, I hereby strike it out with no order as to costs.

It is so ordered.

DATED at DAR ES SALAAM this 9th day of March, 2022.



N.R. Mwaseba
N.R. MWASEBA

JUDGE

09/03/2022

ORDER: Ruling delivered this 9th day of March, 2022 in the presence of the applicant. Respondent is absent.

Moyo

M.MOYO

DEPUTY REGISTRAR

9/3/2022

ORDER: Right of Appeal property explained.



Moyo

M.MOYO

DEPUTY REGISTRAR

9/3/2022