

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**(PC) ADMINISTRATION APPEAL NO. 14 OF 2022**

*(Arising from Civil Revision No. 7 of 2020 of the District Court of Tanga at Tanga, an  
Originating from Administration Case No. 6 of 2020 of Tanga Urban Primary Court)*

**AGNES CHARLES MONGI.....APPELLANT**

**-VERSUS-**

**SOLOMON GEORGE MONGI.....RESPONDENT**

**JUDGMENT**


*Date of last order: 31/08/2022*

*Date of judgment: 13/10/2022*

**AGATHO, J.:**

The Appellant knocked the door of this Court seeking intervention of this Court to consider at the District Court of Tanga at Tanga. The gist of the appeal is that the Respondent was removed from the position of administrator and later he appealed to DC against the decision to remove him. The grounds of appeal are:

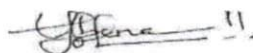
1. That the learned Resident Magistrate erred in law Honourable Court erred in law and in fact by holding that the Respondent was condemned unheard.



2. That the learned Resident Magistrate erred in law and in fact by failing to make a finding that there were valid reasons revocation of the Respondent's administration.
3. That the learned Resident Magistrate erred in law and fact by reversing the trial Court's decision on grounds that it should have afforded the Respondent's family opportunity to appoint a substitute Administrator without taking into consideration that the Respondent and his family are neither heirs nor beneficiaries the deceased's estates thus not entitled to Administer the same.
4. The learned Resident Magistrate erred in law and fact by failing to issue an order of remitting the file to the trial Court for the Respondent to be heard.

When the appeal was fixed for hearing the parties agreed to dispose it by way of written submission. They filed their submissions timely.

The Appellant made submissions in support of the appeal while the Respondent protested it. The appeal anchors on two issues: Whether the Respondent was indeed condemned unheard at the trial Court, and whether the revocation had any valid reasons.

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Whether the Respondent it is the law that only heirs entitled to be administrator of the estate of the deceased? And whether the Appellant's family should have been afforded an opportunity to appoint a substitute administrator.

To resolve the appeal the Court examined and responded to the issues:

1) Whether the Respondent was indeed condemned unheard at the trial Court? I have examined the record of proceedings and found that the allegation is not true. The trial court's handwritten record of proceedings are clear that on 30/3/2022 the Respondent was given the right to be heard.

2) Whether the revocation had any valid reasons?

Looking at the records of the trial court proceedings and especially page 2 of the ruling in Administration case No. 6 of 2022 dated 30/3/2022 it is crystal that the trial Court stated the reasons for revoking the Respondent as an administrator. The ruling states that the Respondent as co-administrator was involving the clan members in administration of the deceased's estate instead of cooperating with the Appellant who is the co-administratrix and

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the deceased's spouse. Also the Respondent was appointed the interim director of Vacha Company (in which the deceased was a shareholder) without involvement of the Appellant. I concur with the trial court's stand that the co-administrators are the ones with duty to make inventory of the deceased's properties and discharge any liability of the deceased's estate. This is not the responsibility of the clan.

I further agree with the trial court that there were controversies. The Appellant justifiably did not trust the Respondent due to his conducts such as not involving the Appellant in the process of his appointment as the director of Vacha Company. Further, the deceased's dependants were not involved in any of said activities central to administration of the estate instead the Respondent involved the so called clan members. I thus find the trial Court's decision to revoke the Respondent a co-administrator quite just and fair in the circumstances of the case to protect the interests of the dependants/heirs.

2. Whether the Respondent it is the law that only heirs entitled to be administrator of the estate of the deceased? This issue is answered in the negative. In certain instances, the Court may

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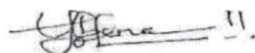


appoint administrator of the estate other than heirs. Therefore, it is not always the case that the heirs must be administrators of the deceased's estate. For instance, where the heirs are minors, lunatic, or where there are serious conflicts between the heirs, etc.

3. Whether the Respondent's family should have been afforded an opportunity to appoint a substitute administrator? This is a non-issue because it was the decision of the District Court to reverse the revocation of the Respondent. And it went on reinstating him as the co-administrator. But since, in this court's view, it was not proper to reverse the decision of the trial court, the Respondent's family may apply to the said trial court for appointment of another co-administrator.

Having so said, the following conclusion is drawn: the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal have merit. The 3<sup>rd</sup> ground is refused for lacking substance. And 4<sup>th</sup> ground is superfluous and hence ignored.

For the foregoing reasons, this appeal has merit and I allow it. The ruling of the District Court is consequently reversed, and its orders equally fall apart. I proceed to uphold the ruling of the trial Court.

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Given the nature of the case at hand each party shall bear its own costs.



**DATED at TANGA** this 13<sup>th</sup> Day of October 2022.

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**U. J. AGATHO**

**JUDGE**

**13/10/2022**

**Date: 13/10/2022**

Coram: U. J. Agatho, Judge.

For the Appellant: Emmanuel Kiariro, Advocate

For the Respondents: Thomas Kitundu, Advocate holding brief of  
Henry Njowoka, Advocate

C/C: Zayumba

**Court:** Judgment delivered on this 13<sup>th</sup> day of October 2022 in the presence of Emmanuel Kiariro, Advocate for the Appellant and Thomas Kitundu Advocate holding brief of Henry Njowoka, Advocate for the Respondent.



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**U. J. AGATHO**

**JUDGE**

**13/10/2022**

**Court:** Right of Appeal fully explained.

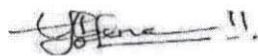


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**U. J. AGATHO**

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**JUDGE**  
**13/10/2022**

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