

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

PC. CIVIL APPEAL NO. 36 OF 2022

(C/F Revision No. 10 of 2021 before District Court of Arumeru at Arumeru,
Originating from Maji ya Chai Primary Court Probate Cause No. 12 of 2021)

PETRO LANGAEL.....APPELLANT

VERSUS

TEREVAEL LANGAEL NANYARO..... RESPONDENT

JUDGMENT

13/12/2023 & 22/02/2023

MWASEBA, J.

A brief background of this appeal is as follows; the respondent herein filed a petition of probate and administration of the estate of the late Langael Karosi Nanyaro at Maji ya Chai Primary Court. During the hearing the appellant raised an objection that the plot mentioned by the petitioner was his personal property and not the deceased's land. Upon hearing both parties, the trial court dismissed the raised objection and advised the caveator/ appellant herein that if he has a lawfully claim against the deceased, he should file a claim at the District Land and

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Housing Tribunal which deals with land claims. Thereafter, the trial court proceeded to appoint the respondent herein as the Administrator of the Estate of the late Langael Karosi Nanyaro.

Aggrieved by the decision of the trial court the respondent filed a revision at the district court of Arumeru beseeching it to inspect the records of Maji ya Chai Primary Court in Probate Cause No. 12/2021 to satisfy itself to its correctness, legality and propriety of its decision. At the end of the trial, the District Court found no point of illegality, incorrectness and impropriety to move the court to invoke its revisional powers as averred by the applicant. Thereafter the application was dismissed for want of merit.

The appellant was not happy with the said decision and preferred the present appeal based on the following grounds:

1. That, District court erred in law and fact when dismissed the revision Application without considering that the trial court had no jurisdiction when entertained probate and Administration Cause No. 12 of 2021.

2. That, The District Court erred in law and in fact when dismissed the revision application without considering the trial court dismissed the objection by the applicant herein in Probate and

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Administration Cause No. 12 of 2021 while the land dispute between the Applicant and Respondent herein was not resolved by competent tribunals before the institution Probate and Administration Cause No. 12 of 2021.

3. That, the District Court erred in law and in fact when dismissed the Revision Application without considering that the fact that the respondent herein fraudulently obtained and distributed the deceased properties vide Probate and Administration Cause No. 12 of 2021 before Maji ya Chai Primary Court.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented whilst the respondent was represented by Mr Lengai Nelson Merinyo, learned counsel. With the leave of the court, the matter proceeded by way of written submission.

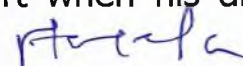
Supporting his appeal, on the first ground he submitted that the Probate and administration cause No.12 of 2021 was filed out of the prescribed time. It was his submission that the deceased died in 2005 and the petition was filed in 2021 which is sixteen (16) years after the death of the deceased. More to that, the deceased was a Christian, so the trial court had no jurisdiction to entertain the matter. Since the issue of jurisdiction can be raised at any stage that's why the same was raised at

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this stage of appeal. His arguments were cemented with several authorities including the case of **Masanja Luponya vs Elias Lubinza Mashili**, PC probate Appeal No. 01 of 2020 (HC-Unreported) and **Sikujua Model Mwasoni vs Sikudhani Hans Mwakyoma**, Probate Appeal No. 10 of 2020 (HC- Unreported).

Responding to this ground, Mr Merinyo submitted that, the issue of the deceased to prophesize Christian religion was never raised at the trial court and the District Court hence, the same cannot be raised at this stage. He submitted further that, taking into consideration what transpired at the trial court, the deceased had three wives and the one who is alive received her shares. So, the trial court had jurisdiction to entertain the matter. He supported his arguments with the case of **Hassan Bundala @ Swaga vs Republic**, Criminal Appeal No. 386 of 2015 (CAT-Unreported). As for the issue of time limitation, he submitted that, the law of limitation is not applicable in filling probate matters in primary courts as per **Rule 5 of G.N 311 of 1964, Customary law (Limitation of Proceedings) Rules.**

Coming to the second ground of appeal, the appellant complained that it was wrong for the District Court to dismiss his application for revision while his objection was dismissed by the trial court when his dispute



with the respondent over the two (2) acres of land was not yet solved. He added that the trial court were supposed to wait until the dispute is resolved before appointing the administrator of the deceased's estate who distributed the disputed land to the heirs. He supported his argument with the case of **Malietha D/O Gabo vs Adamu S/O Mtengu**, Misc. land Appeal No. 21 of 2020 (HC-Unreported).

On the last ground of appeal, he argued that it was wrong for the district court to dismiss his application while the Administrator of the estates was appointed fraudulently and distributed the deceased property without solving the land dispute between them. He submitted further that, when the respondent filed inventory and account of estate, he mentioned the disputed land and divided between the three (3) and left the 13 beneficiaries and other piece of land. More to that, he stated that **Rule 9 (1) (e) of the primary Court (Administration of estates) Rules**, G.N No. 49 of 1971 allow the court to revoke the appointment of administrator which has been fraudulently obtained.

In the end he prayed for the Ruling of the Arumeru District Court to be quashed and set side and the decision of the Maji ya Chai to be revised and its orders be quashed and set aside with costs.



Responding to the 2nd and 3rd grounds of appeal, counsel for the respondent submitted that, once a probate cause has been closed there is no room to re-open it again. He cited the case of **Ahmed Mohamed Al Lazaar vs Fatuma Bakari & Asha Bakari**, Civil Appel No. 71 of 2012 (CAT-unreported) to support his argument regarding the closure of the probate matter. Thus, since the trial court already closed the matter on 11.06.2021 the only option available for the applicant is to sue for his interest in respect of the property in dispute against the Administrator of the estate. He further prayed for the appeal to be dismissed with costs.

In his brief rejoinder, the appellant reiterated what had been already submitted in his submission in chief.

Having gone through the submission made by the appellant and the counsel for the respondent, the main issue for determination is whether the appeal has merit.

I wish to start with the first ground of jurisdiction whereby the appellant argued that the trial court had no jurisdiction to entertain the matter as the same was time barred and the deceased was a Christian. The argument which was strongly opposed by the respondent since there is no strict time limitation in probate matters as the law of Limitation Act is not applicable at the primary courts. As for the issue of the deceased to

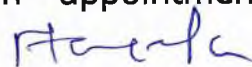
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be a Christian they submitted that the records are very clear that the deceased had three wives therefore the allegation that he was a Christian does not hold water.

Moving to the issue of time limitation within which to file a probate cause, it goes without saying that the deceased died in 2002 and the petition was filed on 2021 when more than 19 years had already passed. On his side the appellant was of the view that the respondent did not justify the delay and prayed for the trial court decision to be quashed. Regarding the matter of time limitation in probate cause, there are two school of thought whereby others believe there is no time limitation while others believe there is a time limitation which is not strict. As it was held in the case of **Majuto Juma Nshahuzi vs Issa Juma Nshahuzi**, P. C. Civil Appeal No. 9 of 2014 (HC at Tabora - Unreported), that:

"There is no specific time limit for petitioning for letters of administration and that it would not be in the interests of justice to have such a provision."

However, this court is of the firm view that the time limitation in filing probate cases as provided under **Rule 31 of the Probate Rules** which does not bind primary Courts since the law is not applicable in this matter. The powers of the primary court in appointment of

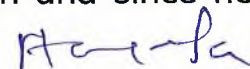


administrators of the estate are governed by the **fifth schedule to the Magistrates Courts Act**, Cap 11 R.E 2019 where there is no time limit specified for the petitioning for probate or grant of letters of administration. So, this ground has no merit.

As for the issue of the deceased being Christian, it was decided in **Gibson Kabumbire vs Rose Nestory Kabumbire**, Probate Appeal No. 12 of 2020, at page 15 and 16 as follows: -

"It is trite law that Primary Courts have jurisdiction in Probate matters concerning Christians where it is proved that they lived customary mode or manner of life in which situation the question of professing Christianity does not interfere with the administration of his or her estate. The reason is that by merely being a Christian, does not mean one has been detracted from his or her customary life, there must be evidence to support the same, there is a distinction between Christians who live and practice normal customary life and those who have professed Christian religion and either by a declaration or by his acts or manner of life is evident that they have professed as such and intended that their estate will be administered under the applicable law to Christians."

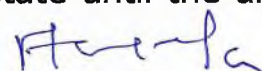
In our present case, since there was no evidence that the deceased abandoned traditional way in favour of the Christian and since he had



three wives then the primary Court had jurisdiction to try the matter as they did. Thus, this ground has no merit.

On the second ground of appeal, the appellant complained that it was wrong for the trial court to proceed to appoint the administrator of the estate who later on filed an inventory and accounts of the deceased's estates while there was a dispute between them regarding the property which was mentioned as the properties of the deceased and the applicant had already raised an objection concerning that matter. At the District Court, it was decided that the trial court was right in its decision and there was no element of fraud done by the respondent.

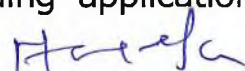
It is a trite law that if there is any dispute in relation to the property of the deceased then, any aggrieved party can file a dispute in respect of that property and the same cannot be distributed unless and until the dispute is resolved. However, it should be noted that the said dispute cannot bar the appointment of the administrator of estate, rather a person who is claiming that he has not been included in the deceased's estate can file a case against the administrator to challenge the ownership or any particular right. That will bar the administrator from including the disputed property in the deceased estate until the dispute



is resolved. Thereafter, the distribution of the said property will depend on the outcome of the instituted case.

Upon revisiting the records of the trial court, this court noted that the respondent was appointed by the court to be administrator of the estate of the late Langael Karosi Nantaro on 19.02.2021 and the same was closed on 11.06.2021. Still, the appellant did not submit any evidence to prove that he had already filed an application at the District Land and Housing Tribunal against the administrator of the estate who is the respondent herein. Rather, the records reveal that there was a previous case between the appellant and the respondent who was with another person which started at Maruvango Ward Tribunal up to Arusha District Land and Housing Tribunal where the decision of the ward tribunal were quashed, and it was ordered that any aggrieved party to file a new case, but the appellant never did so.

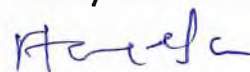
For those reasons, Respondent as the administrator of the estate of the deceased was made upon due consideration of the provisions of **Paragraph 2 (a) of the Fifth Schedule to the Magistrates Court Act**. So, the trial court was correct to close the probate of the late Langael Karosi Nanyaro as there was no pending application at the



District Land and Housing Tribunal between the appellant and the administrator of the estate. That being said, this ground lack merit too.

Coming to the last ground of appeal, the appellant challenged the act of the district court not to take into consideration that the respondent had fraudulently obtained the deceased's property and distributed it to some of the deceased's children. Reverting to the records of the District Court, the appellant alleged that the respondent obtained the probate maliciously by concealing some of the information. However, after going through the records of the trial court, it was satisfied that the letters of administration was legally obtained after following all the procedures as required by the law.

On this ground, this court will concede to what was decided by the District Court that the letters of administration was legally obtained since all the requirements of the **5th schedule of the Magistrates' Court Act**, Cap 11 R.E 2019 were adhered to. That is due to the fact that the administrator was first appointed by the family members as evidenced by the Clan meeting minutes. He also tendered before the court the death certificate of the deceased and some of his relatives testified before the court that he was really appointed by the Family members to



be an administrator of the deceased's estate. For the said reasons, this ground lack merit.

For the reasons stated herein, I find this appeal devoid of merit and dismiss it accordingly.

It is so ordered.

DATED at **ARUSHA** this 22nd day of February, 2023.



N.R. Mwaseba
N.R. MWASEBA
JUDGE
22/02/2023