

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**DC.CIVIL APPEAL NO.12 OF 2021**

*(Originating from Nanyumbu District Court in Revision Application No.1 of 2016)*

**MALINDA HASHIMU KWITANDA** (The Administrator of the  
Estate of the late HASHIMU KWITANDA MALINDA) ..... **APPELLANT**

***VERSUS***

**ZUBEDA PETRO LUGIGA**.....**RESPONDENT**


**JUDGEMENT**

*28/2/2023 & 2/3/2023*

**LALTAIKA, J.**

The appellant herein **MALINDA HASHIMU KWITANDA** is dissatisfied with the decision of the District Court of Nanyumbu at Nanyumbu in Revision Application No.1 of 2016. The impugned decision was delivered by Hon. M.S. Kasonde, RM on 27/01/2016.

Facts leading to the appeal are straightforward: On 21/09/2014 the late HASHIMU KWITANDA MALINDA passed away at the Muhimbili National Hospital in Dar es Salaam. The respondent, in collaboration with other members of the deceased's family, including the appellant, transported the deceased body to Nanyumbu where the burial ceremony was conducted.



Lower Court records show that two family meetings took place proposing either of the parties of this matter to be appointed an administrator or administratrix of the estate of the late HASHIMU KWITANDA MALINDA. The appellant applied for the letters of administration of the estates of the late HASHIMU KWITANDA MALINDA in the Primary Court of Mangaka at Nanyumbu vide Probate Cause No. 8 of 2015. The record of the primary court shows that the respondent was not involved from the beginning to the end of the determination of the matter. The appellant was appointed as administrator and letters of administration granted to him.

On 20/01/2016 the respondent lodged a complaint letter in the District Court of Nanyumbu. In that complaint letter, the respondent informed the district court about the family meeting which proposed her to be appointed as the administratrix of the estate of the late HASHIMU KWITANDA MALINDA. She also informed the district court about the Probate Cause No.14 of 2016 which she lodged at Buguruni Primary Court in Dar es Salaam. The respondent further stated that on 17/01/2016 she communicated with her brother-in-law and was told that the appellant had already filed the Probate Cause and appointment was done and letters of administration were granted to him. The respondent was also told that even the estates of the deceased were distributed and sold without her being aware and involved.

Following that complaint, the district court called the records of the trial court for inspection. After inspecting the record, the district court revised the proceedings, judgment, and orders of the trial court. The effect of nullifying the records of the trial court affected the appointment of the appellant as



administrator of the estate of the late Hashimu Kwitanda Malinda. The district court ordered further that the appellant had to surrender all documents to the trial court pertaining to his appointment. The appellant is dissatisfied. He has filed a Petition of Appeal to this court on the following grounds: -

1. *That, the respondent erred in law and in fact for revoking the appellant's letters of administration ex-parte before Nanyumbu District Court with no any notice issued to all persons known or alleged to be the near relatives of the deceased requiring their appearance in court that detached the appellant's right to be heard.*
2. *That the respondent erred in law and fact for not complying with the legal requirements so ordered by the District Court of Nanyumbu at Nanyumbu in Revision Application No.1 of 2016 issued on 26<sup>th</sup> January 2016 before Hon. M.S. Kasonde-RM, the same upheld the matter to be tried denovo on the same court, thus Mangaka Primary Court at Mangaka in Nanyumbu District, instead the respondent skipped the matter before Buguruni Primary Court in Dar es Salaam.*
3. *That, the respondent erred in law and facts for binded with irregularity in law by emerging the res judicata on the matter that had been already decided before Nanyumbu District Court with the same parties, same cause of action then the same filed again the matter at Buguruni with the same parties, same cause of action.*

On 28/2/2023 this appeal was called on for hearing for the purposes of obtaining additional information that the court needed for proper administration of justice both parties appeared in person and unrepresented. Specifically, this court needed to find the status of cases hitherto filed by either party to avoid unending litigation.

On 23/6/2022 both parties had appeared in person, unrepresented. The appellant submitted that the crux of the matter is on administration of



estate of the late Hashimu Kwitanda Malinda. The appellant stressed that he is a son of the deceased while the respondent is his stepmother. He expounded that the deceased had three wives whom he had married and other women who were not married but had children with him (alizaa nao). The appellant submitted that his mother was among those women not married to the deceased. It was the appellant's submission that he lived with his mother and used to visit his father very often. He recalled that even the respondent used to visit him when he was studying at Mwenerumango Secondary School at Kisarawe.

In that capacity, the appellant averred, he went to Buguruni Primary Court to oppose appointment of the respondent as administratrix of the estate of late Hashimu Kwitanda Malinda. The appellant stressed that he believe that he was entitled to be the administrator of estate of his deceased father, the late Hashimu Kwitanda Malinda and that is why he had come to this court to fight for his right.

In response, the respondent gave an account of her life with the late Hashimu Kwitanda Malinda, her co-wives, appellant's mother, and the appellant. The respondent went further and argued that after the death of her husband she called the family and made contributions to transport the deceased's body to Mangaka. The respondent submitted that before his death, her late husband had instructed that he is buried in his native village and that is why it was necessary to transport his body to Mangaka.

Addressing the court on the crux of the matter, the respondent averred as soon as her late husband was buried, her in-laws wanted her to be



inherited by one of the brothers of her late husband in accordance with the local customs. The respondent refused the revered tradition and relatives of her late husband were enraged. To demonstrate their anger, the respondent contended, the relatives of her late husband forcibly opened her bag and removed the clothes of her late husband as a sign of disowning her.

With regards to opening a probate cause, the respondent contended that she went to court where she met a clerk who told her that her in-laws had indeed initiated a probate case. Furthermore, the respondent contended that in court she met a magistrate known as "Mama Mwamedu" who rebuked her and saying she did not know her and if she disturbed her further, she would order for arrest. The respondent submitted that in 2016 she took her complaints to the District Court whereby the primary court magistrate was summoned and was asked if she knew the respondent and she denied. Thus, the District Court revised the Probate Cause.

According to the respondent, the deceased had died in Dar es Salaam, but in-laws forged the death certificate to show that he died at Mangaka. She had filed the Probate Case at Buguruni Primary Court and provided a citation of UHURU Newspaper which was received by the court because she believed the same was the proper forum as the death of her late husband had taken place in Dar es Salaam.

In a rejoinder, the appellant submitted that the respondent is not the rightful administratrix because the last family meeting appointed him as the administrator. The appellant contended that he went to apply for letters of administration of the estate of the deceased and the respondent was there.

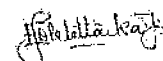


He contended that he was surprised that the respondent was saying that she was not there. The appellant insisted that all the children were there, but the respondent opposed his appointment. Regarding invitation to family meeting, the appellant submitted that the respondent never invited them.

The appellant submitted that he talked to the respondent that the issue could be resolved out of court, but she said she did not want to talk to the person to had sold about 50 acres of the deceased's land. The appellant submitted further that he sold the land because the respondent took 16,000,000/= from Nanyumbu District Council and spent them without telling other members of the family.

It was the considered opinion of this court after hearing the parties that the duo was being unnecessarily litigious. Thus, this court granted the parties yet another chance to go for a lesser litigious approach. On 21/7/2022 the appellant apologized to the respondent. He indicated that he was remorseful as the respondent had been kind to him even when, in childhood, he was not accepted by his own father. However, the respondent was not ready to forgive him because, she narrated, five days after they left this court the appellant's sister allegedly went to a party and started mocking her and said that they had finished the case. She insisted the court to use the law and decide the matter on merit.

On 28/2/2023 the matter came again for hearing where both parties insisted that this court should decide the matter on merit. The respondent submitted further on the status of the Probate Cause No.14 of 2016 filed at Buguruni Primary Court. She averred that the District Court of Ilala had



nullified it because of the existing Probate Cause No.8 of 2015 before the Primary Court of Mangaka upon which the District Court of Nanyumbu made the impugned Revisional Order.

Having dispassionately considered the submissions of both parties, the record of the lower courts and grounds of appeal, I am now in the position to determine the merits or demerits of the appeal. The main complaints of the appellant are **one**, the district court erred in law and fact for not affording him the right to be heard when it called the file of Probate Cause No.8 of 2015 from the Primary Court of Mangaka for inspection and revision. **Two**, the respondent filed the same matter at Buguruni Primary Court while she was aware of the order of the District Court of Nanyumbu vide the Revision Application No.1 of 2016 that the matter be tried de novo thus, it led to res judicata.

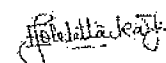
I will start my deliberation with the second complaint. At the outset the record shows that the respondent had lodged the Probate Cause No.14 of 2016 before Buguruni Primary Court in early January 2016 and not after the District Court of Nanyumbu had revised the decision of Probate Cause No.8 of 2015. Following what the respondent submitted on 28/2/2023 it shows that Probate Cause No.14 of 2016 was nullified by Ilala District Court because there was an earlier matter that was pending before the Primary Court of Mangaka waiting for a retrial on the same cause of action. The Probate Cause No.14 of 2016 no longer exists. Consequently, the appellant's second and third grounds of appeal fail for being devoid of merits.

Regarding the first appellant's complaint on the right to be heard, to be able to respond to this complaint, it is important to know what prompted the District Court to call the records of the Primary Court of Mangaka. The calling of the same was grounded on the complaint lodged by the respondent that she never participated in the Probate Cause No.8 of 2015 as the lawful wife of the late Hashimu Kwitanda Malinda. The District Court of Nanyumbu exercised its revisional jurisdiction vested to it under section 22(1) of the Magistrates' Courts Act [Cap.11 R.E. 2019]. For easy of reference, I find it imperative to reproduce a part of the provision of law as follows:-

*"22.-(1) A district court may call for and examine the record of any proceedings in the primary court established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings.*

It does not take much thought to realize that what the district court did is what was expected and indeed pursuant to the above provision of the law. The exercise of examining the records or registers of primary courts does not necessarily require the district court to call the parties to appear before it. This means that the examination of the records of the primary court is purposely done for the district court to satisfy itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein.

In the matter at hand, the district court had examined the records of Mangaka Primary Court and was satisfied that it was procured with illegality





and irregularity for not issuing the notices as per Rule 5(2) of the Primary Courts (Administration of Estates) Rules G.N. No.49 of 1971. Thus, the district court revised the decision, proceedings, and orders of the Mangaka Primary Court by nullifying it. The first ground of appeal equally lacks merit and is dismissed.

All said and done, this appeal, in its entirety, has no merit and it is hereby dismissed with no order as to costs. Before I pen down, I should give the District Court of Nanyumbu and Mangaka Primary Court the following directives with regards to this matter. **One**, since the matter has been in the corridors of the court for too long, it is ripe for expedited hearing in line with the district court's order of 27/01/2016. **Two**, I revise the order of the district court on the magistrate who will be required to conduct the retrial. A retrial shall be conducted by a different magistrate who is competent to try this matter and vested with the requisite jurisdiction. **Three**, the appointed and reassigned magistrate shall strictly abide to all procedures relating to Probate Causes in the Primary Courts including but not limited to the dictates of Rule 5(2) & (3) or (4) of The Primary Courts (Administration of Estates) Rules, G.N. No.49 of 1971. This is to ensure that litigation comes to finality.

It so ordered.



**E.I. LALTAIKA**

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**JUDGE  
2.3.2023**

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**Court**

This judgment is delivered under my hand and the seal of this court this **2<sup>nd</sup> day of March 2023** in the presence of respondent who has appeared unrepresented.



**E.I. LALTAIKA**

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**JUDGE  
2.3.2023**

**Court**

The right to appeal to the Court of Appeal of Tanzania id fully explained.



**E.I. LALTAIKA**

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**JUDGE  
2.3.2023**

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