

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB - REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

PC. CIVIL APPEAL NO. 18 OF 2022

(Arising from probate appeal No. 11/2021 of the District Court Temeke One Stop Judicial Centre before Hon. Msafiri – SRM original Probate cause No. 316 of 2019 of the Primary Court of Ilala District at Ukonga)

BLANDINA LUCAS NDONDOLE & BRUNNO LYUGULA (As joint
administrators of the late ISAYA DAMIAN MKAMI) **APPELLANTS**

VERSUS

INNES ISAYA MKAMI.....**1st RESPONDENT**
ISAACK ISAYA MKAMI.....**2nd RESPONDENT**
MANENO ISAYA MKAMI.....**3rd RESPONDENT**

JUDGMENT

21/11/2022 & 14/12/2022

OPIYO, J.

The primary court of Ilala at Ukonga appointed the appellants to administer the estate of Isaya Damian Mkami. They filed accounts distributing the deceased's estate to seven heirs including the respondents. The other four heirs accepted the mode of distribution made by the appellants. However, the respondents disputed the same. Despite protest by the respondents, on 24/5/2021 probate was closed by reflecting the words *`mirathi imefungwa endapo lolote litatokea kama*



warithi hawajaridhia wafuate taratibu za kisheria. By Hon. Higi, Magistrate. Again on 07/09/2021 there was appearance by the then petitioners before Hon. Cecilia, the probate court marked the file finally closed as the appellant had filed the final accounts.

Due to their dissatisfaction with the accounts of the estate, it seems the respondents complained about it administratively. The record is not clear in this context, but it seems the probate court told them orally or by a letter that it had nothing to do as the file had been closed. This information or reply is not reflected in the court file, but it became subject of appeal to the District court. During hearing of the appeal at the district court, the learned presiding senior resident magistrate raised *suo motu* the issue whether the probate court had jurisdiction as the deceased was a Christian. After hearing the parties, the district court found that the probate court had no jurisdiction. It quashed the proceedings of the probate court, hence, this appeal on the ground that the district court erred to hold that the primary court had no jurisdiction.

This appeal was heard by way of filing written submissions and the parties have complied with the schedule. In the course of composing the judgment, I discovered that the appeal in the district court was based on a none existing order, therefore, no proper appeal was before the District Court for determination. All grounds of appeal are about a complaint which is not part of the proceedings. Consequently, I summoned the parties to address on the issue. They conceded that the appeal was based on complaints which were not recorded in court proceedings.

In that regard, I make a finding that there was no proper appeal at the district court upon which that court could have validly considered the jurisdiction of the probate court. Complaints attended administratively cannot be subject of appeal. In the event, I invalidate the proceeding and quash the judgment of the District Court for being a nullity. I give no orders as to costs as the parties are relatives.




M. P. OPIYO
JUDGE
14/12/2022