"ORIGINAL"

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

PC. PROBATE APPEAL NO. 4 OF 2021

(Arising from Misc. Application No. 7 Of 2020 before The District Court of Tanga, Original Probate and Administration Cause No. 207 of 2018, Tanga Urban Primary Court)

ROSE MZIRAY *(The Administratix of the Estate of the Late Frank Ronald Parnis)*.....**APPELLANT**

VERSUS

MARY MALANGA MHINA*(The Administratix of the Estate of The Late Frank Ronald Parnis)*.....**RESPONDENT**

JUDGEMENT

Date of JUDGEMENT - 30/03/2022

Mansoor, J:

Before the primary court, both parties herein who are the co-wives of the late Frank Ronald Parnis "the deceased" petitioned before the Primary Court to be appointed the administrators of the estate of the Late Frank Ronald Parnis, their husband. It is on record that Rose Mziray, the appellant herein was married in 1981, they celebrated a Christian

marriage in Church and had two issues with the Late Frank Ronald Parnis, both girls, namely Nita and Miriam.

Mary Malanga Mhina, the respondent herein, was married by the deceased in 1976, they celebrated a traditional marriage and had two issues, namely, Eva and Lily.

Before Mary Mhina was married, the deceased had married another woman, also traditionally, and that first woman who is now dead, is the mother of Kelvin. The deceased therefore had left behind five children, namely, Kelvin, Lily, Eva, Nita, and Miriam.

In a family meeting held, all five children of the deceased, and the two wives had agreed that the two wives, that is Mary Mhina and Rose Mziray be appointed the administrators of the estate of the Late Frank Ronald Parnis, and since there was no objections filed in court, the duo were appointed the administrators, and they were given the Letters of Administration to administer the estate of the Late Frank Ronald Parnis. The Court ordered the co administrators to file

the inventory within six months from the date of appointment i.e., six months from 27th **February 2019**.

On 27th **September 2019,** the administrators reported to court some problems regarding the estates of the deceased, and the court granted them six more months to file the inventory.

On 27th April 2020, the administrators went back to court for filing the inventory. The court ordered the two administrators to bequeath the estate of the deceased to the heirs; those assets which are free from disputes. The Co administrators went back to Court on 7th May 2020, the appellant herein addressed the Court saying that, she is the only wife of the deceased, and she should be given 50% shares of all the properties, and the five children should be given 10% shares each. She also said the co administrator should not get anything since she is not the wife of the deceased, as she was not legally married. The Appellant also demanded the properties which were given to the children by the late Frank

Ronald Parnis when he was still alive saying that she did not consent to these properties to be given to the children. She says she was supposed to be consulted and to give her consent before the properties were given or transferred in the names of the children.

The court could not agree with the proposal of division of the estate as suggested by the appellant, and instead agreed to the proposal agreed by all the heirs, except the appellant herein and her two children, as written in the family meeting held on 2nd May, 2020. In that meeting, it was proposed and agreed as follows:

1. Two cars, Mitsubishi Pajero T903 CCX, and Suzuki T 905 AHW, be given to the Appellant and Suzuki Samurai T297 CBX and Toyota Litace T409 AMA be given to Lilian Frank Parnis.
2. The house in Chumbageni with Title No. 5335, Plot No. 5 KB. V II be divided in the following shares:
    i) Rose Mzirai- (the appellant herein) 20%
    ii) Kelvin 16%

iii) Lilian 16%

iv) Eva 16%

v) Nita 16%

vi) Miriam 16%

The respondent herein, although a co administrator and a co wife, agreed not to get anything from the estate of her late husband. The Court then ordered the two administrators to file in court Form No. V and VI. The respondent herein complied with the order of the Court and filed these two forms on 7th May 2020. These forms were signed only by Mary Mhina, but Rose Mzirai refused to sign them.

On 6th July 2020, the Appellant herein filed before the District Court at Tanga Misc. Application No. 7 of 2020 under section 20(4) (a) of the Magistrate Courts Act, Cap 11 R.E 2002, applying for extension of time to file an appeal against the Judgment of Hon. Odeyo RM delivered on 27th February 2019.

Section 20 (3) of the MCA provides for 30 days only after the date of the decision to file an appeal to the District Court against the decision of the Primary Court. Counting from 27th

February 2019 till 6th July 2020, 16 months had expired, thus way beyond the 30 days prescribed by section 30 (3) of MCA.

The reason for the delay advanced before the District Court was that the heirs did not reach the consensus on how the properties were to be distributed. That Forms No. V and VI were filed by only one Administrator. The other reason for delay is that the decision of the Primary Court was tainted with irregularities and illegalities. The illegalities are that the Primary Court did not have the jurisdiction to entertain the administration cause and the primary court did not consider the right of the legal wife's joint efforts in the acquisition of the properties. The District Court refused to grant the extension sought, hence the appellant decided to appeal to this Court. The reasons for delay advanced in the Petiton of Appeal are the same reasons advanced before the District Court. The First reason being that the decision of the Primary Court was tainted with irregularities and illegalities, and that the primary court did not have jurisdiction to entertain the Administration Cause since the deceased was a Christian,

practicing Christian rituals. The Appellant's Counsel Mr. Wantora, cited a number of cases in which the courts through various decisions had ruled that *"when the point at issue is one alleging illegality of decision being challenged, the Court has the duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right." "* (See the case of PRINCIPAL **SECRETARY, MINISTER OF DEFENCE AND NATIONAL SERVICE VS DEVRAM VALAMBIA (1992) TLR 15, C.A)**

The illegalities complained about are that the Primary Court did not have the jurisdiction to entertain the probate and administration cause since the deceased was a Christian, and he celebrated a Christian marriage and that the heirs did not reach a consensus in the distribution of the deceased estates.

I shall deal with the first ground first that the deceased was a Christian, and so the Primary Court did not have the jurisdiction to entertain the probate cause since the law applicable is not the Islamic law or Customary law as provided

under section 1(1) of the 5th schedule to the MCA. Looking at the records of the primary court, the appellant was the 1st petitioner in the administration cause. She applied to be appointed the administrator together with her co -wife. She knew and recognized of the existence of the other two wives before her who were married under customary law. She also recognized that the co- wives had children, namely Kelvin, Lilian, and Eva. The decision delivered by the Primary Court was to the effect that the deceased had lived traditionally and born his children from the two wives traditionally and therefore the letters of administration were granted to the traditional wife as well as the Christian wife. The appellant accepted the decision of the Primary Court, she accepted to be appointed the administrator together with the co wife, and did not object the appointment, and never objected the petition even after the citations were issued. She could not of course object to her own application. She even participated in the administration of the estates. She was only aggrieved when she was given 20 % of the shares in the house of the

deceased, since she demanded 50%. She was therefore never aggrieved by the decision of the Primary Court of 27th February 2017. The grant of Letters of Administration by the Court of competent jurisdiction is a proceeding in rem. So long as the order remains in force, it is conclusive unless it is duly revoked as per law, and the letters can only be revoked by the court which issued it. If at all, the appellant was not happy with the decision of the primary court of appointing her and her co wife to be the co-administrators, she should have gone to the same court to apply for revocation of the letters. If she knew that her husband was living a Christian life, she should not have gone to the primary court in the first place to apply to be appointed the administrator and confirming before that court that there are two wives before her who were married under customary rituals, and three children were born from the customary marriages. Bringing an appeal now, is an afterthought, and that cannot constitute a sufficient cause for the grant of an extension of time.

The decision of the primary Court, therefore, is the judgment in rem. The Letters were granted by a competent Court and the letters were conclusive until they are revoked, and no evidence can be admitted impeaching it except in a proceeding taken by revoking the Letters of Administration by the issuing court. In any case the District Court has no jurisdiction to impugn the grant of Letters of Administration by the Court of competent jurisdiction on an appeal. In this case, the District Court cannot have jurisdiction to question the validity of the Letters of Administration granted by a Competent Court, since the letters granted to both parties herein were not revoked in accordance with the law.

Regarding the second irregularity or illegality pointed out by Counsel Wantora, that the heirs did not reach a consensus in the distribution of the deceased estates, I shall borrow the wisdom of Hon. Judge Rumanyika, in the case of **Nuru Salum (administrator of the estate of the Late Ally Masoud vs Husna Ally Masoud Juma (the Administrator of the estate of the Late Ally Masoud (PC Probate**

Appeal No. 10 of 2019 (unreported), in which at page 2 of the judgement, he had this to say:

> ".....if anything, with reasons also to be recorded, a probate magistrate may reject or return the proposed division to administrators with the direction that they revisit it with a view to reaching at a fair and just distribution of the estate at issue. should the administrators reach no consensus like it was the case here, and the probate court did not do the needful, the probate court is hereby directed to revoke the letters of administration and in lieu thereof appoint any other independent administrator of the estate to do the needful."

Again, the irregularities regarding the distribution of the assets of the deceased, if any, should have been determined by the probate court. If it was the co-administrator who committed any mistake or did not administer her oath or misappropriated the estate or did not distribute the estate as in accordance with the wishes of the heirs or there was no consensus, then

it was only the probate court which had the jurisdiction to determine the issue by revoking the letters issued, and appoint any other independent person who could properly and fairly distribute the estate to the heirs. This again, cannot be termed as an irregularity or illegality, committed by the probate court, on the face of records, to warrant this Court or the Court below to grant an extension of time to file an appeal against the decisions of the primary court which was not appealable.

As noted above, it was the appellant herein who petitioned for the grant of the Letters of Administration without the Will annexed of the property of the deceased. She and the co wife undertook to duly administer the property and credits of the deceased, by paying first his debts and then the legacies therein bequeathed so far as the assets will extend and to make full and true inventory thereof and exhibit the same in the Probate Court within six months from the date of grant of Letters of Administration and also to render to the Primary Court a true account of the said property and credits within

one year from the said date. She cannot turn around now and appeal against her own Petition.

That said, the reasons advanced by the Counsel for the Appellant, are not sufficient for warranting this Court to grant the extension of time sought. The Appeal is therefore without merits, and it is hereby dismissed.

With regards to the findings made by the District Magistrate exercising appellate powers, regarding the status of the appellant being the wife of the deceased, that decisions ought not to have been decided in an application for extension of time. Thus, the decision regarding the status of the appellant, whether she was legally married was misplaced, and that decision is therefore quashed and set aside.

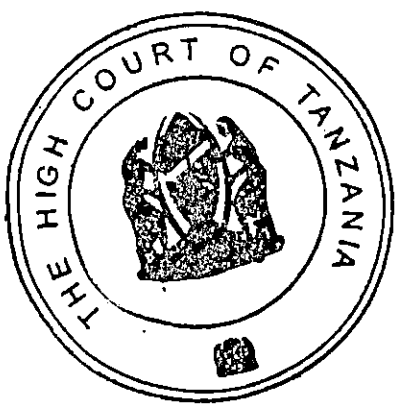
In the result, since there were no sufficient reasons for the grant of extension of time to file an appeal, the appeal is dismissed. The decision of the Primary Court regarding the appointment of the Administrators of the State of the Late Frank Ronald Parnis being conclusive in nature is not

appealable, and the decision remains undisturbed. The inventory and accounts filed in Court by the Administrator are true accounts of the estate of the Late Frank Ronald Parnis, and the matter was concluded as per the inventory and accounts filed in the Primary Court, in Form No. V and VI. The respondent was only complying with the orders of the Court which ordered both the Administrators to file Form No. V and VI. If anything, the appellant should have been condemned for not complying or disobeying the Court orders passed by the competent Court.

The appeal is without merits, and it is hereby dismissed. The decisions of the Primary Court in Probate and Administration Cause No. 207 of 2018 is hereby confirmed.

I shall order no costs as the parties are close family members.

DATED at TANGA this 30TH day of MARCH 2022



L. MANSOOR
JUDGE
30TH MARCH 2022