

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT BUKOBA

BUKOBA DISTRICT REGISTRY

(PC) CIVIL APPEAL NO. 34 OF 2022

*(Arising from Civil Appeal No.31 of 2021 of the District Court of Bukoba,
Original Civil Case No.144 of 2021 of the Primary Court of Bukoba District
at Bukoba Urban)*

GOSBERT RWEYEMAMU KABANDA..... APPELLANT

VERSUS

JULIAN JOHN BULITI ICHULIKA.....RESPONDENT

JUDGMENT

*05/10/2022 & 30/11/2022
E. L. NGIGWANA, J.*

This is a second appeal emanating from the judgment and decree of the District Court of Bukoba at Bukoba in (PC) Civil Case No. 31 of 2021, in which the judgment and resultant orders of the Primary Court of Bukoba District at Bukoba Urban in Civil Case No.144 of 2021 were quashed and set aside.

The material background to the dispute is not difficult to comprehend. In the Primary Court of Bukoba District at Bukoba Urban, the respondent being an Administrator of the estate of the late John Buriti Ichulika, appointed vide Probate & Administration Cause No. 21 of 2021 dated 02/08/2021, sued the appellant herein claiming a motor vehicle with Registration No. T. 449 AFH make Nissan Datsun (Pick-up) valued at Tshs.

12,000,000/=, the property of the late John Buriti Ichulika who died intestate.

On the other hand, the appellant, **Gosbert Rweyemamu Kabanda** alleged to have legally purchased the said motor vehicle from the deceased's wife namely Felista John Ichulika right after it had been distributed to her. The case was heard inter-parties whereby the Primary Court entered judgment in favour of the appellant. In other words, the respondent's claim was dismissed for want of merit.

The decision of the Primary Court provoked the respondent Julian John Ichulika therefore, he knocked the doors of District Court of Bukoba at Bukoba vide (PC) Civil Appeal No.31 of 2021 to fault the Primary Court decision. In consideration of the appeal, the District Court allowed the appeal. Consequently, the judgment and resultant orders of the trial court were quashed and set aside.

Aggrieved by the decision of the District Court, the Appellant herein has knocked the doors of this court armed with three (3) grounds of appeal which were crafted as follows;

- 1. That, the first Appellate Court erred in law for allowing the appeal contending that the sale was invalid as the seller had no property to sell while the same was a matrimonial property which transferred direct to the remaining spouse after the husband's death, without the requirement of administration of estate. , the fact which validates the sale agreement.*

2. *That, the first Appellate Court erred in law for allowing the appeal in which the action of challenging sale agreement of the subject matter in dispute was time barred.*
3. *That, the first Appellate Court erred in law for allowing the appeal which emanates from the matter in which a wrong person was sued.*

Wherefore, the appellant is praying to this court to allow the appeal with costs by quashing and setting aside the judgment and orders of the first Appellate Court and restore the judgment and orders of the trial court, and declare that the appellant is owner of the motor vehicle in dispute.

When this matter came for hearing, the appellant appeared in person, unrepresented while Mr. Pontian Mujuni, learned advocate appeared for the respondent.

When invited to take the floor, the Appellant prayed to adopt his grounds of appeal to form part of his submission. He added that in 2010, he purchased the motor vehicle in dispute and had already transferred ownership. He ended up his submission urging the court to allow this appeal by quashing and setting aside the decision of the District court, and then restore the judgment of the primary court.

In reply, Mr. Mujuni submitted that the decision of the District court is very correct owing to the reason that the appellant bought the motor vehicle from a wrong person since the property was part and parcel of the estates of the late John Buliti Ichulika. He added that, the properties of the late John Buliti Ichulika were never distributed by the Administrator because there had been appointments and revocations of administrators since 2010.

He added that the deceased's wife was one of the heirs and the motor vehicle was the personal property of the deceased that is why the motor vehicle registration card was in the deceased's name.

Now, the only issue before me to determine whether this appeal is meritorious.

In the first ground, the appellant faults the District court alleging that the deceased's wife derives her right in the context of the principle of the right to survivorship, thus she legally sold the motor vehicle to him. *Since the property was part parcel of the deceased's estate, it cannot be said that the wife had good title to pass to the appellant, while she was not the administratrix of the said estate.*

It is common knowledge that a requirement to appoint an administrator of the estate of the deceased is not a luxury but is done with a purpose. The duties of an administrator/administratrix appointed by the Primary Court are statutory. Paragraph 5 of the Fifth Schedule to the MCA Cap 11 R.E 2019 provides that;

"An administrator appointed by a primary court shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court."

The same duties were stated in the case of **Hadija Saidi Matika and Awesa Saidi Matika**, H/C Mtwara, PC Civil Appeal No. 2 of 2016, as follows; **One**, to collect the assets of the deceased. This include both fixed and movables. It also involve going to the bank and collecting what might be there. He can also sue people who may refuse the requests. **Two**, to identify the heirs. **Three**, to identify and pay the debts of the deceased if any. **Four**, to distribute the assets to the heirs and **Five**; to file inventory and statements of accounts.

Generally, an administrator steps into the shoes of the deceased with all legal mandate to exercise all the powers the deceased would exercise including **the power to dispose any of the deceased's estate**. Since the alleged motor vehicle was in the name of the deceased, and since it was sold by Felista John Ichulika and Bertha John Ichulika to the appellant while the said persons were not administratixes of the deceased's estate, it is obvious that the sale was a nullity because the said persons had no good title to pass to the appellant. The respondent as an administrator has the right to collect the deceased's properties and the right to sue the people who may refuse his request the way he did to the appellant herein.

The complaint that the first Appellate Court erred in law for allowing the appeal in which the action of challenging sale agreement of the subject matter in dispute was time barred was not raised in the lower courts. It is well known that; as a matter of general principle, an appellate court cannot consider matters not taken or pleaded in the court below to be raised on appeal. I am alive that matters of law can be raised at any stage even on appeal. In this case, the 2nd ground should not detain me because the

appellant made no submission or referred this court to any law which was offended. What is apparent in this matter is that fact that the sale agreement entered between Felista John Ichulika and Bertha John Ichulika on the one hand and the Appellant on the other hand was nothing but a nullity.

The complaint that the wrong party was sued was not raised by the appellant in the lower court, thus cannot be raised at this stage.

In the upshot, appeal is found devoid of merit therefore, it is hereby dismissed. The judgment and orders of the 1st appellate court are hereby upheld. The appellant is at liberty to institute a suit against Felister John Ichulika and the administrator of the estate of the late Bertha John Ichulika to recover his money. Given the nature of the suit, each party shall bear its own costs in this appeal. It is so ordered.

Dated at Bukoba this 30th day of November, 2022.

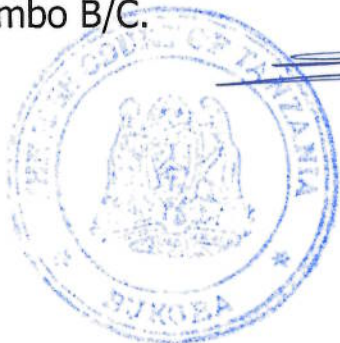



E. L. NGIGWANA

JUDGE

30/11/2022

Judgment delivered this 30th day of November, 2022 in the presence of both parties in person, Hon. E. M. Kamaleki, Judges' Law Assistant and Ms. Sophia Fimbo B/C.




E. L. NGIGWANA

JUDGE

30/11/2022