IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

PC. CIVIL APPEAL NO. 28 OF 2022

(C/F Karatu District Court, Civil Appeal No. 20 of 2021 as originated from Karatu Primary court in probate and Administration Cause No. 49 of 2021)

MAGRETH QAMARA XHIFFI.....APPELLANT

VERSUS

THERESIA EVARIST QAMARA XHIFFI.....1ST RESPONDENT

GRACE EVARIST QAMARA XHIFFI.....2ND RESPONDENT

YONA EVARIST QAMARA XHIFFI .....3RD RESPONDENT

JUDGMENT

27/10/2022 &08/12/2022

GWAE, J

Before the court of first instance, Karatu Primary Court (trial court), one Evarist Qamara, filed a probate and Administration Cause No. 25 of 2014 for grant of letters of Administration of the estate of the late Qamara Xhiffi (herein deceased) who died intestate on 14th day of November 1998. While the matter is pending before the trial court, one Agnesi Ng'anda (Bi Qamara Xhiffi filed an objection however she withdrew it on 13th day of October 2014 on the basis that the deceased family had given her a farm measuring two (2) acres.

The trial court subsequently rendered its ruling on the same date the objection was withdrawn and proceeded granting letters of administration to one Evarist Qamara Xhiffi who unluckily met his demise before accomplishment of his administratorship of the estate of his late father. After the demise of the Evarist and the appellant's mother (2020), the appellant, Magreth Qamara Xhiffi filed Administration proceeding in the trial court in relation to the deceased through Probate and Administration Caused No. 49 of 2021. Subsequent to her filing, a caveat was lodged by the respondents named herein. The 3rd respondent is the son of the late Evarist Qamara Xhiffi whereas the 1st and 2nd respondent were wives of the said Evarist Qamara Xhiffi.

In essence, the respondents' caveat was due to their fear of being deprived of their shares obtainable through the estate of the deceased whose inheritors are the appellant and others including the said Evarist Qamara Xhiffi and the fact that, they were not involved in the appointment of the appellant during family meeting.

On the other hand, it was clear version of the appellant that, the respondents ought not to have been involved in the family meeting since they are neither the family members of the late Qamara Xhiffi (appellant's

late father nor they are direct beneficiaries of the estate of the deceased, Qamara Xhiffi.

In its analysis of the evidence adduced before it, the trial court overruled the respondents' objection and granted the appellant letters of administration. Aggrieved by the trial court's decision, the respondents appealed to Karatu District Court at Karatu. The appellants' appeal was partly allowed in that; the appellants were directed to choice one among themselves to join the appellant to be her co- administrators of the estate of the late Qamara.

The 1st appellate court's decision aggrieved the appellant. Hence, the present appeal containing six grounds of appeal, to wit;

1. That, the District Court erred in law and fact to admit and conclude that the appellant is not trustful for selling sum of the deceased person's property while there was no satisfactory evidence on that regard during trial
2. That, the District Court grossly erred in law and fact to appoint second administrator without reasons while the respondents' side lacks qualification
3. That, the District Court erred in law and fact for failure to consider that the estate to be administered is the late Qamara Xhiff and not that of Evarist Qamara Xhffi, therefore the respondents have no right to administer

4. That, the District Court erred in law and fact to prematurely rule that number of beneficiaries was not listed while Form No. vi has not been filed
5. That, the District Court erred in law and fact to hold that the respondents have rights to inherit without proper reasoning and with no legal basis
6. That, the District Court erred in law and fact for failure to properly analyze evidence adduced during trial and also it also employed wrong reasoning resulting into very wrong decision

On the 27th day of October 2022, the appellant and 3rd respondent reached consensus that, this appeal be disposed of by way of written submission. The court blessed the parties' manner of arguing their appeal.

Arguing the appeal, the appellant opted to argue ground 1st, 5th and 6th ground separately whereas she argued the 2nd and 3rd ground as well as 5th and 6th ground jointly unlike the respondents in their joint written submission who responded only to ground 1 and 2 jointly and ground 6 separately. I shall however consider the parties' written submission in the course of determining grounds of appeal as argued by the parties in their respective submission.

> In the 1st ground which reads, "that, *the District Court erred in law and fact to admit and conclude that the appellant is not trustful for selling sum of the deceased person's property while there was no satisfactory evidence on that regard during trial"*

It is the submission of the appellant that, the 1st appellate court wrongly considered mere and unsupported allegations that the appellant is not trustful on the basis that, she sold some of the deceased's estate. On the other hand the respondents argued that, it is desirable to appoint another administrator so that there can be check and balance in the administration of the estate of the deceased. The respondents urged this court to refer to **Sekunda Mbwambo vs. Rose Ramadhani** (2004) TLR 439. The respondents added that, the appellant was seen by some of the beneficiaries of the estate of the deceased selling some of estate. They went on mentioning properties allegedly stolen to be one acre sold Vitalis Raphael and two acres sold to Karato Faustine.

Carefully examining the decision of the District Court in its appellate jurisdiction, I am of an observation that, the appellant failed to apprehend the same since the District Court Magistrate merely held that the appellant is not trustful since she failed to enlist all beneficiaries including Evarist and Maria. Thus, the appellant's complaint in the 1st ground is misplaced since that was not the finding of the District Court.

As to the ground 2 and 3, which are to the effect, "*that, the District Court grossly erred in law and fact to appoint second administrator without reasons and for failure to consider that, the estate to be*

administered is the late Qamara Xhiff and not that of Evarist Qamara Xhffi."

According to the appellant, she is suitable for grant of letters of administration of the estate of her late father as the daughter while the respondents are not children of the deceased. In her view, the trial District Court had given no reason of appointing second administrator. She went on arguing that during trial the respondents never sought to be appointed administrators, therefore the 1st appellate court as not justified to appoint one of them to be administrator.

The respondent on the other hand stated that, it is the duty of the court to appoint administrator whereas the duty of an administrator is to collect and distribute the deceased person's properties to beneficiaries. Hence, according to them, the District Court was justified to add another administrator following the parties' misunderstandings. They buttressed their argument with the case of **Oliver Bernard vs. Kornel Benard**, PC. Civil Appeal No. 6 of 2020 (unreported) where this court (**Masara, J**) stated;

> *"Considering that there were misunderstandings among the deceased's family, and for the purposes of avoiding further fracases or appoint another person distinct from the parties herein in order to have the deceased's estate distributed to the heirs."*

I entirely agree with the respondents that, the duty of appointing an administrator or administratix is entirely on the shoulders of courts of law. Hence, a clan or family minute or "a will" is a supportive document in the Probate and Administration Cause for appointment of administrator or executor. (See **Naftary Petro vs. Mary Protas**, Civil Appeal No. 103 of 2018 (unreported-CAT), **Angela Philemon Ngunge vs. Philemon Ngunge**, Probate and Administration Appeal No. 45 of 2009 (unreported-H.C) and Paragraph 2 (a) of the fifth Schedule to the Magistrates Courts Act, Cap 11, R. E, 2019).

The appellant's complaints that, one of the respondents would not be appointed co-administrator (s) by the District Court since they neither prayed for the appointment nor family members of the deceased appointed them are unfounded. I am increasingly of that view simply because, the guiding principle in appointing an administrator is existence of beneficial interest in the estate of course and when the interested persons are unfit, the court, may appoint an officer of the court or a refutable and impartial person. Thus, even a person who is not among the deceased person's heirs may be appointed an administrator though first priority is given to the persons interested in the estate. This position was correctly stressed by this court (**Rutakangwa,** J as he then was) in

Sekunda Mbwambo vs. Rose Ramadhani (2004) TLR 439 where it was stated;

> *"(ii) 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 fit person or authority to discharge this duty."*

Guided by the above principle of the law, the appellant who is the daughter to the deceased person is certainly fit person to be appointed an administratix of the estate of her late father, Qamara Xhiffi unless the contrary is established which is not the case here. I would also add to the above judicial authority that, not only, a widow, widows, parents or child of the deceased or deceased's relative but also a widower (mgane) is fit person for administration of estate of his late wife.

Nevertheless, I am satisfactorily not convinced, if the respondents are not interested persons in the deceased person's estate since even the appellant herself admitted before the trial court. She Plainly stated that, her three blood relatives namely; Francis, Ephransia and Martina who are alive and her late brother and her late sister known by names of Evarist Qamara and Maria Qamara respectively have their shares in the

deceased's estate as reflected in the trial court's typed proceeding at page nine.

Through the respondent's own admission ("Evarist ni mrithi") and the respondents' fear towards her impartiality, it seems clearly that, a beneficiary from the estate of the late Evarist Qarama is necessary as far as administration of the estate of late Qamara is concern. So, the 1st appellate Court Magistrate did not misdirect itself by holding that, there should be dual administration of the deceased's estate so that the interest of the late Evarist can be safely protected save for its failure to specifically appoint one among the respondents.

Having determined the 1st, 2nd and 3rd ground of appeal **not** in favour of the appeal, I do not have to be unnecessarily curtained by the 5th and 6th ground of appeal since both are all about analysis of the evidence which I have demonstrated herein.

In the upshot, this appeal is entirely dismissed save to the order of the District Court directing the respondents to choose one among themselves in order to join the appellant as co-administrator and proceed substituting that order by specifically appointing the 3rd respondent, Yona Evarist Qamara Xhiffi to be co-administrator. The appellant and 3rd respondent are therefore appointed to be co-administrators of the estate

of the late father and late grandfather respectively. Given the parties' relationship, I shall not make an order as to costs of this appeal

Ordered accordingly

DATED at **ARUSHA** this 8th Day of December, 2022

M. R. GWAE
JUDGE

Court: Right of appeal explained

M. R. GWAE
JUDGE
08/12/2017