

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

(PC) CIVIL APPEAL NO. 29 OF 2022

(Arising from Muleba District Court Civil Appeal No. 32 of 2021, Original from Civil Application No. 09 of 2021 – Mubunda Primary Court)

JAMAL SHABAN.....1ST APPELLANT

JALIDA SHABANI.....2ND APPELLANT

ALLAFA DAUDA.....3RD APPELLANT

AFADHILATH DAUDA.....4TH APPELLANT

VERSUS

SAID SEIF LWAKYAZI1ST RESPONDENT

LWEGASIRA ISAKA LWAKYAZI.....2ND RESPONDENT

JUDGMENT

*31/08/2022 & 23/09/2022
E. L. NGIGWANA, J.*

In the instant appeal which is contested by the respondents, the appellants herein are seeking to assail the decision of the District Court of Muleba at Muleba in Civil Appeal No. 32 of 2021 handed down on 21/01/2022.

Briefly, the facts giving rise to this appeal are as follows; Before the Primary Court of Mubunda within Muleba District one John Katama, vide Probate and Administration Cause successfully petitioned for letters of administration of the estate of the late Shamsa Zawadi Seif. Later on, one Shella William Shaban who is not a party to this appeal, filed objection which was registered by the trial court as Application No.15 of 2020, praying for two reliefs; revocation of John Katama from being a sole administrator, and

that, the distribution of the estate he had done in that capacity be declared null and void due to unfaithfulness and unfair distribution.

The objection was heard and decided in favour of the said Shella William Shabani. In its decision dated 01/11/2020, among other things, the respondents herein being the deceased's close relatives were both appointed as administrators of the estate of the late Shamsa Zawadi Seif.

The records revealed that, right after being appointed as administrators, the respondents discharged their duty whereas, on 07/12/2020, they filed in court the distribution report (an inventory) titled **"Mrejesho wa ugawaji mali alizoacha marehemu Shamsa Zawadi Seif kwa watoto wake wote (5) watano"**

However, few days later, that is to say; on 12/05/2021, the appellants herein who are the children of the deceased Shamsa Zawadi Seif, lodged Application No. 09 of 2021 disputing the distribution made by the respondents as administrations of the estate. They complained that; the deceased's properties were unfairly distributed, they were not involved in the distribution, they were not involved in the appointment of the respondents as administrators of the deceased's estate and that, some properties were not distributed.

After hearing the parties, the trial court found that the respondents have discharged their duty accordingly thus, blessed the distribution done by them. Other complaints were found baseless. Consequently, the objection was dismissed for want of merit.

Aggrieved by the decision of the trial court, the appellants knocked the doors of the District Court of Muleba vide Civil Appeal No. 32 of 2021 with the view of challenging the decision of trial court. After hearing the parties, the 1st appellate court confirmed and upheld the decision of the trial court. Consequently, the said appeal was dismissed for want of merit.

Aggrieved by the decision of the 1st appellate court, the appellants have knocked the doors of this court while clothed with four (4) grounds of appeal that were coached as follows:-

- 1. That, the two lower courts erred in law and fact as they did not consider the presented grounds disputing distribution*
- 2. That, the lower two courts either recklessly or by intention failed to note that the presented distribution was all forged one and some of properties were already sold.*
- 3. That, the two lower courts failed to note that the appellants were all forced to move out of their mothers properties thus denied the right to inherit instead, the Respondents are corroborating with one child SHELLA WILLIAM SHABAN to manipulate and misuse the heirs' rights.*
- 4. That, the two lower courts did not give out sufficient reasons for their decisions, hence biased.*

Wherefore, the appellants are praying that this appeal be allowed with costs, judgment and orders of the lower courts be quashed and set aside, and re-distribution of properties to the heirs be done according to law.

At the hearing of this appeal the appellants appeared in person, unrepresented, likewise the respondents.

Submitting in all grounds of appeal, the 1st appellant Jamal Shaban stated that the grounds of appeal were withdrawn by Mr. Reinhold .T. Mujuni learned advocate who was engaged for drawing only therefore, they may not clearly state their grievances. He prayed for this court to consider the two major points which trigged them as children of the deceased to raise objection in the trial court; **first**, they were not involved in the appointed of the respondents as administrators of the estate of their deceased mother Shamsa Zawaid Seif after revocation of the initial administrator one John Katama. **Secondly**; they were not involved in the distribution exercise done by the respondents.

The 1st appellant ended his submission urging this court to revoke the respondents' appointment. The 2nd appellant conceded to the submission of the 1st appellant and had nothing new to add. On her side, the 3rd appellant submitted that, nothing has been distributed to them as heirs of the deceased that is why they are complaining. The 4th appellant on her side stated that, the respondents are not trustworthy persons because they have distributed nothing to them.

Opposing this appeal, the first respondent stated that, the appellants have completely failed to argue their appeal. He added that, they have discharged their duty and filed the distribution report in court and that they have done so faithfully and innocently. He urged the court to go through the estate distribution report filed in the trial court. The 2nd respondent conceded to the submission of the 1st respondent. He had nothing new to add.

In their rejoinder, the respondents stated that they were not made aware of the distribution report filed in court, hence were not aware of what was distributed to each of them.

Having carefully examined the lower court records and dispassionately considered the respective submissions of the parties and in support and opposition of the appeal, I should now address the contesting issue and determine the appeal.

One of the complaints by the appellants is that, they were not involved in the appointment of the respondents as administrators of the deceased's estate. In the trial court the 1st appellant who testified as SM1 told the court that the estate of the deceased was not yet distributed to the heirs by the respondents. The 2nd and 3rd respondents who testified as SM2 and SM3 respectively told the trial court that they were dissatisfied with the appointment of the respondents and the distribution of the estate done by them.

However, there is no evidence adduced by the respondents in the trial court to prove that the respondents were not worth of being appointed as administrators or to what extent the respondents have failed to discharge their duties but also no evidence adduced to show that respondents have been corroborating with one child Shella William Shabani to manipulate and misuse the heirs' rights.

The evidence of the 1st and 2nd respondents who testified as SU1 and SU2 respectively is to the effect that, they were appointed as administrators

according to law, and have discharged their duty by distributing the deceased's estate to the five heirs of the deceased.

Regulation 6 of the Magistrates (Rules of Evidence in Primary Courts) Regulations of 1964 provides that;

"In civil cases, the court is not required to be satisfied beyond reasonable doubt that a party is correct before it decides a case in its favour, but it shall be sufficient if the weight of the evidence of the one party is greater than the weight of the evidence of the other."

Reading the evidence adduced by the parties before the trial court, it goes without saying that the evidence of the respondents was strong to the effect that they were appointed according to law, and upon their appointment, they immediately started discharging their duties, whereas, they have already filed the distribution report (Inventory) in court.

In that premise, I agree with the respondents that it was very proper for the trial court to dismiss the objections for want of merit. It was again proper for the District Court to confirm and upheld the decision of the trial court. The Distribution report is self-explanatory as to how the deceased's estate has been distributed to the appellants. The appellants were complaining that they had not seen the distribution report, the fact which was objected by the respondents, but for the interest of justice, I decided to avail the distribution report to them because it was part of the court record. From there, each of the appellants knew what was distributed to him/her.

There is no doubt that jurisdiction of Primary Courts in Probate and Administration cases is provided for under section 19 (1) (c) of the Magistrates Courts' Acts Cap. 11 R: E 2019. The said section should be read together with the 5th Schedule of the Act. Paragraph 2 (a) of the Fifth Scheduled to the MCA Cap. 11 R: E 2019 reads:-

"2 A Primary Court upon which jurisdiction in the administration of deceased's estates has been conferred may;

- (a) Either of its own motion or on application by an person interested in the administration of the estate appoint one or more persons interested in the administration to be the administer or administrators thereof, and in selecting such administrator, shall, unless for any reason it considers in expedient so to do, having regard to any wishes which may have been expressed by the deceased.*

As generally known, the Primary Court can only appoint an administrator where the law applicable to the administration or distribution of the estate is Customary law or Islamic law, and that the deceased at the time of his/her death had affixed place of abode within the local limits of the court's jurisdiction. It appears from the record that the law applicable in this matter is customary law. I need not go further because that has never been a contentious issue in this matter.

The court as per paragraph 2 (c) of the Fifth Schedule to the MCA, may revoke any appointment of an administrator for a good and sufficient cause. In the instant matter, the Primary Court Mubunda upon application made one John Katama appointed him as administration of the estate of the late

Shamsa Zawadi Seif, and later on, upon application made by Shella William Shabani, his appointment was revoked. The trial court proceeded to appoint the respondents to administer the estate of the deceased. The Primary court cannot be faulted for the act because it had powers to do so, and the persons appointed are the deceased's close relatives. The appellants' complaint that they were not involved in the appointment of the respondents is baseless. An administrator can be any person depending on the circumstances of each case. What matters most is his/her ability to discharge his/her duties according to law. For instance, in the case of **Sekunda Mbwambo versus Rose Ramadhani** [2004] TLR at page 439 the court held that;

"An administrator may be a widow/widows, parent or child of the deceased or any other close relative; if such people are not available or if they are found to be unfit in one way or another, the court has the power to appoint any other person or authority to discharge this duty."

The duties of an administrator/administratrix appointed by the Primary Court are statutory. Paragraph 5 of the Fifth Schedule to the MCA Cap 11 R.E. 2019 provides that;

"An administrator appointed by a primary court shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court."

The same duties were stated in the case of **Hadija Saidi Matika and Awesa Saidi Matika**, H/C Mtwara, PC Civil Appeal No. 2 of 2016, as follows; **One**, to collect the assets of the deceased. This include both fixed and movables. It also involve going to the bank and collecting what might be there. He can also sue people who may refuse the requests. **Two**, to identify the heirs. **Three**, to identify and pay the debts of the deceased if any. **Four**, to distribute the assets to the heirs and **five**, to file inventory and statements of accounts.

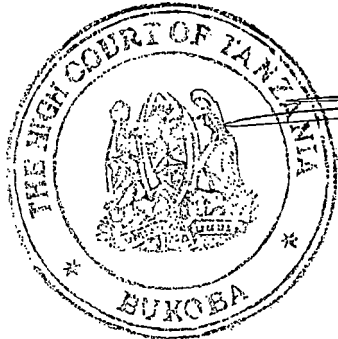
It is always very important to remember that the court has no power to distribute the estate as emphasized in the case **Ibrahim Kusaga versus Emmanuel Mweta** [1986] TLR 26 HC, where the court held that;
"A primary Court ought not to distribute the estate of the deceased; that is the job of an administrator appointed by court."

In the case at hand, the respondents have to the great extent discharged their duties and filed the distribution report/inventory to the trial court. However, the matter was not yet closed because the respondents were still making follow-ups to know whether before the demise of Shamsa Zawadi Seif, her **NMB Account No. 32002400289** had any money, and if yes; whether at the time of their appointment, the said account had any amount of money; and if yes; the same be distributed to the heirs before the closure of the file.

Basing on what I have endeavored to explain, I find no good basis to differ with the concurrent findings of the lower tribunals. Their decision is accordingly upheld as I dismiss this appeal for lack of merit. I further direct the appellants to cooperate with the respondents to easier the respondents'

remaining duty and promptly file in court the estate accounts so that the matter can be marked closed. Given the nature of the matter, the conduct and relationship between the parties to this case, I order that each party shall bear its own costs. It is so ordered.

Dated at Bukoba this 23rd day of September, 2022

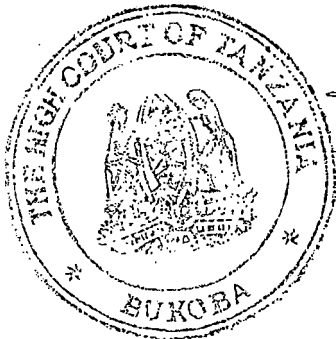


E.L. NGIGWANA

JUDGE

23/09/2022

Judgment delivered this 23rd day of September, 2022 in the presence of all appellants in person, both respondents in person, Hon. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C.



E.L. NGIGWANA

JUDGE

23/09/2022