

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

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**PROBATE CIVIL APPEAL NO. 04 OF 2022**

*(Arising from Probate Appeal No. 02 of 2021 of the District Court of Karagwe at Kayanga and  
Originating from Probate Cause No. 01 of 2021 of the Mabira Primary Court)*

**THEOPISTA CHARLES----- APPELLANT**

**VERSUS**

**EMILIANA CHARLES----- RESPONDENT**

**JUDGMENT**

**Date of Last Order: 23/03/2022**

**Date of Judgment: 08/04/2022**

**A. E. Mwipopo, J.**

Theopista Charles, the appellant herein, filed Probate Cause No. 01 of 2021 in the Mabira Primary Court to be appointed administrator of the estates of her late husband namely Charles Henerico. The Primary Court appointed the appellant to be administrator of the deceased estates in its decision delivered on 29.03.2021. The respondent herein namely Emiliana Charles, who is the second wife of the late Charles Henerico, filed revision in the Karagwe District Court against the

appointment of the appellant to be administrator of the estates of their late husband. The District Court found that there is irregularities in the proceedings before trial Primary Court. That there was a failure to call heirs of the deceased estates whereby only 1 from a total of 16 deceased children was called to testify in the Primary Court. The District Court revised the decision of the trial Primary Court and revoked the appointment of the appellant as administrator of the deceased estate and directed the case to start afresh by involving all interested parties in full. The appellant was not satisfied with the decision of the District Court and she filed the present appeal.

The appellant filed her Petition of Appeal in this Court which contains five grounds of appeal as follows hereunder:-

- 1. That, the learned District Court Magistrate grossly erred in law and facts for failure to know what the appellant filed an inventory of the deceased estate in Court of law after distribution of the deceased estate according to section 10 of the fifth Schedule of the Magistrates Court Act, Cap. 11, R.E. 2019, hence wrong decision against the appellant.*
- 2. That, the learned District Court Magistrate grossly erred in law and facts for failure to know that the appointed administratrix distributed the said deceased properties to all heirs on 27.04.2021 which was filed by the appellant in Primary Court of Mabira in time hence wrong decision.*

3. *That, the learned District Court Magistrate grossly erred in law and facts for failure to know that the appellant had already discharged her own duties for the distribution of the deceased properties which were signed by all legal heirs and clan members without any interference and thus the respondent has no legal right to object the appointment of administratrix at this time hence a wrong decision.*
4. *That, the learned District Court Magistrate grossly erred in law and facts to receive an application for revision from the respondent while there was right to exercise right to appeal out of time in the Court of law hence wrong decision against the appellant.*
5. *That, the learned District Court Magistrate grossly erred in law and facts to revoke the appointment of the administratrix without any sufficient reason given out by the Magistrate hence wrong decision.*

When the matter came for hearing, the appellant appeared in person unrepresented, whereas, the respondent was represented by Mr. Frank John, Advocate.

The appellant being a lay person did not submit on her grounds of appeal. In brief she said that she was married to her husband in 1986 and the respondent was married in 1997. The deceased died in 2018 leaving two widows, 16 children, and some properties which were not distributed to heirs. That she applied and was

appointed by Mabira Primary Court to be administrator of the deceased estate. The respondent was served with summons to appear and be heard by the Primary Court but she did not appear. Also, the announcement was made and put in public places and nobody appeared to object her appointment. Thus, District Court erred to order the probate matter to start afresh before Primary Court.

In his response, the counsel for the respondent said that the District Court found that there was fraud and misrepresentation by the appellant which led to appointment of the appellant as administrator of estates of her late husband. For this reason the District Court ordered the trial to start afresh so that parties herein and other heirs have to get their rights over the deceased property. The counsel prayed for the court to uphold the decision of the District Court or even this court to appoint the appellant and the respondent to be administrator of the estate of their late husband namely Charles Henerico. He said that the appellant and respondent are blood sisters married to one husband.

Having heard the rival submissions from both sides, I think there is a need to make clear the principle on the revisional powers of the District Court. It is settled principle that where a party has a right of appeal, he cannot invoke revisional powers of the Court. The said position was stated by the Court of Appeal in **Moses J. Mwakibete v. The Editor-Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd (1995) TLR 134** and in **Augustiono Lyatonga**

**Mrema v. Republic and Another, [1996] TLR 267.** In the case of **Felix Lendita v. Michael Long'du**, Civil Application No. 312/17 of 2017, Court of Appeal at Arusha, (Unreported), held that According to the law therefore, where there is a right of appeal the power of revision of this Court cannot be invoked. Such powers are exercised in exceptional circumstances.

The District Court have jurisdiction to call and examine the record of any proceedings and registers in the Primary Court within the District the Court is established for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings. This is provided under section 22 (1) of the Magistrates Court Act, Cap 11, R.E. 2019. In the exercise of its revisional jurisdiction, a district court have all the powers conferred upon a district court in the exercise of its appellate jurisdiction according to subsection (2) of the section.

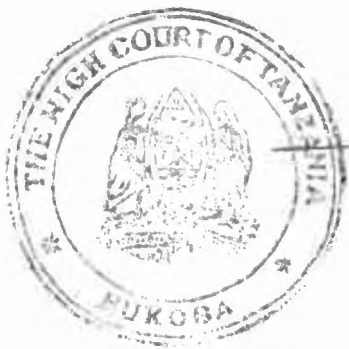
In the present case the respondent who was not a party to the suit at trial Primary Court filed revision application in the District Court against the appointment of the appellant as administrator of the deceased estates. As the respondent was not a party to the proceedings before trial Primary Court, the only available remedy for her where she was not satisfied with the decision of the trial Primary Court was through revision. Thus, the respondent properly filed revision

in the District Court for the purposes of District Court to satisfying itself as to the correctness, legality or propriety of any decision of the Primary Court. The facts that the appellant had already discharged her duties of distributing the deceased properties which were signed by all legal heirs does not take away the revisional jurisdiction of the District Court over the Primary Court. Thus, I find that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal has no merits.

Regarding the last ground of appeal, the appellant alleged that the District Court erred to revoke the appointment of the administratrix without sufficient reason. The Judgment of the District Court shows that it revised the decision of the trial Primary Court to appoint the appellant as administrator of the deceased estate for the reason that the evidence on record revealed that during the hearing of the probate case before the trial Primary Court only one child of the deceased and the appellant were called to testify. The deceased had 2 wives and 16 children. The Court expected the appellant and the trial Primary Court to notify the respondent and other children of the deceased to appear in Court as they have interest in the case. Also, the minutes of the clan meeting shows that only few members of the clan attended the meeting and most of the heirs of the deceased were absent. It was for these irregularities the District Court revoked the order of trial Primary Court appointing the appellant to be the administratrix of the deceased estates. The said reasons speaks of itself and I need not to say much. Thus, it is

not true that the reason for revising the trial Primary Court decision was not given. It was given and the said reason is justified.

Therefore, I find that the appeal is devoid of merits and it is hereby dismissed. The decision of the District Court is upheld. In the circumstances of this case, each party shall take care of his own cost. It is so ordered accordingly.



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A.E. Mwipopo

**Judge**

08.04.2022

The Judgment was delivered today, this 08.04.02022 in chamber under the seal of this court in the presence of counsel for the respondent and in the absence of the appellant and the respondent.



A handwritten signature in black ink, appearing to be "A.E. Mwipopo", written over a horizontal line.

A. E. Mwipopo

**Judge**

08.04.2022