

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)**

AT MWANZA

PC PROBATE APPEAL NO 03 OF 2022

(Arising from the judgment and decree of the District Court of Sengerema in Probate Appeal No. 10 of 2021 by Hon. T.G. Barnabas RM. Original Probate and Administration Cause No.4 of 2021 of Sengerema Urban Primary Court)

PETER LUTEMA.....APPELLANT

VERSUS

YOHANA MSUKA.....RESPONDENT

JUDGMENT

12th & 19th May, 2022

DYANSOBERA, J.:

Before the Primary Court of Sengerema District at Urban, the respondent instituted objections proceedings vide Probate Case No. 4 of 2021 on several allegation against the appellant including. The complaint that the procedure used in the distribution of the deceased's estate was improper and that the heirs had lost faith in the appellant. After the trial court had heard the respondent (then objector), his witnesses and the appellant, it allowed the respondent's objection and revoked the letters of administration granted to the appellant. The same court nullified the distribution the appellant had made, ordered him to surrender all documents relating to the administration. In the same judgment the trial primary court

ordered the heirs to submit the names of two persons to petition for letters of administration within two weeks from thence and ordered the farm of the late Lemi Shinyanga to be excluded from the administration of the estate of the late Msuka Bugatu.

The appellant was dissatisfied with the trial court's decision and appealed to the district court at Sengerema vide Probate Appeal No. 10 of 2021 but lost. In dismissing the appellant's appeal, the learned Resident Magistrate ordered that the farm of Lemi Shinyanga should not be included in the deceased's estate and that within 14 days from the date of that judgment, the family members had to propose names of the persons to be appointed as administrator of the deceased's estate as ordered by the trial court.

The appellant was further aggrieved hence this second appeal. In his petition of appeal filed on 7th December, 2021, the appellant has filed four complaints, namely that the trial court had no jurisdiction to entertain and determine the matter that was before it, the respondent had failed to prove ownership of 10 acres of land by the late Lemi Shinyanga, the respondent had no locus standi to file objection proceedings and the claim of 10 acres was an afterthought.

The respondent objected to the appeal by way of reply to petition of appeal.

The hearing of this appeal proceeded by way of written submissions and both parties filed their submissions according to the set time frame.

Having considered the grounds of appeal and after perusal of the records of the lower courts, I am of the firm but considered view that the issue calling for determination is whether the lower courts were seized with the jurisdiction to entertain and decide the matters, the subject of this appeal. Coincidentally, that is the appellant's first ground of appeal.

The records are clear. According to the judgment of the trial primary court in Probate and Administration Cause No. 4 of 2021 and that of this court (Tiganga, J.) in PC Probate Appeal No. 5 of 2020, the following undisputed facts emerged.

The appellant Peter Lutema was appointed along with Joseph Msuka to be administrators of the estate of Msuka Bugatu in 2020. In 2021 the appellant's co-administrator Joseph Msuka appealed to the District Court at Sengerema objecting to the appointment of the appellant. The objection was allowed and the appellant's letters of appointment were revoked. Later, the appellant successfully appealed to this Court and the revoked letters of administration were restored.

Before discharging their duties, Yohana Msuka, the present respondent did, in 2017, raise an objection against the appellant before the primary court at Sengerema Urban. Again, the appellant's appointment was revoked.

The appellant then complained in writing before the district court at Sengerema. The trial court's proceedings were called and revised. The district court ordered the decision of this court to be adhered to.

The respondent was not satisfied with the decision of the district court. He unsuccessfully appealed to this court (Tiganga, J.) vide PC Probate Appeal No. 5 of 2020. In its decision dated 7th day of October, 2020, this court, alive to its earlier judgment given on 19th day of June, 2021 (Mwangesi, J. as he then was before being elevated to the Court of Appeal), being still intact, ordered the remaining administrator, i.e. the appellant to go back and administer the deceased's estate and after four months, i.e. 120 days from the date of that decision and then report to the primary court and file and inventory on how he had administered the said estate.

Instead of seeking direction from the court on how the appellant had to execute and enforce the order of this court, the respondent, through objection proceedings, sought the revocation of the appellant's letters of

administration. The revocation was granted. The district court blessed the judgment of the trial court.

With due respect to both the primary and district courts, they lacked jurisdiction to overturn the decisions of this court.

In my view, the orders of the primary court revoking the letters of administration, nullifying the distribution, ordering the heirs to submit to court the names of two persons to petition for letters of administration within two weeks and ordering the appellant to hand over all documents that confirmed his appointment not only went out of line with what this court had earlier ordered when it reinstated the appellant in the administration of the estate along with his fellow co-administrator but also overturned the decision of this court made by Tiganga J, on 7th day of October, 2020 in PC Probate Appeal No. 5 of 2020.

For clarity and ease of reference, I quote the pertinent excerpt at pp. 3 and 4 of the said typed judgment as follows:

'Following the above findings, the question which arises at this stage which requires the attention of this court is what the way forward is? Since this matter has taken a long time resulting to the delay of justice on part of the heirs or beneficiaries, and since this court's judgment on this matter which was given on

19.06.2021 (Mwangesi, J) is still intact, the remaining administrator, i.e. the respondent is hereby ordered to go back and administer the deceased's estate and after four months, i.e. 120 days from the date of this decision, he shall report to the primary court and file an inventory on how he has administered the said estate. No order as to costs is given.'

Earlier on, Hon. Justice Tiganga, J, had at p. 2 of the said judgment observed:

The appellant has raised four grounds of appeal. I, however, before going to the merits, think it would be pertinent to discuss the competence of this appeal. As already stated hereinabove, this appeal comes a long way, but the decision of the High Court in PC Probate Appeal No. 8 of 2011 (Mwangesi, J.) which has never been challenged, confirmed the respondent as an administrator of the estate of the late Msuka Bugatu. It was ordered in that decision that the respondent and his assistant (now the late) were to go back and administer the estate as required by the law and thereafter report back to the primary court on how they did it'

With the strong observation in which this court maintained its stand, there is no way the Primary Court and the District Court could have jurisdiction and power to interfere with the decision of this court. If the appellant and his fellow heirs felt that the respondent had failed to properly manage the estates in his administration duties, they were duty bound to obtain direction of the court on how the appellant should have complied with the decision of this court in PC Probate Appeal No. 5 of 2020 and not to have the respondent's letters of administration revoked as was done by the Primary Court in Probate and Administration Cause No. 4 of 2021 and confirmed by the District Court in Probate Appeal No. 10 of 2021. Both the Primary Court and the District Court lacked jurisdiction to revise the decisions of this court in PC Probate Appeal No. 5 of 2020 (Tiganga, J) and PC Probate Appeal No. 8 of 2011 (Mwangesi, J., as he then was).

Before penning down, I have to sound a remark that in Tanzania judicial system, we cherish the doctrine of *stare decisis* which is the principle that lower court decisions should be governed by the precedent of higher courts. The purposes of *stare decisis*, are, apart from ensuring uniform justice and continuity in court decisions and making the legal and judicial systems more efficient, also a form of judicial restraint, preventing a single judicial officer in a lower court from issuing decisions that are out of line

with what higher courts have determined as established law. The lower courts are enjoined to follow the suit.

The upshot of this is that I agree with the appellant in his first ground of appeal that the trial primary court and first appellate district court lacked jurisdiction to entertain and decide contrary to what this court had earlier on decided. Since they lacked jurisdiction, the whole proceedings in both courts were a nullity and I so declare. The same are quashed and set aside.

The appellant should comply with the order given by this court in PC Probate Appeal No. 5 of 2020 within four (4) months from today.

No order as to costs is made.

It is so ordered.



Handwritten signature of W.P. Dyansobera in blue ink.

W.P. Dyansobera
Judge
19.5.2022

This judgment is delivered under my hand and the seal of this Court this 19th day of May, 2022 in the presence of both parties who have appeared in person and unrepresented.

Rights of appeal to the Court of Appeal explained.



Handwritten signature of W.P. Dyansobera in blue ink.

W.P. Dyansobera
Judge