

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

(PC) CIVIL APPEAL NO. 21 OF 2020

(Arising from Civil Appeal No. 37 of 2021 at the District Court of Bukoba at Bukoba and Originating from Probate Cause No. 14 of 2018 of the Kishanje Primary Court)

DEUSDEDIT RAULENT KASHASHA----- APPELLANT

VERSUS

SALVATORY LAURENT KASHASHA----- RESPONDENT

JUDGMENT

Date of Last Order: 21/03/2022

Date of Judgment: 01/04/2022

Hon. A. E. Mwipopo, J.

Deusdedit Raulent Kashasha, the appellant herein, filed Probate Cause No. 14 of 2018 in the Kishanje Primary Court which is application to be appointed administrator of the estates of their late father namely Laurent Kashasha. The Primary Court appointed the appellant to be administrator of the deceased estates on 04.01.2019. The respondent herein namely Salvatory Laurent Kashasha filled objection against the appointment of the appellant, who is his young brother, to

be administrator of the estates of their late father on 02.04.2019. In the said objection the appellant alleged that their late father died on 03.10.1996 and the deceased property was traditionally distributed to heirs according to the will left by the deceased on the same year. The respondent prayed for the trial Primary Court not to re-open the distribution of the deceased estate by appointing the appellant as administrator of the deceased estate. The appellant admitted that the distribution of the deceased estates was done 23 years back but the reason for the application for appointment to be administrator of the deceased estate is to have locus standi to litigate Application No. 32 of 2019 at the Bukoba District Land and Housing Tribunal against Longino Rwegasila who bought the land from their brother namely Leonard Laurent.

The objection was partly successful to the extent that the appellant was appointed administrator of deceased estates for the purpose of litigating Application No. 32 of 2019 in Bukoba District Land and Housing Tribunal and he was ordered not to distribute any of the estates left by the deceased. The respondent was aggrieved by the decision of the Primary Court and appealed successfully to the Bukoba District Court against the decision of the Primary Court. The district Court revoked the appointment of the appellant as administrator of the deceased estate in all aspects for the reason that there is no estate to be

administered. The appellant was not satisfied with the decision of the District Court and he filed the present appeal.

The Petition of Appeal filed in this Court by the appellant contains four grounds of appeal as follows hereunder:-

- 1. That, the appellate Court erred in law and facts by denying the appellant his right to be heard and defend his case.*
- 2. That, the appellate Court erred in law and facts proceeding with the matter ex parte against the appellant before using other alternative service.*
- 3. That, the appellate Court erred in law and fact proceeding with the matter ex parte basing on affidavit sworn by one Longino Mutagwaba Rwegasila who is Bishaka Hamlet Chairman while he has interest in this suit.*
- 4. That, the appellate Court erred in law and fact by revoking the appointment of the appellant as the administrator of estates of the late Laurent Mwebesa Kashasha and without appointing none while there are other properties of the late Laurent Mwebesa Kashasha that have not been distributed.*

When the matter came for hearing, the appellant had a service of Mr. Gerase Ruben Advocate and the respondent appeared in person, unrepresented.

Mr. Gerase Ruben, Advocate, submitted on the 4th ground of appeal only and abandoned the ground No. 1, 2 and 3 regarding the ex parte order of the District Court. He said on the 4th ground of the appeal that the District Court erred

to quash the decision of Primary Court without appointing any other person to administer the deceased estate. Duties of the administrator of deceased estate is to collect properties of the deceased and to distribute to the heirs and also to pay for deceased debts. In this matter, since the deceased Laurent Kashasha, who is the father of the parties herein, died nobody was appointed as administrator of his estate. It was on 2018 when the appellant was appointed before he was removed by the District Court on appeal without appointing another administrator of the deceased estate.

The power and duties of administrator of the deceased estates appointed by Primary Court which is part II of the 5th schedule to the Magistrates' Court Act provides in paragraph 2 how administrator could be revoked which includes that the administrator is not trustworthy. The District Court revoked the appellant's appointment as administrator as the deceased estates has already been distributed, but the appellant was applying for appointment as administrator in order to open a suit before the District Land and Housing Tribunal and confirm the distribution of the deceased estate for the purpose of closing the Probate Case. As the District Court revoked his appointment it led to the case before District Land and Housing Tribunal to be struck out.

In his response, the respondent objected the appeal on the reason that there is no property of the deceased which was not distributed to heirs. He said

that the appellant never mentioned before the trial Primary Court the property which was not distributed. It was submitted by the respondent that there is no need to appoint administrator as the properties has been distributed and some properties has been transferred to third parties. The case which appellant want to prosecute in the District Land and Housing Tribunal has already been struck out as result there is no case for the appellant to litigate. This is the sole reason for appellant's appointment as administrator of the deceased estate by the Primary Court.

From submissions, the issue for determination is whether or not the appeal has merits.

The appellant counsel submitted on the 4th ground of appeal only after abandoned the 1st, 2nd and 3rd grounds of appeal found in his petition of appeal. In the submission he said that after the District Court revoked his appointment as administrator of the deceased estates it leaves the deceased estates without administrator while there are some of the deceased estates were not distributed to any heir. Also, the counsel said that the appellant need to have locus to institute a land case in the District Land and Housing Tribunal and the same will be gained by being appointed as administrator of the deceased estates. The respondent response is that there is no property to be distributed as they have been distributed since 1996 and the case before the District Land and Housing Tribunal which made

the Primary Court to appoint respondent the administrator of the deceased estates for purpose of litigating is not there following the said case to be struck out by the Tribunal.

In the present case, the reason for the District Court to revoke the appointment of the appellant as the administrator of the deceased estate is that all the parties does not contest the will of their late father and the distribution of deceased estate was done in accordance with the said will since 1996. I agree with the District Court that the evidence available in record shows that there is no deceased estate to be distributed. All properties were distributed customary in 1996 and the heirs lived in harmony until 2018 when the appellant instituted application to be appointed administrator of the deceased estates. This is more than 22 years since the said estates of their late father was distributed.

In the case of **Julius Fundi and another v. Ernest Pancras**, Probate and Administration Appeal No. 3 of 2013, High court of Tanzania, at Bukoba, (Unreported), this Court was of the view that where deceased estates has already been distributed according to customary laws there is no need to appoint an administrator who in actual sense would have nothing to administer other than creating some unfounded claims in respect of the estate of the deceased which already have owners. This is appears to be the situation in the present case were the deceased estate was distributed in 1996 soon after his demise. The heirs of

the deceased estate has lived in harmony for almost 23 years until the appellant herein instituted the probate case in the Primary Court. In his application for appointment to be administrator of the deceased estate before the Primary Court, the appellant reason for appointment was to distribute the deceased estate according to the will as if the said deceased estates were not distributed at all. As result, the Primary Court appointed the appellant as administrator of the deceased estate on 04th January, 2019, to distribute the deceased estate. It was after the respondent has filed the objection to appellant's appointment where the appellant said in his testimony that his intention was to litigate the land dispute case pending at District Land and Housing Tribunal and not to distribute deceased estates.

The evidence available in record shows that when appellant was asked by the trial Court during his testimony in objection proceedings to name the deceased estate which was not distributed he failed to show any of the deceased estate which was not distributed. The appellant told the Court that the land has been distributed to hear since 1996 and the respective heirs are using them. The deceased estate he was interested to litigate at District Land and Housing Tribunal was distributed to four heirs including his brother Leonard Laurent, but Leonard Laurent sold it. This is found in page 29 and 30 of the typed proceedings of the Primary Court. This means that the appellant is applying for appointment to be administrator of the deceased estate to litigate the land which was not distributed

to him. The appellant has no interest to the land distributed 23 years back to his siblings thus there is no valid reason for his appointment as administrator of deceased estate. This means that without respondent interference the appellant would have proceeded to distribute the deceased estate afresh which would have caused chaos in their family.

Therefore, the appeal is hereby dismissed for want of merits and the decision of the District Court is upheld. As the heirs of the deceased estates has been in occupation of the deceased estates for more than 23 years without interruption, it means they are the rightful owner of the said land and they can sue or being sued as the rightful owner of the land in their own names. In the circumstances of this case, each party has to take care of his own cost of the suit. It is so ordered accordingly.




A.E. Mwipopo
Judge
01.04.2022

The Judgment was delivered today, this 01.04.2022 in chamber under the seal of this court in the presence of the Appellant, Respondent and the counsel for the Appellant. Right of appeal explained.



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

A. E. Mwipopo

Judge

01.04.2022