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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**PC. CIVIL APPEAL NO. 24 OF 2021**

**(C/F Civil Appeal No. 41 of 2020 in the District Court of Arumeru at Arumeru, Originating from Probate Cause No. 57 of 2017 in the Primary Court of Maji ya Chai)**

**REGINALD KORA HUGO.....APPELLANT**

**VERSUS**

**DESIDERI RIVA URASSA.....1ST RESPONDENT**

**ROSEMARY WANKURU URASSA (As an administratrix**

**of the estate of the late Alphonce Timira Urassa).....2ND RESPONDENT**

**VICENT SHAURI URASSA.....3RD RESPONDENT**

**JUDGMENT**

**30/12/2021 & 31/03/2022**

**GWAE, J**

The parties herein are the children of the late Hugo Kahumba (father) and Irena Mkasahabu Hugo (mother) scrambling for the properties left by their deceased parents.

This appeal has its unique historical background which goes as follows; that, initially in the Maji ya chai Primary Court the appellant filed a petition

for letters of administration of his late mother Irena Mkasahabu Hugo who passed away in 1992. The petition was challenged by his relatives (the respondents) through a caveat and one among the reasons in the caveat which led to the dismissal of the petition was that the deceased persons had left no property to be administered. The trial court, upon hearing of the caveat, dismissed the appellant's petition stating that, the properties intended to be administered had already been administered through a probate cause of their late father who died in the year 1965 and that there was no property that was left un administered as their mother had no property and the place she was living had already been given to the appellant.

Dissatisfied by the trial court dismission his petition, the appellant filed his appeal to the District Court which confirmed the trial court decision. Still aggrieved by the 1st appellate court's decision, the appellant filed another appeal to the High court which reversed the decision of both the trial court and the 1st appellate court by stating that the issue of appointment and the question of whether the deceased persons had properties or not are two distinct issues, and that it was premature to dismiss the petition basing on the fact that, there were no properties to be administered.

Following the finding of the court (Mwenempazi, J), both the trial court and the 1st appellate court's decision were quashed and set aside, the trial court was further directed to issue letters of administration to the appellant.

In complying with the High Court order, on the 27 August 2020 the Maji ya Chai Primary Court issued the appellant with the letters of administration, however on 21/09/2020 the respondent wrote a letter to the trial court seeking for revocation of the letters of administration granted to the appellant and for purposes of this appeal the reasons are enlisted hereunder;

1. Kuanzia kuteuliwa kwake tarehe 21/08/2020 amekuwa akitufanyia wanafamilia matisho mbalimbali. Kwa mfano ametumia wakili wake Robert Roghat kuingilia mirathi anayopaswa kusimamia Reginald Kora Hugo jambo ambalo siyo jukumu lake wakili.
2. Ndugu Reginald amaingilia mashamba yetu yaliyopo Arusha na Rombo kwa kumtumia mpimaji ardhi bila kibali cha mahakama na bila kutushirikisha, na jambo hili limeleta mzozo kwetu hata kufikia kutaka kuumizana.
3. Msimamizi huyu mteule ametishia na pia kuonyesha ubabe kwa kutamka hatuna sehemu ya mali yoyote.
4. Huyu ndugu Reginald Kora Hugo alipewa muongozo na mahakama na hajatimiza lolote tofauti na kuleta sintofahamu kati yetu.

Following this letter, the parties were summoned to address the court as to whether the letters of administration should be revoked. After hearing the parties, the trial court gave a ruling that the letters of administration issued to the appellant be revoked and in order to avoid biasness a neutral party (the hamlet leader) was appointed to administer the estate of the late Irena Mkasahabu Hugo.

Dissatisfied with the revocation order, the appellant filed an appeal to the District Court where the court confirmed the revocation however it nullified the appointment of the hamlet leader and directed for the appointment of another administrator.

Distressed by the decisions of the courts bellow, the appellant is nw before the court armed with the following grounds;

1. That, the 1st appellate court grossly erred in law and in fact to uphold the decision of the Primary court which revoked the appellant from being the administrator of the estate of the late Irena M. Hugo based on speculative, unjustifiable, illegal or no reason at all.
2. That, the 1st appellate court grossly erred in law by holding that the appellant failed to finalize the probate cause within time, ignoring the fact that at the time the respondents filed

their frivolous objection at Primary court, the appellant still was within the time to administer the said estate.

3. That, the 1st appellate court grossly erred in law and fact by holding that the appeal had no merit and failed to consider that the trial court disqualified the appellant as the administrator of the estate of the late Irena M. Hugo at a very premature stage and with no justifiable reasons.
4. That, the 1st appellate court grossly erred in law and in fact by upholding the decision of Maji ya Chai Primary Court which is full of irregularities, illegalities and impropriety.

When the appeal was called for hearing, the appellant was represented by the learned counsel called Mr. Emmanuel Shio, on the other hand, the respondents enjoyed legal services from Legal and Human Rights Centre (LHRC) under the representation of Mr. Hamisi Mkindi, the learned advocate. With leave of the court, the appeal was disposed by way of written submission which I shall consider while disposing the appeal.

Having read the records and parties' written submission, this court is of the firm view that, the main issue for consideration in this appeal is, whether the trial court was justified to revoke letters of administration issued to the appellant.

It is the submission of the appellant that reasons for revocation of the appellant as an administrator were speculative unjustifiable and unfounded. The appellant went further to argue that revocation by the trial court was done contrary to what is provided by the law under Rule 9 (1) of the Primary Court (Administration of Estate) Rules G. N. No. 49 of 1971 which provides for factors to be considered in revocation of the grant of letters of administration, even the trial court in disqualifying the appellant did not state reasons for doing so. Supporting his argument, the appellant cited the decision of the High Court of Tanzania at Mbeya in the case **of Kristantus Msigwa vs Marry Andrew Masuba,** Probate & Administration Appeal No. 06 of 2019 (Unreported)

The appellant went further to submit that the respondents did not give proof to justify their allegations that, the appellant had invaded into their properties. He was of the view that had it been that the said properties were the properties of the respondents, they would have notified the court so that the said properties would have not been subjected to the estate of the late Irena Hugo. In essence, the appellant submitted that at the time of revocation he was still within the time of administration and that it has been

the respondents who have been frustrating him with the whole process of administration by filing objections against him.

The respondent, on the other hand, strongly opposed the appeal arguing that the trial court's grant of letters of administration was properly revoked by the trial court. To them, the appellant's appointment was revoked pursuant to rule 9 (1) (e) of G.N No. 49 of 1971 for the reason that the appellant had been acting in contravention with the terms of the grant and willfully against the beneficiaries of the estate.

The respondents further submitted that the revocation of the appellant as an administrator was done upon good and sufficient cause and that the court decision was done for the interest of justice and to maintain peace and harmony within the family.

It is common knowledge that a primary court may appoint an administrator upon an application being made by any person interested in the administration of the deceased estate. The reason being to protect the deceased's properties and the interest of the beneficiaries (See Rule 2 (a) and (b) of the Fifth Schedule of the Magistrates' Courts Act Cap 11 Revised Edition, 2019. More so, the law has also given powers for the courts, upon

good and sufficient reasons, to revoke the appointment (Rule 2 (c) of the Fifth Schedule). Reasons for revocation of the appointment of an administrator have been provided by the law under rule 9 (10 (a)-(e) of G.N No. 49 of 1971 and for the purpose of this appeal the reasons are enlisted hereunder;

> "9. Revocation or annulment of grant of administration
>
> (1) Any creditor of the deceased person's estate or any heir or beneficiary thereof, may apply to court which granted the administration to revoke or annul the grant on any of the following grounds–
>
> (a) that, the administration had been obtained fraudulently;
>
> (b) that, the grant had been made in ignorance of facts the existence of which rendered the grant invalid in law;
>
> (c) that, the proceedings to obtain the grant were defective in substance so as to have influenced the decision of the court;
>
> (d) that, the grant has become useless or inoperative;
>
> (e) that, the administrator has been acting in contravention of the terms of the grant or willfully or negligently against the interests of creditors, herein or beneficiaries of the estate."

Guided by the above provision of the law in relation to the reasons for revocation advanced by the respondents, I am therefore compelled to hold that, both the trial court and the 1st appellant court misdirected to have revoked the appointment of the appellant basing on what this court finds to be speculative and hypothetical.

Reading from the records of this appeal, the appellant at the time of his revocation he had been in the office of administration of the estate of his late mother for less than a month, meaning that he was still in the process of administration as he had not yet evidenced to the court the accounts and inventory of the estate of the deceased. from the outlook of the reasons advanced by the respondents it is apparent that they do not feature as reasons for revocations as elaborated by Rule (1) (a)-(e) of G.N 47 of 1971. It would have been prudent to have left the appellant to complete his administration and thereafter if there was any party aggrieved by the conducts to bring the same in accordance to reasons stated under Rule 9 (1) (a) – (e) of G.N 47 of 1971 or to file a case against the administrator (appellant) in a court of competent jurisdiction in the event the appellant has or is about to distribute properties which were not belonging to the deceased person.

Despite the above finding of the court, this court has also noted that, the respondents in their joint reply to the appellant's written submission in support of his appeal canvassed the issue of jurisdiction, alleging that the trial court had no jurisdiction to entertain the matter on the reason that the deceased was prophesying neither Islamic nor customary. According to them the deceased was a Christian and the jurisdiction of the Primary Courts in Probate Matters is unlimited only where the law applicable is Islamic or Customary. Therefore, it is their view that the trial court had no jurisdiction to determine the matter.

In the rejoinder, the appellant strongly submitted that the respondents' allegation that the deceased prophesized Christianity did not have any proof. The appellant also submitted that the respondents ought to have raised the issue of jurisdiction during hearing before the trial court.

The jurisdiction of the Primary Court to entertain administration Causes is provided under Rule 1 of the fifth schedule of MCA where it is stated as follows;

> "The jurisdiction of a primary court in the administration of deceased's estates, **where the law applicable to the administration or distribution or the succession to,**

> **the estate is customary law or Islamic law,** may be exercised in cases where the deceased at the time of his death, had a fixed place of abode within the local limits of the court's jurisdiction..." (Emphasis is mine)

Moreover, it has been the position of the law under section 18 (1) (a) of the Magistrates' Courts Act (supra) that the jurisdiction of Primary Court is unrestrictive only where the law applicable is Customary law or Islamic law. In furtherance of the above, it has been the position of the law that an objection challenging the jurisdiction of the court can be raised at any stage of proceedings (See the decision of the Court of Appeal of Tanzania in the case of **R. S. A Limited v. Hanspaul Automechs Limited Govinderajan Senthil Kumal,** Civil Appeal No. 179 of 2016 (Unreported)

Therefore, I am of the increasing view that, the issue of jurisdiction being a creature of statute the respondents were justified to have raised the same in their reply to the appellant's submission and rightly responded by the appellant through his rejoinder. The appellant has disputed stating that the respondents have not given proof that the deceased was neither Moslem nor Christian.

I have diligently gone through the entire records of this appeal in particular the trial court's records at Form No. 1 which is an application for appointment of an administrator of the estate at paragraph 7, it is evidently clear that the deceased person prophesized Christianity. For easy of clarity the paragraph is hereby reproduced;

> "Marehemu alikuwa (eleza kabila) MCHAGA na alikuwa mfuasi wa dini ya MKRISTO."

As apparently depicted by the trial court's records and evidently admittedly by the appellant that the deceased at the time of her lifetime was professing Christianity and it is at this juncture that this court join hands with the respondents' counsel that the trial court had no jurisdiction to entertain the matter. This position of the law has been consistently and severally emphasized by the courts in our jurisdiction for instance in the case of **Re v. Florian Katunzi vs. Goodluck Kulola and Others,** PC. Probate Appeal No. 02 of 2014 (unreported) where this court (**Makaramba,** J (rtd) inter alia stated; z

> "It is now settled law, in granting letters of administration of estates, the jurisdiction of a primary court is limited where the law applicable is customary and Islamic law. A primary court

therefore has no jurisdiction where the estate is that of a person who professed Christian religion as the case presently, where the deceased died professing Christianity.

See also a decision of the court **in Christina Alexander Ntonge vs. Limi Mbogo**, PC. Civil Appeal No. 11 of 2017 (unreported).

In observance of the provisions of the law and judicial precedents, I am of the decided view that the trial court lacked the requisite jurisdiction to entertain the matter.

In the event, the proceedings, judgment and decree of the trial court and the 1st appellate court are hereby quashed and set aside. The parties herein being siblings, therefore, I refrain from making an order as to costs.

It is so ordered.

THE HIGH COURT OF TANZANIA

**M. R. GWAE**
**JUDGE**
**31/03/2022**

**Court:** Right of appeal fully explained

**M. R. GWAE**
**JUDGE**
**31/03/2022**