

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MWANZA SUB-REGISTRY  
AT MWANZA**

**PC PROBATE APPEAL NO. 16 OF 2021**

*(Arising from Revision Probate Civil Cause Case No. 01 of 2021 at Kwimba District Court, Originating from  
Probate Cause No. 08 of 2021 at Ngudu Urban Primary Court)*

**LUCAS SAMIKE @ MPONEJA.....APPELLANT**

**VERSUS**

**NDALAHWA AMANI @ MANGE..... RESPONDENT**

**JUDGMENT**

*2<sup>nd</sup> December, 2022 and 1<sup>st</sup> March 2023.*

**ITEMBA, J.**

This appeal originates from revision Probate Civil Cause no. 1 of 2021 at the District Court of Kwimba, the deceased being **Ndalahwa Amani Mange**.

Before embarking on the appeal, it is worth remarking on what transpired after Ndalahwa Amani Mange's death. The deceased died on 23/11/2020 at Misungwi and he was buried at Misungwi. During his lifetime, he was not blessed with any child, he had married Twitike Mwakamsale whom they later separated and he was then cohabiting with one Edna up to his death. Upon his death, on 1/3/2021, Sadalaah Juma Malongo, the deceased brother petitioned to be appointed as an

administrator of the deceased estate in **Probate cause no. 3/2021 at Misungwi Primary Court**. He was appointed and he started to execute his duties as an administrator of estate. On 6/8/2021, the deceased's wife Twitike Mwakamsale filed an objection against the appointment of Sadalaah Juma Malongo. The court conducted an inter parte hearing, summoned several other witnesses including court witnesses and scheduled for ruling. Just before a ruling was issued, Mr. Adam Robert, a learned counsel, informed the court that there is another **Probate cause no. 8 of 2021** which was filed at Ngudu Primary court in respect of the same deceased Ndalahwa Amani Mange, and that, one Lucas Samike has been appointed an administrator. The said Lucas Samike was summoned at Misungwi Primary Court, testified as a court witness and among others, he informed the court that he had already sold the deceased *shamba* for TZS 10,500,000 and he has kept the money at home pending distribution to the relatives. At the end Sadalah Juma Malongo's appointment was revoked and the deceased's wife was appointed an administratrix. The trial magistrate at Misungwi informed officially the Misungwi District court of the co-existence of the two probate causes and two administrators in respect of the same deceased person. The District Court Magistrate of Kwimba *Suo*

*motto* revised the said probate no. 8 of 2021 and nullified the proceedings because the same cannot be executed while there is another probate cause. The situation necessitated calling for the records in Probate cause no. 3/2021 at Misungwi Primary Court which was useful in reaching the decision of this appeal.

The appellant is aggrieved by the revision done by Kwimba District Court hence this appeal. There are three grounds of appeal as follows:

- 1. That, the revisionary court erred in law and fact failed to rule out that the probate case at Misungwi Primary Court delivered on 25<sup>th</sup> day of August, 2021 is void basing on fact that the appellant was dully proposed by the family meeting in the presence of the widow of the deceased who conceded the appellant's appointment*
- 2. That, the revisionary court erred in law and fact for quashing the appointment of the appellant without taking into consideration that the decision at Ngudu Urban Primary was valid since no objections upon notice of publication being made.*
- 3. That, the revisionary court erred in law and fact for failure to rule out that the probate case at Misungwi No. 03 of 2021 tends to abuse court process basing on the fact that*

*the appellant has partly already discharged his duties as the administrator of late Ndalaha Amani Mange.*

At the hearing, the applicant was represented by Mr. Anold Katunzi, advocate. There was no respondent as it can be noted that in the said revision application, the respondent was actually the deceased person. Upon being probed by court on this situation, Mr. Katunzi explained that when the revision application was done at the district court, only the applicant appeared which was incorrect, and that was one of their grounds of appeal. That, the only remedy which they had was to appeal as they were bound by records. This ground however is not reflected in the petition of appeal.

Addressing the three grounds of appeal jointly, the counsel for the applicant explained that according to **rule 9(1)(b) of the Primary Court (Administration of Estate Rules) GN 49/1971**, any person who is dissatisfied with the court's decision of appointing an administrator can file an objection of appointment in the same appointing court. Therefore, any complaint would have been brought to Ngudu Primary court and the matter would have reached Kwimba District Court as an appeal or revision. That the decision of Ngudu Primary court has nothing to revise as there was no

illegality or incorrectness. He added that it was never clear to the appellant as to which complaints were raised before the court as the issues appear in the ruling only. He said that based on this, the appellant was not heard on these issues. He added that even a copy of complaint was never issued to the appellant; the issues were just in the letter from Misungwi Primary Court which is neither dated no reference number, handwritten and had no stamp features which raises questions as to its' authenticity. He argued further that, as to who can initiate Probate case, the Local Customary Law (Declaration no. 4 Order) Government Notice 436/1967, the 2<sup>nd</sup> schedule paragraph 2 states that inheritance lies in the patrilinear side, therefore the appellant was the right person to administer the deceased's estate as he is from patrilinear side as opposed to the other relative who filed his petition at Misungwi.

The learned counsel finalised by stating that the death certificate relied in Ngudu Urban primary court was issued on 16/2/2021 while the one used in Misungwi was issued on 22/2/2021 therefore, Misungwi relied on an 'illegal' death certificate. Having appreciated the background and facts of the two matters, the issue is whether the appeal has merit.

The appellant's counsel opted to argue the grounds of appeal jointly. I will use the same approach in responding to the same. To start with, looking at form no. 1 (GN 943) which initiated the proceedings when before Ngudu Primary Court, the appellant informed the court that he is the deceased's young brother. Part 12 of the said form states clear that:

*12. 'Hakuna daawa lolote kuthibitisha wosia wala kuomba kumteua msimamizi wala jambo lingine linalihusika na mirathi ya marehemu huyo ambalo limeanzishwa mbele ya mahakama au mamlaka yoyote wala katika mahakama nyingine yoyote wala katika mahakama nyingine nje ya Tanzania. Ameapishwa/amethibitishwa na kutia Saini ya huyo anayejulikana kwangu.'*

Meaning, the applicant is informing the court that, he is sure that there is no other probate cause filed before any court in respect of the same deceased person inside and outside the country. However, that was not the position as there was another probate cause filed in respect of the same deceased within the same region just in the next district. The appellant, being a close relative of the deceased, he ought to have known that the deceased had other relatives in Misungwi and he was supposed to do due diligence and find out if there is any probate cause filed in that respect.

It should be noted that all the 3 grounds of appeal go to the merit of the probate case no. 8 of 2021. However, upon revision, this case was declared nullity. The appellant has not talked about this fact whatsoever. Either way, this court cannot proceed with the appeal without satisfying itself on validity of the proceedings, knowing that the last order by the district court magistrate was to nullify the proceedings. As explained above there were two administrators of estate co existing in respect of the same deceased person. Rule 12 of the **The Magistrates' Courts (Civil Procedure in Primary Courts)** provides that:

*'where in any proceeding before a court, the court is satisfied that any issue between the parties is also an issue in another proceeding **previously commenced between the same parties in the same court or any other court of competent jurisdiction in Tanzania**, the court shall stay the proceeding until the previous proceeding has been decided.'*

As rightly stated by Kwimba District Court Magistrate that the proceedings and decision in Probate cause no. 8 of 2021 at Ngudu Primary

Court could not co-exist with Probate cause no. 3/2021 at Misungwi Primary Court because the deceased was the same. The trial magistrate in Probate cause no. 8 of 2021 was supposed to stay the proceedings pending the decision in Probate cause no. 3/2021 as that did not happen, the District Court Magistrate was justified in nullifying the whole proceedings. Having joined hands with the district court magistrate, it means that this appeal cannot be entertained as it emanates from a nullity. I do not feel called upon to go into the merit of the first, second and third grounds of appeal because they arise from an adventure that had no basis in law.

As to the way forward, Section 9(1)(a) to (e) of the The Primary Courts (Administration of Estates) Rules G.N. No. 49 of 1971 provides that:

*'(1) Any creditor of the deceased person's estate or any heir or beneficiary thereof, may apply **to court which granted the administration** to revoke or annul the grant on any of the following grounds: –*

*a) that the administration had been obtained fraudulently;*



- b) that the grant had been made in ignorance of facts the existence of which rendered the grant invalid in law;*
- c) that the proceedings to obtain the grant were defective in substance so as to have influenced the decision of the court;*
- d) that the grant has become useless or inoperative;*
- e) that the administrator has been acting in contravention of the terms of the grant or willfully or negligently against the interests of creditors, herein or beneficiaries of the estate.’ (emphasis supplied)*

It goes therefore, the law is crafted in a way that all probate matters in respect of the same deceased should be centralized and all interested parties must be informed. That is why if there is any person who is not satisfied with the appointment of the administrator, the first remedy thereof is to apply for revocation or annulment before the court which granted the administration.

Looking at the three grounds of appeal by the appellant all those complaints fall within the criteria in rule 9(1) (a) to (e). That being said, the proper forum for the appellant is to file his application before Misungwi Primary Court which is the appointing court, instead of this one-sided

appeal. That will be more legitimate and for the best interest of both parties. Otherwise, this appeal lacks merit and it is hereby dismissed.

Due to the nature of the case, there are no orders as to costs.

It is so ordered.

Dated at MWANZA this 1<sup>st</sup> day of March 2023.



Judgment delivered under my hand and seal of the court in chambers, in the presence of Mr. M. Sakila holding brief for Mr. Anold Katunzi, counsel for the appellant and Ms. G. Mnjari RMA.

A handwritten signature in blue ink, which appears to be 'L. J. Itemba', written on a light background.

**L. J. ITEMBA**  
**JUDGE**  
**1.3.2023**