

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB REGISTRY OF KIGOMA
AT KIGOMA**

PC CIVIL APPEAL NO.10 OF 2022

(Arising from Civil Appeal No.23 of 2021 of Kasulu District Court and Originating from
Civil Case No. 105 of 2021 of Kasulu Urban Primary Court)

TAUSI ISMAIL TANGILA (On behalf of Naomi d/o Justine George Muganya
and Nancy d/o Justine George Muganya- minors).....**APPELLANT**

Versus

AGNES SIMON (Administratrix of the estate of

late Justine George Muganya) **1st RESPONDENT**

DORICE MESHACK BULAGI..... **2ND RESPONDENT**

JOSEPH JUSTINE MUGANYA..... **3RD RESPONDENT**

GODLOVE JUSTINE GEORGE MUGANYA..... **4TH RESPONDENT**

Date of Last Order: 07/02/2023

Date of Judgement: 17/03/2023

JUDGEMENT

MAGOIGA, J.

This is an appeal against the judgement of the Kasulu District Court dated 15th day of July, 2022 arising from PC Civil Appeal No. 23 of 2021.

At Kasulu Urban Primary Court, in a nutshell, the appellant (being guardian of the two minors Naomi and Nancy Justine George Muganya issues of the late Justine George Muganya with the appellant) successfully sued the respondents for the ownership and distribution of one house at Nyambebha street property of Naomi d/o Justine George Muganya worth Tshs.9,000,000.00 (allegedly gifted to Naomi by his father before his



death) shop at Soko Kuu Kasulu worth Tshs.5,000,000.00 (allegedly gifted to the 3rd and 4th respondents), and a house situated at Sido street worth Tshs.15,000,000.00. within Kasulu district.

Against the above background, the appellant prayed that the house at Nyambebha be declared wrongly included in the deceased properties and be the exclusive property of Naomi, the shop be distributed afresh among all heirs and the house at Sido be distributed to Naomi and Nancy as their share of inheritance from their deceased father.

Upon hearing parties, the trial court find in favour of the appellant. Aggrieved, the respondents appealed to the District Court, vide PC Civil Appeal No.23 of 2021 which found that the trial court had no jurisdiction to entertain the ownership of the of the landed properties during probate which is confined to appointment of the administrator of the estate alone among others.

Aggrieved, the appellant preferred this appeal armed with three grounds of appeal faulting the first appellate court in the following language, namely:-

1. That the 1st appellate court erred on point of law in nullifying the proceedings of the trial Primary Court and setting aside the judgement thereof;



2. That the 1st appellate court erred on a point of law and facts in failing to understand and appreciate the decision of the High Court in Tangile's case;

3. That the 1st appellate court erred in point of law and facts in failing to recognize and appreciate that the administratrix of estate of Justine George Muganya had been appointed by the trial Primary Court and illegality distributed the estate thereof, hence, the suit;


When this appeal was called on for hearing, the appellant was enjoying the legal services of Mr. Masendeka Ndayanse, learned advocate, while the respondents were enjoying the legal services of Mr. Hamis Kimilomilo, learned advocate. The learned counsel for parties prayed that the appeal be argued by written submissions. I granted their prayer. I commend the learned counsel for their input in making this judgement possible by complying with the order of the court. I have had time to read their arguments, which I have noted and will assist this court in reaching a fair decision. I may not be able to reproduce them here but are well considered in the course of preparing this judgement.

Mr. Ndayanse in his written submissions argued grounds one, two and three jointly which boils down to interpretation of the High Court judgement in PC Civil Appeal No.10 of 2020 resulting into nullification of the trial Primary Court proceedings and judgement on the powers to



appoint an administration of estate and in dealing other matters ancillary thereto. According to Mr. Ndayanse, the direction of the High Court in PC Civil Appeal No. 10 of 2020 was for the appellant to challenge the distribution in a legally acceptable manner and went on to quote the ruling of the trial Primary Court in appointing the 1st respondent that the trial Primary Court had conclusively found and determined that the house in dispute was not among the properties of the deceased and the proper forum to challenge the same was in the Primary Court and not otherwise. On that account, Mr. Ndayanse seriously faulted the findings of the 1st appellate court and urged this court to find this appeal merited and allow the appeal with costs.

In response, Mr. Kimilomilo strongly opposed this appeal and like his colleague jointly argued grounds one, two and three in the same manner argued by Mr. Ndayanse. According to Mr. Kimilomilo, the powers of the Primary Court in probate matters are limited to appointment of the administratrix/administrator only and not to determine the ownership of the landed properties in dispute. In support of this argument and stance, he cited the case of **Jackson Lenyemela Vs. Vumilia Sadock, PC Civil Appeal No. 02 of 2021 (HC) Kigoma (Unreported)** in which it was held and observed that:-



"A Primary Court has no jurisdiction over landed matter when ownership is disputed being in civil or probate and administration matters. When such a dispute arises, a probate court ought to confine itself to appointing the administrator who thereafter can sue or be sued in court of competent jurisdiction and the disputed property shall be dealt with in the probate and administration cause once the court of competent jurisdiction declares it to be property of the deceased."

Further guidance, according to Mr. Kimilomilo, is the provisions of section 4 of the Land Disputes Courts Act, [Cap 216 R.E.2019] which are clear that, Primary Court had no jurisdiction to declare ownership of land property when confronted during the appointment of the administrator.

On the above reasons, Mr. Kimilomilo invited this court to find and hold that, the 1st appellate was justified within the four corners of the law to hold as it did and proceed to dismiss this appeal with costs.

Mr. Ndayanse did not bother to file rejoinder.

The noble task of this court now is to determine the merits or otherwise of this appeal. However, before going into that task, I find it prudent to know the statutory powers and limitations of the Primary Court in Probate and Administration matters. I said statutory because, they are statutorily provided for under the 5th Schedule to the Magistrates' Courts Act, [Cap



11 R.E. 2019]. Under paragraph 2 of the Schedule powers of the Primary Court are clearly spelled out. The paragraph provided as follows:

2. A primary Court upon which jurisdiction in administration of deceaseds' estate has been conferred may-

- a) Either of its own motion or on an application by any person interested in the administration of the estate appoint one or more persons interested in the estate of the deceased to be the administrator or administrators thereof, and, in selecting any such administrator, shall, unless for any reason it considers inexpedient so to do, have regard to any wishes which may have been expressed by the deceased;**
- b) Either of its own motion or an application by any person interested in the administration of the estate, where it considers that it is desirable to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under subparagraph(a);**
- c) Revoke any appointment of an administrator for good and sufficient cause and require the surrender of any document evidencing his appointment**
- d) Make orders as to the administration of the estate and, in particular but without prejudice to the generality of the foregoing, as to advertising for creditors**
- e) Require an administrator to sign an undertaking to administer the estate faithfully;**
- f) Require an administrator to give security for the due administration of the estate;**
- g) Make orders as to the payment of the share in the estate of any minor or other person under a disability to a relative or other suitable person for the maintenance or otherwise for the use of such minor or person under a disability or, with the consent of the Public Trustee, to the Public Trustee; or**
- h) Make any order which it has power to make under this Act in cases of a Civil nature.**



It is plainly clear that in sub paragraphs (a) to (h) none state that the Primary Court can determined ownership of the property when dealing with the administration. The powers are limited as provided in the paragraphs and anything done outside those paragraphs, in my respective considered opinion, will not stand and will have been done without jurisdiction.

Equally important to note, as rightly held in the case of **Jackson Lumenyela vs. Vumulia Sadock (supra)** by my brother Mugeta, J, which I wholly subscribe to, the issue of ownership of the land forming part of the estate, should be preferred to the court of competent jurisdiction and for this matter are courts as established under section 4 (1) of the Magistrates' Courts Act, [Cap11 R.E.2019], which the primary court is inclusive are excluded.

Coming now to the merits of the of this appeal, and in particular, grounds one, two and three argued jointly, I need to state after following closely the rivaling arguments of the learned counsel that this appeal is without any iota of merits. I will explain. **One**, as rightly argued by Mr. Kimilomilo, and rightly so in my opinion, the powers of Primary Court are limited when dealing with probate and do not include the determination of the ownership of landed matters when dealing with probate matters. **Two**, I see no confusion or failure to understand on the part of the 1st appellate



court in interpreting the decision in PC Civil Appeal No. 10 of 2020 because the directives of the learned Judge that any challenge must comply with a legal acceptable manner and for this matter the legally acceptable manner was to open a landed suit to court of competent jurisdiction and not what was done. **Three**, the primary Court in Probate Cause No. 32 of 2019 stating how the administratrix will distribute and declaring the ownership of the properties done by the primary Court was beyond its powers and was of no legal effect. On that note, I strongly give guidance and urge Primary Court magistrates when handling probate causes to confine themselves to what is before it and should not traverse to matters not within their legal powers. **Four**, to agree with Mr. Ndayanse line of arguments, with due respect to him, will amount to agreeing that Primary court have powers to deal with ownership on landed matters when handling probate matters. As such his whole arguments are misconceived, erroneous and are rejected for want of legal back up. What was done by the Primary Court in the said judgement he referred to was no decision at all and cannot be a basis of what he understood the law to be.

Therefore, consistent with the settled law that Primary Court have no jurisdiction to deal with landed matters when handling probate matters, I hereby find that the District Court was justified in its decision and same is



hereby confirmed, consequently this appeal must be and is hereby dismissed for want of merits with costs.

It is so ordered.

Dated at Kigoma this 17th day of March, 2023



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, followed by a small flourish.

S.M. MAGOIGA
JUDGE
17/03/202