IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

PROBATE APPEAL NO. 2 OF 2022

(Originating from the Judgment of the District Court of Moshi In Probate Appeal No. 12 of 2021 delivered on 24/3/2022 by Hon. N.E. Mwerinde-SRM)

ATHUMANI IDDI KIRETI.....APPELLANT

VERSUS

ISACK IDI KIRETI..... RESPONDENT

Date of last order: 23/9/2022

Date of Judgment: 6/10/2022

JUDGMENT

MWENEMPAZI, J

This appeal is the outcome of the battle between the two blood brothers over the estates left behind by their beloved father who demised since 22nd day of Feb, 2013. It all started with Probate and Administration Cause No. 167 of 2013 whereby the respondent Isack Iddi Kireti applied to be appointed an administrator of the estate of his father Iddi Kireti (the deceased). Before his appointment, Mwanaisha Iddi (the deceased's wife) and Paulo Lukas Maro, successfully challenged the petition by the Respondent and instead of the respondent, Paulo Lucas Maro was appointed as the Administrator of the deceased's estates. While performing his duties as the Administrator, the deceased's wife one Mwanaisha Iddi appeared again, requesting for the Administrator's

appointment to be revoked. Upon hearing, her grounds were found persuasive hence led to the revocation of letters of administration issued to the said Paulo Maro. Apart from being revoked, the appointing court ordered parties to convene a clan meeting and nominate another Administrator apart from the deceased's children who have already appeared before the said court. That order was issued on 30/10/2018. The record is silent as to whether the said order was adhered to, on contrary, the respondent appeared again before the appointing court on 6/8/2019, applying for him to be appointment as the Administrator of his father's estates. At this time, the application was via Probate Cause No. 89/2019. Before the appellant's appointment Makaviha Iddi Kireti rose, objecting the respondent's appointment, his ground being that the appellant was not nominated by the clan meeting as the said meeting was still on progress. After hearing, the trial court sustained the objection and declined the respondent's application. No appeal was lodged regarding the said decision. As if that was not enough, on 16/7/2021 the appellant appeared again before the trial court asking for him to be appointed as the Administrator of his father's estates. The respondent issued the clan meeting minute to clarify his nomination, the allegation which was later challenged by the appellant. Upon hearing, the trial court ruled out that since the respondent is a legal heir and also

a beneficiary to late Iddi Kireti's estates, he is also qualified to be appointed as the Administrator of his father's estates. The decision which was not faulted at the first appellate court hence this second appeal.

Challenging the decision of Moshi District court, the appellant lodged the petition of appeal comprised of three (3) grounds;

1. That the Honourable Magistrate erred in law and in fact when he held that no need to disturb the Primary Court's decision appointing the respondent while the evidence in place shows that the respondent appointment was never sanctioned by the clan/family members.
2. That the Honourable Magistrate erred in law and in fact when he failed to hold that the administration of the estate of the late IDDI KIRETI has been obtained fraudulently by the respondent.
3. That the Honourable Magistrate erred in law and fact when he failed to hold that the respondent did not submit on the grounds of appeal rather than proof reading the appellant's pleadings as a result arrived at a wrong decision by conforming impugned trial court's decision.

Wherefore; the appellant prayed for this appeal to be allowed and the decision of the District Court be quashed with costs.

At the hearing Mr. Isiaka Yusuf learned Counsel appeared for the appellant while the respondent fended by himself. The appeal was argued by filing written submissions.

Submitting to the petition of appeal, Mr. Isiaka Advocate commenced by advising the court on appointment of the Administrator of the deceased's estates and suggested that the parties be jointly appointed so as to bring together the two split sides of the family.

Arguing the 1st ground of appeal, it was Mr. Isiaka's submission that the trial Magistrate was duty bound to satisfy himself as to the suitability of the respondent not only being the person of interest to the estate but also a person who has a majority support of the clan or family members. That the evidence shows that the existing dispute is regarding the respondent's appointment which was contrary to the clan members wishes. However, the trial Magistrate based his argument as to whether the respondent was the interested person hence led to the wrong findings. Supporting his argument, the learned Advocate for the appellant cited the case of **Beatrice Brighton Kamanga & Another v. Ziada Wiliam Kamanga, Civil Revision No. 13/2020, HCT**

(Unreported) where the court insisted on the existence of the clan minutes over administration of estates.

Regarding the 2nd ground of appeal, it was Mr. Isiaka's submission that the trial Magistrate failed to rule that the minute submitted by the respondent was fraudulently obtained as the same didn't contain the family members or close relatives. That the law clearly states under **Rule 9(1) (a) of The Primary Court (Administration of Estates) Rules GN No. 49 of 1971** that when a grant of administration was obtained fraudulently it can be annulled by the court upon application by the person who has interest in the estate.

As for the 3rd ground of appeal, the appellant's Advocate further submitted that the trial Magistrate failed to hold that the respondent failed to submit on the grounds of appeal during trial but instead he proceeded proof reading the appellant's pleadings which is contrary to the law. Mr. Isiaka further argued that, it is now a settled law that failure to submit on the grounds of appeal is tantamount to failure to substantiate and oppose the appeal as per the case of **Jumaa Abasi v. Hawa Abuu Seif, Misc. Probate Appel No. 14 of 2021, HC (Unreported).**

With the explained reasons above, the appellant's Advocate prayed for the grounds of appeal to be allowed and the proceedings, judgment of the lower court be nullified and set aside.

Despite the schedule fixed by the court as to how the parties should submit on this appeal the respondent didn't reply to the appellant's submission which is tantamount to being absent on the date fixed for hearing without notice.

This being a second appeal, I prefer starting by citing the case of **Amratlal D.M t/a Zanzibar Silk Store v A.H. Jariwala t/a Zanzibar Hotel (1980) T.L.R 31** whereby Court of Appeal has spelt out that the findings of the lower court should not be disturbed. In the above cited case, a number of situations were illustrated which could warrant the appellate Court to disturb the lower court's decision including the following:

a) Misapprehension of the evidence.
b) A violation of some principles of law and/or practice.
c) Miscarriage of justice.
d) Obvious errors on the face of the record.
e) Misdirection or non-directions on the evidence.
f) Misapprehension of the substance.
g) Nature and quality of the evidence resulting in unfair conviction.

The same position was discussed in the case of **D.P.P v Jaffari Mfaume Kawawa [1981] T.L.R. 149,** where the court clearly stipulated that before interfering with the lower court's decision, the Court has to ascertain that there is or are cogent reasons to do so.

Basing on the above laid down principles, I have carefully gone through the records of the proceedings and the submissions made. I would, from the outset, state that this appeal has merits and therefore find it important to go through the lower courts' decisions. Having cautioned myself as such, I will now embark on examining the three grounds of appeal starting with the first one regarding not following the procedure in appointing the administrator which I think is the crux of this appeal.

The records clearly show that, the respondent being the son of the deceased late Iddi Kireti have tried several times to be appointed as the administrator of his father's estates but encountered various challenges especially by his family members. The main reason being that he has no support from his own family for him to be the administrator of the deceased's estates. One among the family members who appeared to object the respondent's appointment in court was the appellant one Athuman Iddi Kireti, Mwanaisha Iddy, Paulo Lukas Maro, and Makaviha Iddi Kireti. It was the trial court's findings several times that the respondent was not suitable to be appointed as the administrator of the

deceased's estates as per the reasons established by the objectors and their witnesses. The last order with such observations was through Probate Cause No. 89/2019 where the court observed at page 5 as follows;

> *"Pia kwa kuzingatia majukumu ya msimamizi wa mirathi ambayo ni kukusanya mali za marehemu na kuzigawa kwa warithi, mahakama inajiuliza mtu ambaye haungwi mkono na watoto wote 10 na hajaleta hata ndugu mmoja wa kumuunga mkono, atatekelezaje jukumu hili.*
>
> *Mazingira yote kwa ujumla yanafanya Mahakama hii ihitimishe kwa kuamua kwamba pingamizi lililoletwa dhidi ya mwombaji ni la msingi na linakubaliwa."*

After such observations, the trial court went on declining the respondent's application. At no point this order was reversed or appealed against and therefore the same remained effectual. It is also apparent on records that all that time the family members including the parties were still debating as to who will take over the responsibility of the administrator after the revocation of the 1st administrator one Paulo Lukas Maro.

From this perspective, it is therefore obvious that the respondent's appearance before the appointing court after being declined was contrary to the court's orders first, that he was among the beneficiaries of the deceased's estates who had been already barred by the court to be the administrators as per the court's order dated 30/10/2018 at page 7 where the trial court stated:

> *"AMRI. 1. Mahakama inawataka wanafamilia kukaa na kuteua msimamizi mpya wa mirathi ya marehemu IDDI KIRETI ndani ya siku 14. Na asiteuliwe mleta pingamizi au watoto ambao wamehusika katika kupelekea ukwamishaji wa ukusanyaji na ugawaji wa mirathi hii";*

From the above quoted order, it is obvious that the respondent was among the deceased's children who applied for the appointment and led to endless litigations as he is not in good relations with other members of the family. **Secondly**, that he was not the one who was nominated by the family members to be the administrator of the deceased's estates.

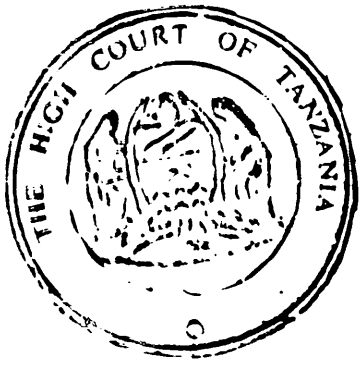
I am awake of the situations where the clan meetings are difficult to be conducted due to misunderstandings amongst the family members, in such circumstances, the court is urged not only to be the appointing

court relying on the wishes of the family but also to take part as to who can be a suitable administrator in such a circumstance. Appointing the administrator by relying merely on his capacity as the beneficiary of the deceased's estates has never been a good approach especially where the rest of the family members are against him.

Since it is obvious that the trial court contradicted itself on its orders, it is my finding that the last order dated 27/8/2021 was void and therefore, renders the respondent's appointment being illegal. With such findings it is my view that this ground suffices to dispose this appeal, I therefore see no reason to waste much time on the remaining grounds of appeal.

In the upshot I conclude that the two lower court decisions are hereby quashed and set aside, the parties are therefore advised to continue with the arrangements of nominating a suitable person to administer their late father's estates. Since the suit took long time in court, I hereby order the parties to discharge this obligation as soon as possible failure of which, the court may now step in and appoint a suitable person apart from the family members.

The appeal before this Court has merits and is consequently allowed with no order to costs based on the nature of the relationship between the parties. It is so ordered.



T.M. MWENEMPAZI

JUDGE

6/10/2022