

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
SUB - REGISTRY OF MWANZA  
AT MWANZA**

**MISC. CIVIL APPLICATION No. 56 OF 2022**

*(Arising from the decision of the High Court of Tanzania at Mwanza, before Hon. Dyansobera J, in PC Probate Appeal No. 03/2022 dated 19/05/2022, arising from the Judgment and Decree of the District Court of Sengerema in Probate Appeal No. 10 of 2021, by Hon. T.G. Barnabas RM, Original Probate and Administration Case No. 4 of 2021 at Sengerema Urban Primary Court)*

**YOHANA MSUKA.....APPLICANT**

**VERSUS**

**PETER LUTEMA.....RESPONDENT**

**RULING**

*23 September & 05<sup>th</sup> October 2022*

**M.P. OTARU, J.:**

This Application is brought under Section 5(1)(c) of the **Appellate Jurisdiction Act**, (Cap. 141 R.E. 2019) and Rule 45(a) of the **Court of Appeal Rules**, (GN No. 368 of 2009). The Applicant, **Yohana Msuka** is seeking for leave to Appeal to the Court of Appeal against the decision of this Court in PC Probate Appeal No. 03 of 2022.

The Application is supported by an Affidavit sworn by **Yohana Msuka**, the Applicant herein. The facts of the case are such that the Respondent was appointed together with **Joseph Msuka** to be administrators of the Estate of **Msuka Bugatu** in Probate and

Administration Cause. The respondents co-administrator appealed to the District Court of Sengerema at Sengerema objecting the appointment of the Respondent. The objection was allowed and the Respondents letters of appointment were revoked. The Respondent successfully appealed to the High Court via PC Probate Appeal No. 8 of 2011 (Mwangesi, J) thereby restoring the revoked letters.

Before they discharged their duties. The Applicant objected against the Respondent before the Primary Court at Sengerema Urban and again the Respondents appointment was revoked. The District Court at Sengerema revised the proceedings in Civil Appeal No. 10 of 2021 and ordered the decision of the High Court to be adhered to. Dissatisfied yet again, the Applicant unsuccessfully appealed to the High Court vide PC Probate Appeal No. 03 of 2022 (Dyansoberwa, J) which ordered the Respondent to administer the deceased's estate within four months, report back to the Primary Court that issued the Letters of Administration, and file the inventory.

Even before the lapse of the four months, the Applicant was again in the court of law instituting probate objection proceedings against the Respondent. The Respondents letters of Administration as well as all his actions in respect of the estate of the deceased were nullified and ordered

family members to submit new names for the grant of the letters. Aggrieved, the Respondent appealed to the District Court of Sengerema at Sengerema. The court dismissed the Appeal and ordered the probate process to proceed within the next 14 days. Aggrieved still, the Respondent appealed to the High Court through PC High Court Probate Appeal No. 03 of 2022. The High Court (Dyansobera, J.) allowed the Appeal, quashed and set aside all proceedings of the lower court and finally ordered the Respondent to comply with the Order of the PC Probate Appeal No. 5 of 2020 (Tiganga, J.) within the four months.

As soon as the Order was given, the Applicant was filing this Application seeking for Leave to Appeal to the Court of Appeal of Tanzania. When the matter was called for hearing both parties appeared in person and unrepresented.

The parties prayed to adopt the Affidavit and Counter Affidavit filed earlier in support of their submissions. The Applicant expressed his dissatisfaction about the decision of the Hon. Dyansobera, J. as the said administration process was taking too long with no positive outcomes. He also complained about the way he believed the Estate was mis-managed. He thus believes that his complains require the guidance of the Court of Appeal. The Respondent on the other hand complained of the Applicants

actions that were hindering the process. Whenever he tried involving village leaders and elders, the friction between the parties would worsen.

I have given careful consideration to the argument for and against the Application advanced by the parties, Affidavit as well as the Counter Affidavit. the central issue to determine is **whether the application has merit.**

This court is aware that, Leave to Appeal to the Court of Appeals is not automatic. It is within the discretion of the Court to grant or refuse it, and that discretion should be exercised judiciously (see the case of **British Broadcasting Cooperation Vs Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 CAT (unreported)).

In considering whether this Court should allow the Application or otherwise, I sought for wisdom of the Court of Appeal delivered in the case of **Harban Haji Moshi & another Vs Omary Hilal Self**, in Civil Reference No. 19 of 1997 (unreported), where the Court held that leave is granted where the proposed Appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the Court of Appeal. Hence in determining an application of this kind, the Court has to consider

whether the Applicant has advanced sufficient reasons to convince the Court to grant the application sought.

Are reasons advanced by the Applicant convincing enough to stand reasonable chances of success? Do the proceedings reveal such disturbing features as to require the guidance of the Court of Appeal? Does dissatisfaction in the probate process reveal any disturbing features? Is it convincing enough to stand reasonable chances of success?


It has been over 10 years since the initial grant of Letters of Administration to the Respondent. Until now the Applicant has not given the Respondent any opportunity to do what he is required to do by law. As the administration process could not commence due to the Applicant acting as a block thereto, I do not see any reason that is convincing enough to stand any chance of success. It will be in the best interest of everyone involved to put aside their differences and work together to achieve amicable results.

If the Applicant has any issues with administration of the Estate, he should go back to the Primary Court that granted the letters and seek for guidance. As such, I do not see any chances of success by the Applicant, neither are there any disturbing features that require the guidance of the Court of Appeal in this matter. Having said that, Leave to Appeal to the

Court of Appeal is hereby denied. The Order of this Court delivered in PC Probate Appeal No. 03 of 2022, be complied with within four (4) months from today.


It is so ordered. Each party to bear own costs.

**DATED** at **MWANZA**, this 5<sup>th</sup> day of October 2022.

  
**M.P. OTARU**  
**JUDGE**

Ruling delivered on 05<sup>th</sup> day of October, 2022 in the presence of Yohana Msuka the Applicant and Peter Lutema the Respondent.



  
**M.P. OTARU**  
**JUDGE**  
**05/10/2022**