

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

PC. CIVIL APPEAL NO 27 OF 2022

(Arising from the decision of Bunda District Court in Probate Appeal No 06 of 2021,
Originated from the decision of Bunda Urban primary Court in Probate Cause no 19 of 2021)

SILAS JACKSON MAKUMBATIAPPELLANT

VERSUS

LUGENDO STEVEN MAKUMBATI RESPONDENT

JUDGMENT

25th August & 25th August, 2022

F. H. MAHIMBALI, J.

When this matter came for hearing today, I noted that it is the probate matter and it is in this court as second appeal. It involves the administration of the estate of the late Steven Jackson Makumbati. I had inquired the parties, what religion did the deceased profess. They unanimously replied to be Christian. I then asked the learned advocates to address the court whether as per law section 18 (1)a (i) and (2), section 19 (1) c and the fifth schedule of MCA, whether case was properly before the trial court.

Both counsel replied in negative that as per law (section 18 (1) a (i) and (2), section 19 (1) c and the fifth schedule of MCA, Cap 11 R. E. 2019, the primary court (trial court) had no legal mandate to preside over as the probate was either customary nor Islamic. They prayed that the proceedings and orders of the trial court be quashed and set aside for being nullity.

According to section 18 (1) a (i) and (2) of the MCA, Cap 11 R.E 2022 it reads:

"A primary court shall have and exercise jurisdiction in all proceedings of a civil nature 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."

However, as regards to the powers of Primary Court in the administration of deceased's estates is not automatic. It is only upon the Chief Justice by order published in the Gazette confer the powers of Primary Court in the administration of deceased's estates and only where the law applicable to the administration or distribution of, or the succession to, the estate is customary law or, Islamic law.

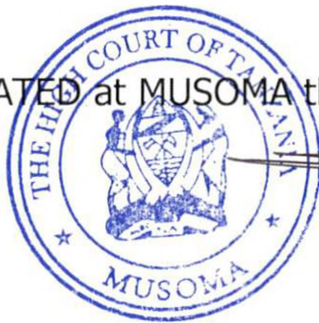
As what is provided under item 1 of the Fifth Schedule of the MCA, it is clear that the jurisdiction of a primary court in the administration of deceased's estates as per Chief Justice's directives, is where the law

applicable to the administration or distribution or the succession to, the estate is customary law or Islamic law.

That said, the proceedings of the two lower courts are hereby quashed and set aside for being nullity as the trial court had no legal mandate to preside over administration case where the law applicable was neither Islamic nor customary law.

Each party shall bear its own costs.

DATED at MUSOMA this 25th day of August, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered thin 25th day of August, 2022 in the presence of the Mr. Emmanuel Paul Mng'arwe, advocate for the appellant, Ms. Loyce John Mkandala, advocate the respondent and Mr. Gidion Mugo, RMA.

F. H. Mahimbali

Judge