

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**BUKOBA DISTRICT REGISTRY**  
**AT BUKOBA**

**(PC) CIVIL APPEAL NO. 39 OF 2022**

*(Arising from Civil Revision No. 5 of 2021 of Muleba District Court originating from Probate Cause No. 18 of 2017 of Nshamba Primary Court)*

- 1. CLEOPHACE SILAS..... 1<sup>ST</sup> APPELLANT**  
**2. AURELIA SILAS..... 2<sup>ND</sup> APPELLANT**  
**3. ISAYA SILAS..... 3<sup>RD</sup> APPELLANT**  
**4. PRISCA SILAS..... 4<sup>TH</sup> APPELLANT**

**VERSUS**

- 1. GASTONE SAMWEL .....1<sup>ST</sup> RESPONDENT**  
**2. PHILBERT KAHIMA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*21/11/2022 & 16/12/2022*  
**E. L. NGIGWANA, J.**

The appellants herein have invited this court to interdict the decision of the District Court of Muleba at Muleba (Before A. H. Mwetindwa, RM) with the following grounds as quoted hereunder:

- 1. The learned trial Magistrate erred in law and in fact for dismissing the appellant's application for want of merit on the mere reason that the appellants were supposed to appeal against the order arising from the probate cause and not opting to file application for revision while the magistrate told and came into her knowledge through appellant's*

*application that some appellants and respondent were not part of probate cause which was heard at Nshamba Primary Court.*

- 2. That the learned Magistrate erred in law and in fact for dismissing the appellants application without legal consideration that if the order of Nshamba Primary Court will left undisturbed, the appellant will suffer irreparable and economic loss while in the appellants prayer averred in chamber summons supported with affidavit revealed clear that the respondents after grant of letter of administration voluntarily wrote a letter denouncing themselves from distributing the deceased property by the reason that there were no property of deceased to be distributed to the purported heirs.*
- 3. The learned trial Magistrate who heard the application for revision erred in law and in fact for entering ruling that after reading the appellants application brought before her, she did not see any complaint that the appellants aggrieved with the decision of the Nshamba Primary Court.*
- 4. That the learned Magistrate erred in law and in fact for entering judgment that the appellants did not submit substantive reasons which would have made the court to exercise its power to make revision while the appellants notified the court the reasons which warrant the court to do so and on the face of Primary Courts' records reveals pure irregularity which warrants any court of law for interest of justice to make revision as the appellants are going to lose their properties which got them through blood and sweat for ill will of the first respondent.*

In order for one to understand the nitty-gritty of this matter, It is imperative, at this juncture to narrate the historical background of the dispute as it appears the said matter had the long time zigzag movements in the trial Primary Court.

The record has it that on 1<sup>st</sup> June, 2017, the first appellant Cleophas Silasi applied before Nshamba Primary Court to be appointed administrator of the late Silas Bibarulo who died on 16<sup>th</sup> March, 2014. He therefore encountered an objection from his sibling one Apolinary Silas. The Primary Court determined the matter and finally refrained from appointing neither the first appellant nor the Objector/Caveator and instead appointed three people namely; Edes Clemence, Justice Kalumuna (WEO) Bunyagongo Ward and Betson Mutabanohahi to be administrators. Due to the reasons not relevant to avail here, the said appointed administrators refused to take their offices of administrator ship. The court therefore directed the clan members to reconvene the meeting and nominate or propose other administrators.

The clan proposed Cleophas Bibalulo and Clemence Rwemegote, they were again objected by the same objector one Apolinary Bibarulo, the Primary Court decided to appoint the first appellant (applicant in primary court) and the objector Apolinary Bibarulo together with the WEO of Nshamba Ward. It was again unfortunate and dismay that the appointed administrators had a misunderstanding and as a result, could not cooperate and fulfill their duties. Following to that situation, the Primary Court revoked the administrators and in *suo moto* appointed the clan Chairperson and WEO of Nshamba. The said new appointed Administrators performed their duties and filed inventory and prayed for the court to close probate the prayer which was dully granted as

on 06/10/2020 the Probate Cause No. 8 of 2017 in the primary Court was marked closed.

Seven months later, the appellants made an application to the District Court of Muleba to revise the proceedings of the Probate Cause No. 08 of 2017. The District Court inspected the record of the Primary Court and heard parties on revision and finally was satisfied that there was nothing to revise as there was no illegality, incorrectness or impropriety on the proceedings of the trial court. It further reasoned that there was no reason for revision and that, if they were not satisfied with the Primary Court decision, they would have opted an appeal as a recourse. The application was thus dismissed on merit. Hence the current appeal in this temple of justice.

When this matter came for hearing, the parties opted to argue the appeal through written submissions, the mode which was blessed by this court. Though parties were not represented but the scheduling calendar by this court was accordingly complied with.

Starting with the 1<sup>st</sup> ground, the appellants submitted that the District Court erred to dismiss their application for revision basing on the reason that their possible remedy for them was an appeal. They argued that they could not have appealed as some of them were not parties to the original Probate Cause No. 18 of 2017 of the Primary Court.

As regard to the second ground, the appellants complain that the respondents who were appointed were not conversant to the existing properties as they had prior written a letter of renouncing on the ground that there were no properties of the late Silas Bibarulo. They argued that, when a

person is not conversant with the properties of the deceased, it would be difficult for him to collect the deceased's property and distribute to the rightful heirs.

The appellants' elaborations appear to touch on the third and fourth grounds. It was their argument that the Primary Court's order to file inventory was ordered to be done within 2 months but the inventory was filed beyond that period without being granted them extension of time. The appellants submit that distribution was done to the wrong names of the appellants and there was no fair distributions among the heirs.

They further contended that there was uncertainties in the reasoning of the District Court as at first it said the appellants were supposed to appeal but also said they supplied no substantive reason which could move the District Court to revise the decision.

In reply, the respondents, submitted that in Civil Revision No. 5 of 2022, the District Court rightly determined it as the appellant wanted to tactically use revision to challenge the decision of Nshamba Primary Court in Probate Cause No. 18 of 2017 while they had right to appeal against it.

That the late Silas Bibarulo died in 2014 and not 2019 was the appellant have submitted.

They also reacted that the administrators had legal standi to distribute the estates but the 1<sup>st</sup> appellant wants to grab bigger shares than others and is the one the major cause of conflicts and cases.

In rejoinder, the appellants reiterate that the appointed administrators distributed the properties of the late Silas Bibarulo Rwemigira while they had already written a letter to the Primary Court to renounce their duty. They added that revision was their only remedy and not appeal as parties were not originally parties to the Probate case at Nshamba Primary Court.

I will start determining the issue whether the appellants had the right to appeal or not as it seems to be one of the crucial issues confronting the appellants and it also touches on the jurisdiction of the District Court to hear revisions and appeals originating from Primary Courts. The respondents have joined hands with the District Court and say they had a right to appeal and not revision whereas the appellants oppose that they had right for revision as they were not original parties to probate No. 18/2017. This ground will not detain me. I agree with the appellants that the 1<sup>st</sup> appellant was only the party in probate case No.18/2017 but the co-appellants never featured as parties in the probate No.18/2017 and as well, the respondents were not parties as they were appointed by the Court *suo moto* is trite that persons who were not parties to the original case cannot exercise right to appeal save revision as correctly argued by the appellants. The revision therefore was the only remedy to be invoked by the appellants.

There was anomaly which was committed by the Resident Magistrate in the District Court. Apart from the District Court forming an opinion that the appellants had no right to file revision save an appeal, it went on further to determine the merit of the application for revision which actually it had already ruled that it had no jurisdiction to hear it as parties had the appeal right. In my view, the procedure adopted by the District Court was not legally

proper as it cannot be said that the revision filed before the District Court was properly determined where the Hon. Magistrate had decided to have no jurisdiction. In other words, it was a confusion to parties telling them that they had no right to file revision in the District Court save Appeal and then you proceed to determine the filed revision. This court cannot shut eyes to that anomaly and be left to stand.

By and large, I am constrained to quash the proceedings of the District Court save the application for revision case file number and their pleadings thereon which should remain undisturbed. I further order the matter (Application for revision No.5 of 2021) be remitted to the District Court of Muleba at Muleba to be tried *de novo* so expeditiously before another competent Magistrate. It is so ordered.

Dated at Bukoba this 16<sup>th</sup> day of December, 2022.



E.L. NGIGWANA

JUDGE

16/12/2022

**Court:** Judgment delivered this 16<sup>th</sup> day of December, 2022 in the presence of all parties in person, Hon. E.M. Kamaleki, Judge's Laws Assistant and Ms. Sophia Fimbo, B/C.



E.L. NGIGWANA

JUDGE

16/12/2022