

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TEMEKE SUB - REGISTRY
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE**

PC CIVIL APPEAL NO. 3 OF 2021

(Appeal from the decision of District Court of Ilala at Kinyerezi in Probate Revision No. 24 of 2020 delivered by Hon. Obasi S. J, RM on 09th September, 2021 and originated from Probate and Administration Cause No. 350 of 2017 of Ukonga Primary Court)

SALMA KIMBUTE MGHAMBA..... APPELLANT

VERSUS

MOHAMED KIMBUTE MGHAMBA..... RESPONDENT

JUDGMENT

Date of last order 15/2/ 2022

Date of judgement: 28/2/2022

OPIYO, J.

Aggrieved by the decision of District Court of Ilala at Kinyerezi in Probate Revision No. 24 of 2020 delivered by Hon. Obasi S. J, RM on 09th September, 2021 the appellant appealed to this court on the following grounds:-

1. That, the learned Magistrate erred in law to revoke the appointment of Salma Kimbute Mghamba as administratrix of the estate of the late Kimbute Mghamba without considering the evidence on record.

2. That, the learned Magistrate erred both in law and fact to quash the ruling of the Ukonga Primary on the fact that the trial court did not decide the matter raised before it concerning the ownership of the house number ILA 006710 without regarding the jurisdiction of the Primary Court.
3. That, the learned magistrate erred both in law and fact to quash the decision of the trial court while there were neither appeal nor revision before the honourable District Court of Ilala.
4. That, the learned Magistrate misdirected himself to revoke the decision of the trial court without good cause.
5. That, the learned Magistrate misdirected himself to revoke and revise the ruling of the trial court while there was no pending litigation relating to said probate in the trial court.
6. That, the learned Magistrate erred both in law and fact to quash and revise the decision of the trial court on the matter of legality and ownership of house No. ILALA 006710 without referring to the judgment of the trial court dated 14th December, 2017 before honourable Nahato, RM on which the respondent was appointed as administrator of the estate of late Kimbute Mghamba, where by the said house was among the estate mentioned by the respondent.
7. That, the learned Magistrate erred in law even citing the case number (sic).

Wherefore the appellant prays for the ruling of the District Court to be quashed and set aside and trial court decision be upheld.

On 13th December, 2021 when the matter came for hearing, in consensus both parties agreed to dispose of the matter by written submissions. Timely filing of their respective submissions by both sides is highly appreciated.

The appellant started by giving the background of the case that, they are blood related, the defendant being her stepbrother borne to the same father, the late Kimbute Muhamed Mghamba. That, their father died on 13th March 2017. After the death of their father, a family meeting was held and they all proposed the respondent to be the administrator of their late father's estate to which he was appointed by Ukonga Primary Court on 14th December, 2012 vide Probate cause No. 350 of 2017. On 05th October, 2020 the appellant herein on behalf of other family members applied to the same court for revocation of letters of administration on the ground of misusing the deceased estate and on 29th June, 2021 the respondent's appointment was revoked and instead, the applicant was appointed to be the administratrix of the said property.

Aggrieved with the revocation the respondent wrote a letter on 10th August, 2021 which moved the District Court. The court *suo motu* revised the trial court decision and reinstated the respondent as an administrator of the deceased estate hence this appeal.

Submitting on the first ground, she stated that the basis for the ruling of the District Court on its ruling dated 9th September, 2021 is that the

Primary Court did not consider the issue raised by the respondent that he was the owner of the property, the findings of the District Court is misplaced because ownership was not an issue at the Primary Court and the respondent made it clear that the house in dispute belonged to the deceased and the appellant made it clear during the hearing of the revision that the deceased was using the names of Kimbute Mohamed Mghamba and Mohamed Kimbute Mghamba interchangeably and referred to page 5 of the ruling and it can be evidently shown on "Leseni ya Makazi" that is Land Form No. 74 in respect of property ILA 006710 it contained the deceased photograph and signature this shows the deceased owns the property, the marriage certificate attached in a complaint letter to District Court of ilala bears the name of Mohamed Kimbute, thus the property in Banana area forms part of the deceased estates.

Submitting on the second ground, that the trial court erred in deciding the matter concerning ownership of the house number ILA 006710 without regarding its jurisdiction, it is the respondent's own submission at the trial court that the said house formed part of the deceased estate and thus he is estopped from denying the same fact. On the third ground, her submission is that the Magistrate erred in law and in fact in quashing the decision of the trial court while there was neither appeal nor revision. He argued that, the law requires an application to be brought by way of chamber summons supported by affidavit as provided under Order XLIII of the Civil Procedure Code, Cap 33, R.E 2019 but in the case at hand the application was initiated by a letter dated 10th August, 2021 captioned

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*"MALALAMIKO YA KUONDOLEWA USIMAMIZI WA MIRATHI
MAHAKAMA YA MWANZO UKONGA SHAURI LA MIRATHI*

*NO.350/2017, MAREHEMU KIMBUTE MOHAMED MGHAMBA,
MSIMAMIZI, SALMA KIMBUTE MGHAMBA"*

Thus, the notion that the court moved *suo motu* is not true rather it was moved by the respondent, she so argued.

In regard to ground four, that the decision of the trial court was revoked without good cause, the appellant prayed to repeat the reasons adduced in grounds 1, 2, and 3 of which I find no need to replicate.

On the fifth ground, the appellant stated that the decision of the trial court was revoked and revised while there was no pending litigation relating to the said probate in the trial court. After the appointment of the appellant as administratrix of the deceased estate, the only remedy was for the respondent to appeal as there were no proceedings in the Primary Court to back up the revision.

Lastly, the appellant submitted on the sixth ground that the trial court judgment was quashed and revised on the matter of legality and ownership of house No. ILALA 006710 without referring to the judgment of the trial court dated 14th December, 2017 where the respondent admitted that, the deceased left a house. Wherefore the appellant stated that there was a valid reason for revocation of the respondent's appointment as an administrator by the trial court. Thus, she prayed for the appeal to be allowed as her grounds have merits.

Resisting the appeal, the respondent stated that, the house at Banana, the junction of Segerea with 25 rooms and shop frames is the root of the

case and does not belong to the deceased, though it was bought by the deceased it was registered in respondent's name. He further stated that, being dissatisfied with the decision of Ukonga Primary Court, on 10th August 2021 by a letter he applied for revision in District Court of Ilala and the court moved *suo motu* and revised the decision of the trial court of which the District Court Magistrate agreed with the respondent that the ownership of the house at Banana was not resolved before revoking the respondent's appointment and this answer also reflected on the second ground of which I won't labour to repeat.

Regarding the third ground, that the trial court decision was revised with neither appeal nor the application for revision, the respondent submitted that it is a common law doctrine that where there is any complaint the court may move *suo motu* for the purpose of administering justice to the parties. He contended that in this case the District Court had a good cause to revoke the trial court's decision as there was no good ground warranting the revocation of the respondent being the administrator of the deceased's estate in the first place.

Replying on the fifth ground that revision was done without pending litigation the respondent repeated that, he is the applicant of Probate Revision No. 24 of 2020 and wrote a letter to the Magistrate Incharge of the District court complaining about his revocation and that is what made the court to move *suo motu*.

Lastly, on the sixth ground, it was stated by the respondent that, he never included house No. ILA 006710 into the properties of the deceased as the said house belongs to him.

On her rejoinder, the appellant reiterates mostly what she had submitted on her submission in chief, and for the purpose of avoiding repetition, I refrain from reproducing it.

Going through, the submission of the parties, it is clear that the appellant dropped the seventh ground, as it was not addressed, I also prefer to do the same. In determining the grounds of appeal, I will combine first and fourth ground, third and fifth ground, and lastly, second and sixth ground.

Starting disposing third and fifth ground, that the trial court erred in law and facts to quash the decision of the trial court where there was neither appeal nor revision before the District Court and there was no pending litigation relating to the said probate. This should not detain us much, by the virtue of **section 22 (1) of the Magistrates Courts Act, Cap 11, R.E 2019**, it vested the District Court to have revisional power over the primary court and for the purpose of clarification, I quote;

"A district court may call for and examine the record of any proceedings in the primary court established for the district for which it is itself established, and may examine the records and registers thereof, 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."

Thus, in case of any complaint as the one filed by the respondent through his letter dated 10th August 2021 directed to Magistrate Incharge of the

District Court headed as it is enough for the district court to call and examine the record for the purpose of satisfying itself as to the correctness, legality, or propriety of any decision. Above all, **section 22(2) of the Magistrate's Courts Act, Cap 11** (*supra*) empowers the district court in exercising its revisional jurisdiction to have all the powers conferred to it in the exercising its appellate jurisdiction, this includes quashing and revising the decision *suo motu*, thus, I find grounds 3 and 5 not to have merit as the revisional powers of the court can as well be invoked by the a mere complaint letter or on his own accord.

Regarding the first and fourth ground, the learned Magistrate erred in law to revoke the appointment of Salma Kimbute Mghamba as administratrix of the estate of late Kimbute Mghamba without considering the evidence on the record and without good cause. Upon perusal of the lower court records, it is observed at page 6, last paragraph of the District Court ruling, in Magistrate's own words, what prompted the revision was the failure of the trial court to determine whether a property is part of the deceased estate or not." Also at page 8, the first paragraph of the same ruling reads;

"the court erroneously did not discharge its duty of determining the question raised by the applicant according to the law instead it ventures into hearing revocation..."

Perusal proceeded to the records of primary court where it all started. When the matter was for hearing at the Primary Court in the proceedings of 14th December 2017, when the respondent herein was applying for

letters of administration of the estate of their late father. respondent is recorded to have stated the following:-

"Enzi za uhai wake marehemu alikuwa na mali zifuatazo, nyumba ya Banana njia panda ya Segerea ina vyumba 25..."

And during cross examination he continued to state that

"Kuhusu kodi ya nyumba nitagawa kwa warithi ipasavyo"

From the above observation, the issue of ownership of the house located at Banana Segerea junction, No. ILALA 006710 was not in dispute as the respondent who by then was applying for letters of administration, as noted earlier clearly said the property belonged to the deceased and even suggested how he was going to distribute proceeds therefrom. Thus, there was no dispute as to ownership and due to that he was appointed as administrator of the estate.

The District Court on its ruling stated that the trial court failed to resolve the issue of ownership raised by the respondent. After the grant of letters of administration, the proceedings of the trial court shows that the beneficiaries went to court on different occasions as to 14th July 2020 the respondent (who was the administrator) was ordered by the trial court to file inventory after the complaints from other beneficiaries of not receiving part of their shares derived from the same said house. The respondent never complied with this court order irrespective of several adjournments that followed until other beneficiaries prayed for revocation. I find no place where the respondent alerted the court as to ownership of the said house until, during the hearing of the application for revocation that is on

10th May 2021 when the matter came for defence. That is when he raised the question of ownership. Thus, it is a finding of the court that, the issue of ownership during the hearing was not raised which led for the letters of administration to be granted.

For the reason, it is my considered view that, the District Court misdirected itself in holding that the question of ownership of the house in dispute was raised and the trial court failed to determine it. This is because, even if it was raised, it would not have fallen on the realm of primary court's jurisdiction to determine the same. Section 18(1)(i) of the Magistrate's Courts Act, Cap 11, R.E 2019 restricts Primary Court in dealing with the issues relating to land, thus even if the said issue was raised that was not a proper forum, the trial Primary Court had no jurisdiction of determining the question of ownership of a house as it falls on land matters. What was before it for determination was if the respondent complied with his duties as administrator, which the court correctly found he did not for failure to file inventory and final accounts in accordance with the law (see rule 10(1) of The Primary Courts (Administration of Estates) Rules G.N. No. 49 Of 1971). The court correctly abstained from exceeding its jurisdiction. It was stated in the case **Mic Tanzania Limited V Hamisi Mwinyijuma & Another, Civil Appeal No. 112 OF 2019, High Court of Tanzania, at Dar es Salaam** that,

"Jurisdiction is a creature of law and, important for the Court's to satisfy themselves of its powers to determine matters firstly and prior to attempting them, lest it finds itself addressing a nullity. In the event of lack of

jurisdiction, in the determination of matters whichever the outcome the whole proceedings and, findings a nullity.”

If the respondent later formed personal interest on the property forming part of the estate, he was originally appointed to administer, was supposed to declare the conflict of interest, and approach a proper forum for determination. In addition, even if he could have approached a proper forum, land court for that matter still his issue could not be determined if he remained an administrator of the same estate he claims against. This is because, it is a common understanding when it comes to the deceased estate that there is no transmission without administration of deceased estate (see of **David David Mbunda v. Stanley Joachim Mmanyi Misc. Land Appeal No. 80 of 2013, DSM (Land Division)**, Mansoor, J.) what that entails is that deceased property can only be claimed through administration of his estate, therefore the same person cannot be an administrator of the same estate he is personally claim against without question of prohibited conflict of interests coming in. How could he claim in personal capacity against himself as an administrator? Therefore, it is my considered finding that, the trial court there was even more reasons for the trial court to revoke his appointment or grant apart from what it revoked it for. For this, first and fourth ground have merit. They are allowed.

Regarding the second and sixth ground, I find no need to labour myself as the above two grounds effectively dispose the appeal. In the event, I hereby quash and set aside the decision of the District Court of Ilala in Probate Revision No. 24 of 2020 delivered by Hon. Obasi S. J. RM on 09th September 2021 and uphold the decision of Ukonga Primary Court in

Probate and Administration Cause No. 350 of 2017 dated 29th June 2021 revoking the letter of administration granted to the respondent, one Mohamed Kimbute Mghamba and granting the same to Salma Kimbute Mohamed @Salma Mohamed Mghamba. Given the nature of the relationship between the parties, I make no order as to costs.

It is so ordered.



A handwritten signature in black ink, appearing to read "M. P. Opiyo", is written above a horizontal line.

M. P. OPIYO,
JUDGE
28/2/2022