

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

PROBATE APPEAL NO. 08 OF 2022

(Arising from Probate Appeal No. 10 of 2021 of the District Court of Bukoba and original Probate Cause No. 4 of 2021 of the Primary Court of Bukoba District at Katerero))

YAZID YUSUPH AMIRI..... APPELLANT

VERSUS

RAUFU HAMDAN SELEMANI 1ST RESPONDENT

MNAWARU HAMDAN SELEMANI 2ND RESPONDENT

JUDGMENT

06/12/2022 & 21/02/2023
E. L. NGIGWANA, J.

This is an appeal against the decision of the District Court of Bukoba in Probate Appeal No. 10 of 2021 delivered on 29th day of March, 2022.

A brief background of the matter is as follows; following the demise of one Hamdani Kajuna Selemani, one Yazidi Yusuph Amiri who claimed to be a close friend of the deceased, petitioned for probate of the deceased's estate for the execution of the deceased's "Will", and he did so vide Probate and Administration Cause No.4 of 2012 of the Primary Court of Bukoba District at Katerero.

Following the said petition, the first respondent that is to say; Raufu Hamdan Selemani emerged with two objections; one was against the appellant and the second was challenging the validity of the "Will".

On 10th day of September, 2021 the two objections were determined by the Primary Court of Bukoba District at Katerero whereas the court found that the "Will" was valid. Besides its finding on the validity of the "Will", the court discovered that there were properties which were not included in the "Will" and ordered that the properties of the deceased that were not included in the "Will" be dealt with as intestate estate for the interest of all beneficiaries. The court also found that the objection against the appellant is devoid of merit owing to the reason that he was precisely mentioned in the deceased's "Will".

Considering the presence of properties that were listed in the "Will", the court left at liberty one **Mnawaru Hamdani Selemani** to move the court to be joined in Probate Cause No. 4 of 2021 so that he can be appointed as an administrator of the deceased's estates not mentioned in the "Will".

Though the proceedings of the Primary Court are silent on response of Mnawaru Hamdani, the ruling of the court revealed that he informed the court that he was not ready to be joined as petitioner No.2 because he was aggrieved by the ruling of the court dated 10/09/2021 pertaining the objections raised.

The hearing of Probate No. 4 of 2021 proceeded whereas on 22/09/2021, the petitioner (Appellant herein) was appointed as an Executor of the said "Will" but

an administrator of the deceased's properties which were not covered in the "Will".

Being aggrieved by the decision of the Primary Court dated 22/09/2021, Raufu Hamdani Selemani and Mnawaru Hamdani Selemani (now respondents) appealed to the District Court of Bukoba vide Probate Appeal No. 10 of 2021. The Memorandum of Appeal contained five (5) grounds of appeal which were coached as follows:-

- 1. That, the learned Magistrate erred in law and fact entertaining the Probate involving a large estate of registered lands without considering that jurisdiction of such estate is ousted in Primary Courts.*
- 2. That, the learned Magistrate erred in law and fact by granting letters of administration based on an invalid "Will".*
- 3. That, the learned Magistrate erred in law and fact by granting letters of administration to a stranger having no interest in the estate of the deceased thus difficult and risk in running the affairs of the estate.*

4. *That, the learned Magistrate erred in law and fact in including the house at Mwanagati Dar es Salaam as part of the deceased's estate while the same belongs to the deceased's son.*
5. *That, the learned Magistrate erred in law and fact in entertaining the probate involving a large estate of registered land in a Primary Court while there was another probate filed in the High Court of Tanzania – Bukoba Registry.*

Wherefore, the appellants now respondents prayed the District Court to allow the appeal with costs by quashing and setting aside the decision of the Primary Court and issuing a new order thereof, and declare the "Will" presented before the Primary Court, invalid

Upon hearing the appeal, the 1st, 4 and 5th grounds of appeal were found devoid of merits hence dismissed but the 2nd and 3rd grounds were found meritorious, therefore the District Court allowed the appeal by declaring the deceased's "Will" which was admitted in the Primary court invalid. The appellant's appointment as an executor of the "Will" and administrator of the properties not listed in the "Will" was also revoked. The District court ordered that the

procedure for the administration of the deceased's estate without a "Will" should start afresh.

Aggrieved by the decision of the first appellate court, the appellant has preferred this appeal whereas in the petition of appeal, he raised nine (9) grounds of appeal as follows;-

- 1. That, the District Court erred in law for not taking into consideration the legal fact that the 2nd respondent having not filed any determinable objections in the trial court against the appellant, he was therefore incompetent to file an appeal against the proceedings of which he never objected at the trial court as a party to the suit.*
- 2. That, the District Court erred in law for having not taken into consideration the fact that even the 1st respondent had no locus tandi to appeal against the ruling delivered on 22nd September, 2021 as he was not party to it as his right of appeal only accrues from the ruling delivered on the 10th September, 2021 and not subsequent to.*
- 3. That, the District Court erred in law by quashing the ruling of the primary court issued on the 10th September, 2021 whereas such ruling did not*

- even form part of the decisions of which the respondents appealed against in probate appeal no. 10 of 2021 at the District Court of Bukoba.*
- 4. The District Court erred in law for having erroneously stepped into the jurisdiction of the primary court, by hearing the 2nd respondent's appeal which was in form of objections to the "Will" of the deceased and the appointment of the appellant as an administrator, while such objections had never been laid before the trial court by the said 2nd respondent in probate cause no. 4/2021 at Katerero Primary Court.*
 - 5. That, District Court erred in law by invoking the Customary mode of test in invalidating the "Will" of the deceased whereas in the trial court, no objection was presented by the respondents in respect to the mode of life of the deceased in an effort to challenge the validity of the "Will".*
 - 6. That, the District Court erred in law for failure to take into consideration the legal fact that in the presence of a "Will" which appoints the executor, the mode of life test is immaterial when it comes in assessing the truthfulness and genuineness of the "Will" in controversy.*
 - 7. That, when assessing the mode of life test, the District Court erred in law for failure to take into consideration the fact that adherence to ones*

religious and/or customary practices and laws, is not a static phenomenon in one's personal entire life, rather it is a dynamic phenomenon which depends on one's freedom of choice and conscience at any particular time in his life.

8. That, the District Court erred in law by invalidating the "Will" of the deceased on the basis of the difference of names of the deceased which appear on the documents which do not even form part of the contested "Will".

9. That, the District Court erred in law for invalidating the "Will" of the deceased on the basis of the reasons which do not prove that the Will was a forged one.

WHEREFORE: The appellant prays for the following judgment.

- i. Quash the entire judgment of the District Court of Bukoba in probate appeal no. 10 of 2021.*
- ii. Restoration of the Primary Court ruling and orders issued in Probate Cause No. 4 of 2021 at Katerero Primary Court on the 10th September, 2021 and on the 22nd September, 2021.*
- iii. Costs of the appeal*

This appeal was argued by way of written submission upon the leave of this court. Mr. Dustan Mutagahywa, learned advocate represented the appellant whereas the respondents appeared in person unrepresented.

On the first ground of Appeal, Mr. Mutagahywa argued that since the 2nd respondent Mnawaru Hamdan Selemani was not an objector in the Primary Court in Probate Cause No. 4 of 2021, he could not have any *locus standi* to file an appeal challenging the ruling which was delivered in response to the two objections raised by the first respondent Raufu Hamdan Seleman.

He further argued that for that matter it was very wrong for the first appellate court to entertain the grounds of appeal by the 2nd respondent which were challenging the decision of the trial court of which the 2nd respondent had not taken part as an objector. He went on arguing that if at all the 2nd respondent was not in favour of the ruling of the objections, which was delivered by the trial court on 10th day of September, 2022; the only option available to him was to file revision against the said ruling.

On the 2nd ground, Mr. Mutagahywa submitted that the first respondent has no *locus standi* to appeal against the ruling delivered on 22/09/2022 due to the fact that his right of appeal accrues from the decision of the trial court which was

delivered on 10th day of September, 2021 and not from the decision of the trial court which was delivered on 22/09/2021.

He added that the respondents in the first appellate court appealed against the decision of the trial court delivered on 22/09/2021 which appointed the appellant as an administrator of the estates of the deceased, and therefore the said decision and its accompanying proceedings dated 13th September, 2021 to 22/09/2021 had nothing to do with the objections.

He further submitted that, the only available remedy available for a person aggrieved by such appointment was to file an application for revocation of the appointment of the Appellant in the said trial/appointing court and not to appeal against the appointment. Mr. Mutagahywa added that since the 1st respondent did not appeal against the ruling on the objections, and since the 2nd respondent did not file revision against the said ruling, then the two respondents had no right to file an appeal against the said objections basing on the ruling which was delivered on 22/09/2021. He further argued that the only remedy left for them was to file an application for revocation of the appointment before the trial court or file a revision against the ruling of the objections in the District Court, or appeal out of time against the ruling of the trial court issued on 10th day of September, 2021.

In reply submission on the 1st and 2nd grounds of appeal, the respondents argued that they have legally appealed and had a *locus standi* to Appeal to the District Court since they were frequently involved and cannot be excluded from the entire Probate and Administration Cause No. 4 of 2021 at Katerero Primary Court. They made reference to the case of **Nuru Hussein versus Ghani Ismail Hussein** (2000) TLR 217 where it was held that in probate as well as administration cases, more than one heirs or beneficiaries to the estate are frequently involved, where such a situations occurs it becomes imprudent, if not fraudulent to exclude them in proceeding, for that would make a conclusive decision almost impossible.

It is their further argument that the 2nd respondent was involved in a trial proceedings as it can be seen in the ruling delivered on 10/09/2021 of which the first respondent was the objector and the Appellant herein was the petitioner. They made reference to the ruling especially page 7 where the trial court had this to say;

"Hivyo basi mahakama inamruhusu Mnawaru Hamdan Selemani kujiunga na mjibu pingamizi Yazid Yusuph Amiri kuja mahakamani tarehe itakayopangwa; ili wasikilizwe na mahakama hii iweze kuwateua kuwa wasimamizi wa mirathi ya marehemu".

They also made reference to the ruling of the trial court dated 22/09/2021 where the court had this to say;

"Kwenye uamuzi wa pingamizi la awali mahakama ilimpatia nafasi mwombaji wa pili Bw. Mnawaru Hamdani kujiunga na mwombaji Yazid Yusuph Amiri kwenye maombi haya lakini Bwana Mnawaru Hamdani aliiambia mahakama hakuwa na nia ya kujiunga na mwombaji Yazidi Yusupy Amir kwa kuwa hakubaliani na uamuzi wa mahakama kwenye pingamizi lililoletwa mahakamani na Raufu Hamdani".

They further argued that, since the 1st respondent (Raufu Hamdani Selemani) later joined in the 2nd respondent (Mnawaru Hamdan Selemani) for the purpose of facilitating the trial court to come up with a final and conclusive decision, it is apparent that anyone can appeal against that decision. They made reference to the case of **Monica Nyamakare Jigamba versus Mugeta Bwire Bhakome (Administrator of the estate of Musiba Roni Jigamba) and Hawa Salum Mengele**, Civil Application No. 199/01 of 2019 CAT (unreported) where it was held as follows;

"It follows then that where a petition has been opposed, the probate or administration changes as really as can be, into an ordinary civil suit where the petitioner becomes a plaintiff and the caveator becomes the defendant and

parties are required to file special pleadings. The main purpose of that procedure is to facilitate the investigation of a caveator's objection and its effects is to enable the entire proceedings, but not just a part of it, to be dealt with in totally as in a suit and to be concluded as one whole'.

It is their argument further that within the meaning of the herein cited case, there is no way the first respondent could appeal just only on the decision date 10/09/2021 because the objections raised by the 1st respondent and supported by the 2nd respondent were to facilitate the entire proceedings so as to reach a sound conclusive decision. They added that the respondents cannot be barred from appealing against the decision of the trial court delivered on 22/09/2021 in respect of Probate and Administration Case No. 4 of 2021 otherwise it is fraudulent to exclude them from the entire proceedings because by doing so renders no conclusive decision.

In rejoinder submission on the 2nd respondent's argument that he was appointed as an administrator of the estate of the deceased in the ruling of the trial court dated 10/09/2021, Mutagahywa submitted that, the ruling of the trial court dated 10/09/2021 did not grant any probate of the deceased nor did it appoint any person to be the administrator.

He further argued that the ruling was in respect of the preliminary objections raised, and after the same were determined, the trial court had the opinion that if there were any other properties of the deceased which were not reflected in the "Will", the 2nd respondent would be a proper person to petition for letters of administration of the said estates not reflected in the "Will" and by doing so, the trial court did not make the 2nd respondent a party to the case.

Mr. Mutagahywa further argued that in Probate and Administration Cause No. 4 of 2021, the 1st respondent is the one who opposed the appellant's application for probate and not the 2nd respondent, therefore the parties were two, the appellant being the plaintiff and the 1st respondent being the defendant as per principle set in place in **Monica Nyamakare Jigamba versus Mugeta Bwire Bhakome** (supra). He added that, in that respect, the 2nd respondent had never been a party to the suit originated from Probate and Administration Cause No. 4 of 2021 at Katerero Primary Court, therefore has *no locus standi* to file an appeal against the said proceedings, as the available remedy for him was revision.

He added that reading the ruling of the trial court, it is obvious that the 2nd respondent did not form part to the proceedings of the petition of probate which was only challenged by the 1st respondent. That, 2nd respondent was offered a chance by the court to petition for letters of administration of estates not

reflected in the "will" but as per the trial court ruling, the 2nd respondent refused that offer. He added that after refusing the offer, it is apparent that the 2nd respondent further removed himself from the subsequent proceedings which resulted the ruling dated 22/09/2021.

As regard the argument that the 1st respondent had *locus standi* in filing the appeal at the District Court by relying on the ruling dated 22/09/2021, Mr. Mutagahywa argued that the 1st respondent had *locus standi* to file an appeal against the ruling issued on 10/09/2021 and had only this right if he only utilized it within the prescribed thirty days of appeal because the orders were appealable as they brought into finality the issue of the validity of the "Will".

He added that the time when both respondents filed the appeal in the District Court challenging the ruling dated 22/09/2021, thirty days of appeal against the ruling dated 10/09/2021 had already expired.

Having heard submission of the parties on 1st and 2nd grounds of appeal and having gone through the record of the trial court as well as those of the 1st appellate court, I am convinced that the 1st and 2nd grounds of appeal will suffice to dispose of this appeal.

In the 1st ground of appeal, the appellant faults the first appellate court for not taking into consideration the legal fact that the 2nd respondent having not

filed any determinable objections in the trial court against the appellant, he was therefore incompetent to file an appeal against the proceedings of which he never objected at the trial court as a party to the suit whereas in the 2nd ground of appeal, the appellant faults the 1st appellate court for having not taken into consideration the fact that even the 1st respondent had *no locus standi* to appeal against the ruling delivered on 22nd September, 2021 as he was not party to it as his right of appeal only accrues from the ruling delivered on the 10th September, 2021 and not subsequent to.

In the matter at hand, it is undisputed that the appellant herein is the one who petitioned for probate of the deceased's estate for the execution of the deceased's "Will" but met two objections from the 2nd respondent **Raufu Hamdani Selemani**, one challenging the validity of the "Will". The second objection was against the appellant not to be appointed to execute the deceased's "Will". Therefore, the parties as per the ruling of the trial court dated 10/09/2021 were as follows;

"JAMHURI YA MUUNGANO WA TANZANIA

MAHAKAMA YA MWANZO KATERERO

WILAYA YA BUKOBA

SHAURI LA MIRATHI NAMBA 4/2021

RAUFU HAMDANI SELEMANI,.....MLETA PINGAMIZI

NA

YAZIDI YUSUPH AMIRI.....MJIBU PINGAMIZI

The objections were heard and conclusively determined by the trial court. Part of the Primary Court ruling read as follows:-

"Baada ya kueleza hayo, maamuzi ya mahakama ni kua wosia wa marehemu utaendelea kuwepo na msimamizi aliyetajwa kwenye wosia atasikilizwa na mahakama hii kwa kuwa mapingamizi juu yake yametupiliwa mbali kwa kuwa mahakama haijatupilia mbali wosia, lakini pia mahakama inaelekeza kuhusu mali ambazo hazijagawiwa na wosia ziweze kugawiwa kwa utaratibu wa mirathi isiyo na wosia. Hivyo mahakama hii inaruhusu SU5 Mnawaru Hamdani Selemani kujiunga na mjibu pingamizi Yazid Yusuph Amiri kuja mahakamani kwa tarehe itakayopangwa ili wasikilizwe na mahakama ili iweze kuwateua kuwa wasimamizi wa mirathi ya marehemu lakini wakiwa na majukumu tofauti; mmoja ambaye ametajwa kwenye wosia atekeleze wosia na mwingine asimamie na kugawa kwa usawa kwa warithi wote wa marehemu mali ambazo hazikugawiwa kwenye wosia"

AMRI

1. Shauri linaahirishwa mpaka tarehe 13/09/2021 kwa ajili ya kusikiliza maombi ya kuteuliwa msimamizi/ wasimamizi wa mirathi

Washauri

1. Victoria Nestory

2. Theonister Ngirwa

A. A MADULU-RM

10/09/2021

Haki ya rufaa ni ndani ya siku 30.

A. A MADULU-RM

10/09/2021"

Reading the herein above ruling, it apparent the trial court left at liberty one Mnawaru Hamdani Selemani (2nd respondent) to accept the offer to be joined in Probate Cause No. 4 of 2021 so that he can be appointed as an administrator of the deceased's estates not mentioned in the "Will".

Though the proceedings are silent on response of Mnawaru Hamdani, the ruling of the trial court dated 22/09/2021 revealed that he informed the court that he

was not ready to be joined as petitioner No.2 because he was aggrieved by the ruling of the court dated 10/09/2021 pertaining the objections raised.

Part of the ruling reads;

*"Kwenye uamuzi wa pingamizi la awali mahakama ilimpatia nafasi mwombaji wa pili Bw. Mnawaru Hamdani kujiunga na mwombaji Yazid Yusuph Amiri kwenye maombi haya lakini Bwana Mnawaru Hamdani aliiambia **mahakama hakuwa na nia ya kujiunga na mwombaji Yazidi Yusuph Amir kwa kuwa hakubaliani na uamuzi wa mahakama kwenye pingamizi lililoletwa mahakamani na Raufu Hamdani**".*

Since the 2nd respondent **Mnawaru Hamdan** was not a party in Probate Cause No.4 of 2021 and since he had refused the offer to be made a party as correctly submitted by Mutagahywa, the remedy available to him, if at all he was aggrieved by the ruling of the trial court was to file revision in the District Court of Bukoba as per the law. Even if , for the sake of argument we assume he was properly joined still he could not appeal against the ruling dated 22/09/2022 because he told the court that he was not ready to be joined, he removed himself from subsequent proceedings which remitted the ruling dated 22/09/2021.

It is trite law that an appeal be against the same parties who were heard in the trial. The Court of Appeal of Tanzania in **CRDB Bank PLC (Formally known as CRDB (1996) Ltd versus George Mathew Kilindu**, Civil Appeal No.110 of 2017 CAT (Unreported) held among other things that;

"The right of appeal is for the parties who have been involved in the original suit and not any other person".

In a probate case to wit; **Mudhihir Hemed Mewile versus Furaha Chande Kigwalilo**, PC Civil Appeal No. 15 of 2020 HC- Mtwara (Unreported) which originated in Primary Court whose proceedings are governed by the Magistrates Courts Act, [Cap.11 R.E 2019] and the rules made there under my learned brother Dyansobera, J. had this to say;

*"Generally, parties to the suit enjoyed the right to appeal and to be appealed against. Unless for special application for revision, a person cannot be added in the proceedings at an appeal stage. This was emphasized in the case of **Attorney General versus Tanzania Ports Authority and Mr. Alex Msama Mwita**, Civil Application No.87 of 2016 CAT Dsm (Unreported at Page 7".*

In the case of **Daudi Mongi versus Angelina Sangiwa and Another**, Land Appeal No.156 of 2019 HC- Dsm Lady Justice Opiyo had this to say;

"It is common understanding that an appeal be against the same parties who were heard in the trial. It cannot be preferred against a stranger to the trial proceedings who was not at all heard or a non-party to the proceedings"

Being guided the herein above Court of Appeal decision and having drawn inspiration from the decisions of the this court, I agree with the learned counsel for the appellant that the District Court erred in law for not taking into consideration the legal fact that the 2nd respondent having not filed any determinable objections in the trial court against the appellant, he was incompetent to file an appeal against the proceedings of which he never objected at the trial court as a party to the suit.

The 2nd respondent's argument that he had legally appealed and had a *locus standi* to Appeal to the District Court since his was frequently involved and cannot be excluded from the entire Probate and Administration Cause No. 4 of 2021 at Katerero Primary Court does not hold water on simple reason according to law that he was not a party and was never made a party in the said matter. In that premise, the 1st ground of appeal is resolved in the positive.

It is trite that Rule **8 of the Primary Court (Administration of the Estates) Rules, GN No. 49 of 1971** provides for the matters which can be heard and determined by primary court to include;

- (a) *Whether the deceased died testate or interstate;*
- (b) *Whether any document alleged to be a will of the deceased is the valid will of the deceased or not;*
- (c) *Any question as to the identity of the persons named as heirs, executors or beneficiaries in the will;*
- (d) *Any question as to the property, assets or liabilities of the deceased;*
- (e) *Any question relating to the payment of debts of the deceased out of his estate;*
- (f) *Any question relating to sale, partition, division or other disposal of the property and assets;*
- (g) *Any question relating to the investment of money forming part of the estate;*
- (h) *Any question relating to the expenses to be incurred on the administration of estate.*

As far as I know, the law is silent and does not provide for separate applications upon hearing of the above matters, therefore, it is the practice of the court that such matters are heard and determined in the same case file, bearing the same number. In the case of **Khadija Said Matika versus Awesa Said Matika,**

P.C Civil Appeal No. 2 of 2016 HC Mtwara Registry; it was held that, where there is an objection, the court will receive evidence from both parties and make a ruling accordingly.

In the instant matter, the 1st respondent exercising his right; raised objections which were conclusively determined on 10/09/2021. The objection against the appellant who was named as an executor in the "Will" was dismissed for being devoid of merit while the deceased's "Will" was confirmed a valid "Will".

Since there was no appeal preferred by the first respondent (Objector) against the ruling of the trial court dated **10/09/2021** notwithstanding the fact that the right to appeal was explained to the parties, that is evident that he was satisfied by the ruling of the trial court.

In that respect, I agree with Mr. Mutagahywa, learned advocate for the appellant that the first appellate court erred in law for having not taken into consideration the fact that even the 1st respondent had no *locus standi* to appeal against the ruling delivered on 22nd September, 2021 as he was not party but his right of appeal only accrues from the ruling delivered on the **10th September, 2021**. However, the same ruling had already run against him save for extension of time.

The 1st respondent's argument that he had legally appealed and had a *locus standi* to Appeal to the District Court since his was frequently involved in Probate and Administration Cause No. 4 of 2021 at Katerero Primary Court, and therefore had the right to appeal against the ruling date 22/09/2022 which appointed the appellant herein as an executor of the deceased's "Will" does not hold water in the eye of the law.

In the ruling dated 22/09/2021, the party was the appellant alone as the petitioner. In other words, the respondents were not parties to that ruling. For easy reference, let the record speaks for itself;

"JAMHURI YA MUUNGANO WA TANZANIA

MAHAKAMA YA MWANZO KATERERO

WILAYA YA BUKOBA

SHAURI LA MIRATHI NAMBA 4/2021

YAZIDI YUSUPH AMIRI.....MWOMBAJI

NA

HAMDANI KAJUNA SELEMAN.....MAREHEMU"

The hearing of Probate and Administration Cause No. 4/2021 proceeded and the trial court vide its ruling dated 22/09/2021 appointed the Appellant as the Executor of the deceased's "Will". Part of the primary court ruling reads;

" Mahakama hii imeridhika kwamba kuna wosia wa marehemu ana mwombaji amefuata taratibu zote zinazohitajika kataka kumpata msimamizi wa miradhi iliyokua na wosia hivyo mahakama hii inamteua mwombaji Yusuph Yazidi Amiri kusimamia mirathi ya marehemu Hamdan Kajuna Selemani kama alivyoomba, na kwa mujibu wa kanuni ya 29 ya sheria ya wosia ya mwaka 1963 iliyotolewa katika taarifa ya serikali Namba 436 kwa mali ambazo hazijagawiwa au kutajwa kwenye wosisa mwombaji asimamie kama sheria hiyo inavyosema...."

There was no application filed by the respondents for revocation of the appointing of the Appellant, if at all they had grounds for revocation instead they filed an appeal to the District of Bukoba by way of Memorandum of Appeal challenging among other things the validity of the "Will" and appointment of the appellant, appears as follows; Part of the said Memorandum of Appeal appeared as follow;

IN THE DISTRICT COURT OF BUKOBA

AT BUKOBA

PROBATE APPEAL NO.10 OF 2022

(Appeal originating from Shauri la Mirathi Namba 4/2021 of Primary Court of Katerero made on 22nd September 2021)

BETWEEN

RAUFU HAMDAN SELEMAN.....1ST APPELLANT

MNAWARU HAMDANI SELEMAN.....2ND APPELLANT

AND

YAZIDI YUSUPH AMIRI.....RESPONDENT.

MEMORANDUM OF APPEAL

The Appellants above named being aggrieved and dissatisfied with the attached decision of A.A.MADULU (RM) of the Primary Court of Katerero made on 22nd September, 2021 in Shauri la Mirathi Namba 4 of 2021 appeal to this honorable court"

For the reasons earlier stated, it is my considered view that the herein respondents had no *locus standi* to lodge Probate Appeal No.10 of 2021 before the District Court of Bukoba against the trial court decision dated 2021. The High Court of Uganda in the case of **Dima Dominic Poro versus Inyani and Another** (2017) UGHCCD 154 defined the term *locus standi* as follows;

*"It means a right to appear in court, and, conversely, to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding. (see **Njau and others v. City Council of Nairobi** [1976–1985] 1 EA 397 at 407)"*

The Halbury's Law of England 4th Edition paragraph 49 at page 52 which states as follows:-

"Locus standi means a party must not only show that the court has power to determine the issues but also that the party is entitled to bring the matter before the court."

I have been also persuaded by one of the Kenyan case; **Julian Adoyo Onginga versus Francis Kiberenge Abano Migori**, Civil Appeal No.119 of 2015, where the High Court of Kenya held that;

"The issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and /or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of court acting without jurisdiction. Since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of the deceased person since in most cases the case involves several other beneficiaries or interested parties"

From the herein above authorities, it is apparent that *locus standi* is one of the thresholds of instituting a suit or lodging an appeal. The same can affect the jurisdiction of the court, and therefore, can be raised at any time in the proceedings or on appeal like in the present matter. If a party does not have

locus standi to institute an action, the court would have no jurisdiction to entertain the suit.

Since, Probate Appeal No.10 of 2021 was lodged by persons who had no *locus standi*, the proceedings of the District court, the resultant judgment and orders there too are a nullity. Having found the 1st and 2nd grounds of appeal meritorious, I see no compelling reasons to address the rest of the grounds of appeal. In the event, I proceed to nullify the proceedings of the 1st appellate Court, quash and set aside the resultant judgments and orders. It is so ordered. Given the fact that this is a probate matter, each party shall bear its own costs. It is so ordered.

Dated at Bukoba this 21st day of February, 2023.



E. L. NGIGWANA

JUDGE

21/02/2023

Judgment delivered this 21st day of February, 2023 in the presence of the Appellant in person, both respondents in person, Hon. E. M. Kamaleki, Judge's Law Assistant, and Ms. Sophia Fimbo, B/C.



E.L. NGIGWANA

JUDGE

21/02/2023