IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 137 OF 2020

Appeal from the decision of the District Court of Ilala District at Kinyerezi (Bwakila, RM) in Misc. Civil Application No. 176 of 2020, dated 22nd of June, 2020.)

ABDALLAH IBRAHIM

(Legal Representative of the late Salehe Waziri) **..... APPELLANT**

VERSUS

WAZIRI JUMBE

(Legal Representative of the late Salehe Waziri) **..... 1st RESPONDENT**

RIZIKI KASSIM ..... 2ND RESPONDENT

SALEHE SIMBA..... 3RD RESPONDENT

MWANAHAMISI JUMA ..... 4TH RESPONDENT

KIATE KASSIM ..... 5TH RESPONDENT

MWAJUMA KASSIM ..... 6TH RESPONDENT

JUDGMENT

24th August, & 14th September, 2022

ISMAIL, J.

The appellant is a joint administrator of the estate of the late Salehe Waziri, who met his demise on 6th June, 1970, at Kauzeni village, Kisarawe District within Coast Region. He left behind several landed properties, among them, two houses on Plot No. 29 Block A, known as House No. 6, situated

along Aggrey Street; and Plot No. 18A Block 59A, House no. 58A Mafia Street, in Kariakoo Area, Dar es Salaam. He was also survived by several children and a widow. Pursuant to Probate and Administration Cause No. 202 of 2006, and by letters of administration issued on 5th May, 2006, the Primary Court of Ilala at Buguruni appointed to administer the deceased's estate, along with the 1st respondent.

In the course of carrying out his duties as an administrator of the estate, the respondents filed a complaint in the Primary Court of Buguruni, challenging the inventory which was filed by the appellant. The alleged that the inventory was falsified and that they, the respondents, had been not been included in the list of the beneficiaries of the estate. While seeking to be included in the list, the respondents sought to have the letters of administration granted to the applicant and the 1st respondent be revoked. This application was objected to by the appellant but to no avail. In the end, the trial court acceded to the respondents' request by elbowing what the appellant contends to be legal heirs and allowed the deceased's grand children to come as beneficiaries of the estate.

This decision was not well received by the appellant, hence his decision to institute revisional proceedings vide Miscellaneous Civil Application No. 120 of 2020. The District Court found nothing meritorious in the application,

hence its decision to dismiss it with costs. It is this decision that has triggered the instant proceedings.

The petition of appeal has three grounds of appeal, paraphrased as follows: ***one***, that the District Court erred in law by analyzing the main issue raised on the points of appeal and base its decision on the reasons of appeal; ***two***, that both of the lower courts erred in law and in fact in proceeding to determine that the Primary Court was right to proceed with an issue which had been ruled as *res sub-judice;* and ***three***, that the lower courts erred in law and in fact by failing to determine the issue that was to the effect that the appellant and grandchildren are not legal heirs of the deceased's estate according to the law.

On the date on which the matter was set for hearing, none of the respondents showed up, notwithstanding service of the notice of hearing on the respondents. This culminated into the issuance of an order to the effect that the appeal be heard *ex-parte*, through written submission, the filing of which conformed to the schedule.

Submitting in no particular reference to the grounds of appeal, the appellant contended that the trial court erred in its decision to include grandchildren of the deceased in the list of beneficiaries while in legal terms they were not. The appellant contended that this decision was taken by the

court without the involvement of assessors who were absent on 16th March, 2020, the date on which the decision was made.

The appellant contended that the decision to execute his duties as an administrator of the estate, by instituting Application No. 25 of 2020, for recovery of part of the deceased's estate against 2nd, 3rd and 4th respondents is what triggered the respondent's decision to include non-heirs. He argued that any decision, subsequent to the decision that listed the widow and children as beneficiaries, on 5th May, 2006, is illegal in substance and procedure, and he wondered why the District Court failed to appreciate this fact.

The appellant further decried the decision of the primary court to order revocation of letters of administration in the pendency of an appeal challenging the decisions of the lower court, and without involving the beneficiaries of the estate. The appellant argued that such decision defied the legal position accentuated in the case of ***Imelda Yakobo Mlekwa v. Andrea Peter***, PC Civil Appeal No. 28 of 2017 (unreported), in which it was held that consent of the administrators is important before a decision to replace administrators is made. The appellant took the view that the revocation of his appointment is intended to shield the respondents against the alleged misappropriation of rentals which constitute the estate of the

deceased person. On this, the appellant implored the Court to be inspired by the decisions of the Court in ***Sekunda Mbwambo v. Rose Ramadhani*** [2004] TLR 439; and ***Abraham Ally Sykes v. Zainab Sykes***, HC-Misc. Civil Application No. 104 of 2019 (unreported). The appellant urged the Court to see that the appeal is meritorious and allow it.

The grand question that follows the appellant's uncontested submission is whether the appeal has what it takes to succeed.

I will begin the disposal by touching on the issue raised by the appellant as he submitted to this Court. He opened up a new frontier that I consider to be relevant to the matter, and I find that it is apposite that I should spend some time on it, though it did not feature as a substantive ground. This is in view of the fact that the same is a point of law touching on the validity or otherwise of the decision of the Primary Court. The contention by the appellant is that the decision of the Primary Court, that bred the decision against which revisional proceedings were preferred, was not signed by the assessors who participated in the matter.

The role of assessors in the proceedings presided over by a Primary Court Magistrate is stated in section 7 (3) of the Magistrates' Court Act, Cap. 11 R.E. 2019, which provides as follows:

"In any proceeding in any other magistrates' court in which any rule of customary or Islamic law is in issue or relevant the court may, and when directed by an appropriate judicial authority shall, sit with an assessor or assessors; ***and every such assessor shall be required, before judgment, to give his opinion as to all questions relating to customary*** *or Islamic law in issue in, or relevant to, the proceeding; save that in determining the proceeding the court shall not be bound to conform with the opinion of the assessors."* [Emphasis supplied]

What is clear from the quoted excerpt is that involvement of the assessors in the proceedings is immense and it also involves giving their opinion with respect to issues raised in the proceedings over which they preside. As we consider involvement of the assessors as imperative, the position is that such opinions need not be recorded by the magistrate. It is enough if the assessors append their signatures on the decision. the signatures signify their concurrence with the decision and are part of the deliberations made by the court. This position was underscored in ***Neli Manase Foya v. Damian Mlinga,*** CAT-Civil Appeal No. 25 of 2002 (unreported), in which the Court of Appeal of Tanzania held:

"With due respect to learned High Court judge, this is not what Rule 3 (2) provides. The assessors are members of the court and sign the judgment as such, and not for the purpose of

authenticating it or confirming it. In answer to the second point of law, assessors are neither required to give their opinions, nor to have their opinions recorded by the magistrate."

See also: ***Sospeter Bwilima v. Ereno (Stephen J. Ngana)***, HC-(PC) Civil Appeal No. 28 of 2019 (unreported).

My unfleeting review of the ruling of the Primary Court and the proceedings for the day reveal that none of the assessors who was recorded as having sat with the trial magistrate 'put pen to paper', to signify their concurrence with the decision that revoked letters of administration and include new heirs in the list of heirs. This means that the decision lacked the essential component of what the Primary Court is i.e. the assessors.

The net effect of this is to render the decision irregular and lacking in legitimacy. It liable to quashing and setting it aside.

While this ground is sufficient to dispose of the matter, I feel compelled to make a comment on the reasons and circumstances in which revocation of the letters of administration was done. The allegation that swayed the magistrate's opinion was that of misappropriation of the assets forming the estate of the deceased. It is a matter of legal certainty that the Primary Court has powers to revoke letters of administration. Exercise of such powers is

predicated on some solid grounds and upon solid evidence under rule 2 (c) of the Rules.

It is evident that the decision by the Primary Court to revoke the letters of administration were triggered by a complaint dated 13th June, 2017. Nowhere, in the said letter of complaint, no shred of evidence was adduced on the alleged malpractice or unethical conduct that would justify such revocation. The other obvious fact gathered from the proceedings is inclusion of the complainants as heirs was never requested by them, yet it also clear that it is the alleged inclusion that raised a concern which finally led to the filing of the revisional proceedings. By not pronouncing itself on this, the District Court abdicated its duty of stating the procedural propriety or otherwise of the Primary Court to deal with a matter which was not part of the request. I find this to be improper and an affront to the provisions of section 22 of the MCA.

I hold the view that the District Court did not satisfy itself as to the correctness, legality or propriety of the Primary Court's decision, and the overall regularity of the proceedings. This is because the record was not examined, thanks to the magistrate's haste in relying on the decisions which were, in my considered view, not relevant to the case.

As the learned magistrate disposed of revisional proceedings, he drw an inspiration from the decisions of the Court of Appeal of Tanzania in ***Christian Orgenes Nkya v. Republic***, CAT-Criminal Application No. 14/05 of 2019; and ***Regional Manager TANROADS Lindi v. D.B. Shapriya & Company Limited***, CAT-Civil Application No. 29 of 2019 (both unreported). My scrupulous review of these decisions conveys the feeling that the same were quoted out of context. In my considered opinion, inclusion of new heirs was a matter that touched on the procedural aspects and powers of the court during the revocation. They were not decisional issues which would be addressed through an appeal as he appeared to suggest.

In the upshot of all this, I find the appeal meritorious and I grant it. I quash the proceedings of both courts, set aside the decisions and remit the matter to the Primary Court for fresh determination of the complaints by the respondents against the appellant. Such determination should be done by another magistrate. I make no order as to costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 16th day of September, 2022.

M.K. ISMAIL

JUDGE

16.09.2022