

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

(PC) PROBATE APPEAL CASE No. 9 OF 2022

*(Arising from the District Court of Musoma at Musoma in Probate Appeal
No. 10 of 2021 and Originated from Musoma Urban Primary Court at
Musoma in Probate Cause No. 77 of 2021)*

GUMARI KILEMEZI APPELLANT

Versus

MATYOKO JOHN MANYASI RESPONDENT

[As Administrator of the Estates
of the Late Juma Kakwaya Kisanya]

JUDGMENT

07.06.2022 & 07.06.2022

Mtulya, J.:

Two (2) death certificates and two (2) clan meeting minutes originated from one deceased person, namely **Juma Kakwaya Kisanya**, were spotted by this court today morning when the appeal in **(PC) Probate Appeal No. 9 of 2022** was scheduled for hearing.

In order to appreciate the legal status and clarification of the matters, this court *suo moto* invited the parties to cherish the cardinal right of human person, the right to be heard, as enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and a bunch of precedents pronounced by the Court of Appeal (see: in **Mbeya-Rukwa Auto**

Parts & Transport Limited v. Jestina George Mwakyoma, Civil Appeal No. 45 of 2002, [2003] TLR 251 **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44; and **Tanelec Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018).

Being lay persons and completely unaware of the law and practice regulating the matters, the parties decided to invite learned minds in Mr. Ostack Mligo and Mr. John Manyama to explain the legal implication of the matters. Mr. Manyama, who was invited by Mr. Gumari Kilemezi (the appellant), was the first to take the floor of this court and briefly stated that the two (2) faults invite legal confusions and may be rectified by legal interventions. To his opinion, as an officer of this court, he has to assist this court in arriving at justice smoothly. According to Mr. Manyama, for proper record of the dispute, and considering circumstances of the present case, nullification of the lower courts' decision would be proper and desirable course to take.

In his opinion, if that is done by this court, it will create a room for clan and family members to sit and settle the matters amicably for the interest of the clan members and deceased person without any chaos. In reply of the raised issues, Mr. Mligo, who

appeared for Mr. Matyoko John Manyasi (the respondent), on his part submitted that the facts displayed this morning on the record of appeal show that the lower courts did not performed their duties with regard to inquiry on the matters raised in this court. To his opinion the primary court was supposed to initiate inquiry to determine the authenticity of the documents and come up with its own conclusion. However, according to Mr. Mligo, the duty was also not performed by the first appellate court, the district court courts and this court, being the second appellate court, has no mandate to perform the duty on inquiry and come up with its own conclusions.

Finally, Mr. Mligo supported the move of quashing the judgments and setting aside proceedings of the lower courts for want of proper record of the court. However, Mr. Mligo did not support clan meeting move and preferred fresh and proper proceedings to be determined in accordance to the laws regulating probate causes.

I perused the present appeal and learned that the record displays two (2) faults, which were considered in resolving the dispute without an inquiry at **Musoma Urban Primary Court at Musoma** (the primary court) in **Probate Cause No. 77 of 2021** (the

cause) and the errors, though material to the cause, were blessed by the **District Court of Musoma at Musoma** (the district court) in **Probate Appeal No. 10 of 2021** (the appeal).

The errors relate to admission of documents at the primary court without regard to the authenticity of the same, namely: first, admission of two (2) birth certificates from one deceased person. The first was issued by Registrar of Births and Deaths on 29th July 2021 at Butiama Hospital showing the deceased, Mr. Juma Kakwaya Kisanyi, who expired on 12th May 2021 at Songola area, Butiama through natural death. The certificate was numbered 1003631149 issued to Mr. Gumari Kilemezi Magigi (the appellant).

The second death certificate was issued by the same authority, Registrar of Births and Deaths on 12th May 2021 displaying the deceased, Mr. Juma Kakwaya Kisanya, who passed away on 12th May 2021 at Musoma Government Hospital by natural death. The certificate was numbered 1034189063 and was issued to Mr. Matyoko John Manyasi (the respondent).

The second fault relates to admission of two (2) clan meeting minutes originated from the same deceased person, namely: first, *Kikao Cha Awali cha Mirathi ya Familia (Juma Maroba)* dated 16th May 2021 with thirty three (33) participants and appointed *Mratibu*

wa Mirathi, Mr. Gumeri Kitemezi; and second meeting named, *Kikao Cha Familia ya Marehemu* dated 15th June 2021 with seven (7) participants and appointed *Msimamizi wa Mirathi ya Marehemu* called Mr. Matyoko John Manyasi.

The confusions of materials produced in the record of the current appeal were not resolved in the primary court in the cause, though touched the merit of the case. My understanding tells me that it is certain and settled that errors that touch the merit of the cause may be raised at any stage of proceedings and it has to be determined first before determination of the substantive matters (see: **M/S Tanzania China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70; **Consolidated Holding Corporation Ltd v. Rajani Industries Ltd & Bank of Tanzania**, Civil Appeal No. 2 Of 2003; **Fanuel Mantiri Ng'unda v. Herman Ngunda**, Civil Appeal No. 8 of 1995; **Shahida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 and **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai**, Civil Appeal No. 179 of 2016).

The primary court in the cause escaped its vital role of inquiry in adjudicating the matter before it. Similarly, the district court in the appeal blessed the wrongs committed by the primary court.

This court detected the fault and invited the parties to participate in resolving the matters at this stage. However, their learned minds argued that this is second appellate court and cannot enjoy scrutinizing the record and come up with its own conclusions.

I am aware that the two (2) learned minds are on the same course of remedies available in such faults and suggested nullification of the proceedings and the judgments of the lower courts as they emanated from nullity proceedings. However, the recent precedent of the Court of Appeal in **Yusufu Selemani Kimaro v. Administration General & Two Others**, Civil Appeal No. 266 of 2020, delivered on 24th May 2022, has put in place two (2) options in the circumstances like the present one, *viz.* first, the judgment or decree may be avoided without necessarily having recourse to setting it aside; and second, the judgment or order obtained by fraud shall be treated as a nullity by any court be it an interior or superior court. However, in the precedent the Court faced with obvious situation of fraud on the record and it was vividly displayed.

In the present appeal, there is no vivid display of fraud and the primary court did not probe into the certificates and minutes produced by the parties during the proceedings to authenticate the

documents. The primary court also declined to call professionals on the subject of death certificates, the Registrar of Birth and Deaths who issued both death certificates from one (1) individual deceased person. In the circumstance like the present one, a proper course to follow is to nullify the proceedings and judgments or orders originated from nullity proceedings. The questions on proper course to follow after this judgment, will be left to the family and clan members to decide, as whether to lodge a fresh and proper clan meeting or probate suit in an appropriate forum according to the law regulating probate matters.

Having said so, I decline to declare any of the parties as a rightful administrator of the deceased's estates and accordingly allow the appeal without costs. The reasons are clear that the parties are relatives and learned minds acted as officers of this court, and in any case, traditional method of dispute settlement may be invited by the parties in ending the dispute amicably.

Ordered accordingly.

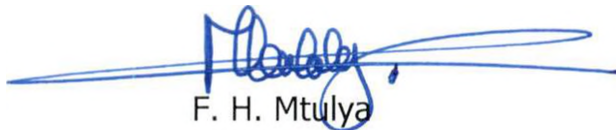



F. H. Mtulya

Judge

07.06.2022

This judgment was delivered in the presence of parties, Mr. Gumari Kilemezi and Mr. Matyoko John Manyasi, and in the presence of their learned counsels, Mr. John Manyama and Mr. Ostack Mligo.



F. H. Mtulya

Judge

07.06.2022