

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

**TEMEKE HIGH COURT SUB - REGISTRY**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**CIVIL APPEAL NO. 7 OF 2022**

*(Original Misc. Civil Application No 103/2021 of the Resident Magistrates' Court of Dar es Salaam at Kisutu before Hon. H.A. Shaidi - PRM)*

**ANDREW JOHN SAMBO ..... APPELLANT**

**VERSUS**

**NICAS MASIKA**

*(As administrator of the Estate of the late John Silvin Sambo) .....RESPONDENT*

**JUDGMENT**

*30/11/2022 & 13/12/2022*

**I.C. MUGETA, J**

The trial probate court was satisfied that the appellant's application for revocation of the letters of administration granted to the respondent was incompetent for being res judicata. As a result, it upheld the objection raised by the respondent to that effect. The appellant's application was, therefore, per the order of the probate court, "rejected". Besides rejecting the application, the probate court made a finding that, the respondent being administrator of estate of John Silvin Sambo had failed in his duties as he had not filed inventory. For this finding, the learned Principal



Resident Magistrate advised those affected by his failure to report to the police for investigation, perhaps for possible criminal prosecution.

Aggrieved, the appellant has filed two grounds as reproduced hereunder:

- i) That, the trial court erred in law and fact as the ruling is ambiguous and uncomprehend (sic)*
- ii) That, the trial court erred in law and fact as the ruling has no legal stand and no reason for the decision.*

These grounds are ambiguous but were explained during hearing. The appeal was argued by way of filing written submissions. Supporting the first ground of appeal, counsel for the appellant Mr. Ashiraf Muhidin submitted that the learned magistrate erred to declare the application incompetent for being res judicata and proceed to find that the administrator had not filed the inventory which is going into merits of the application. He argued further that the ruling is ambiguous because the trial magistrate did not state which issues were to be investigated by the police.

Regarding the second ground of appeal, the learned advocate submitted that the decision of the trial court offends orders XX rule 4 of the Civil Procedure Code as no reasons for the decision was provided. One of such scenario is ordering police investigation without assigning reasons.

*M. geta*

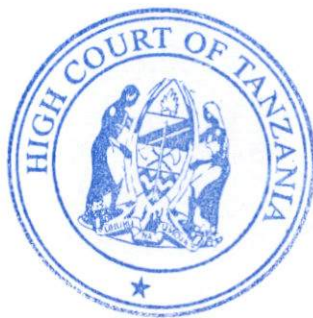
The respondent's reply was filed by the Legal and Human Right Centre. It supports the finding of the trial court that the application is res judicata. In their view, besides the decision on the principle of res judicata, the rest of the statements are just comments by the learned magistrate which are obiter dictum.

I agree with the respondent that the learned magistrate addressed the issues of inventory and reporting to the police as obiter dictum. This is because the application was determined on a preliminary objection while the issue whether the respondent has filed inventory goes to the merits of the case. However, to set the record of the court straight, let it be known that it is the duty of the court, not the police, to make sure administrators execute their function per the law. A report to the police can be made in terms of section 107 (3) (4) and section 157 of the Probate and Administration of Estates Act [Cap. 352 R.E 2002] after a special finding of the court that the administrator has not filed inventory or accounts and omitted to comply with the requisition made under rule 110 of the Probate Rules. In this case, there is no evidence on record of compliance with the said provisions of the law before engaging the police. The erroneous obiter dictum cannot, therefore, be left to remain in court record. I quash it.

*M. Ngeta*



On the application being res judicata, the learned magistrate fell into error too. If the administrator has not discharged his duties by filing inventory and accounts, applications to revoke his appointment for such a misconduct while holding his office are limit less. The principle of res judicata does not apply on application for revocation of the letters of administration provided there is an allegation of a misconduct on part of the administrator and the file has not been closed. It is for the same reason a probate court never becomes functus officio on matters relating to the administration process until when the administration bond has been discharged and the file closed. The trial probate court ought to have found the objection without merits. For this reason, I quash the ruling of the probate court and order it to determine the application on merits. The appeal is allowed without orders as to costs.



*Mugeta*  
**I. C. MUGETA**

**JUDGE**

**13/12/2022**

**Court:** - Judgment delivered in chambers in the presence of Ashiraf Muhidini, advocate for the appellant and in the absence of both the appellant and the respondent.

**Sgd: I. C. MUGETA**

**JUDGE**

**13/12/2022**

A handwritten signature in blue ink, appearing to read 'Mugeta', is centered on the page below the printed text.