

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM SUB DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 230 OF 2020**

*(Originating from Misc. Civil Application No. 210 of 2019)*

**BENEDICT LUTEGE MWOBANE.....APPEALLANT**

**VS**

**SALOME BARNABAS MISANA.....RESPONDENT**

*Date of Last Order: 15/07/2022*

*Date of Judgment : 07/03/2023*

**JUDGMENT**

**HON. MGONYA, J.**

Being aggrieved by the Ruling in **Misc. Application No. 2010 of 2019** at Kinondoni District Court in an application for revocation of the Respondent as an Administrator of a deceased estate; the Appellant herein has paraded four grounds of appeal to wit:

- 1. That, the learned trial Magistrate erred in law and in fact for failure to take into consideration that the proceedings to obtain the grant of letters of administration by the Respondent were defective in substance;***
- 2. That, the learned trial Magistrate erred in law and in fact for failure to take into consideration that the***

***procedure of appointing the Respondent as an Administratrix was fraudulently procured;***

***3. That, the learned trial Magistrate erred in law and in facts by holding that Notice of Citation Under rule 73 of the Probate Rules (as emanated from S. 9 of the Probate and Administration of Estates Act Cap. 352 R. E 2019) was issued while there was no citation issued to notify the interested parties on the existence of application for grant of letters of Administration to the Respondent; and***

***4. That, the learned trial Magistrate erred in Law and facts for her failure to confine herself to the grounds and reasons set out for the application and instead misdirected to the facts of another land dispute pending at Kinondoni Land and Housing Tribunal.***

The appeal before this Court was heard by written submissions as requested by **Mr. Mligo** learned Advocate who represented the Appellant. The Court granted the Prayer and **Mr. Mwang'ezi Mafembe** learned Advocate adhered to the order as he was representing the Respondent. At the time of the Appellant's submissions, the fourth ground of appeal was withdrawn and submissions were jointly made for the first and third grounds of appeal.

In his submission the Appellant in the **first and third grounds** of appeal stated that **Rule 73 of the Probate and Administration Act (referred to as PAEA forthwith)** provides for a clear mandatory procedural for compliance before grant of letters of administration. The said compliance is that the Court shall issue a citation by publicizing it in a widely circulated newspaper. The Appellant states that, in **Application No. 210 of 2019** at Kinondoni District Court in respect of revocation, the Court failed to take consideration that the letters granted were solely granted basing on a repugnant citation issued on Mwananchi newspaper dated **11/11/2018** of which the same was defective.

Further, the Appellant claimed that the said citation concealed information about where the Application to administer the deceased estates was filed and as the result the Appellant herein who is the only beneficiary was not informed about the pending application for grant of Letters of Administration hence failed to appear and access the process. The Act of concealing the venue where the application was held was intentional and aimed to prevent the Appellant from appearing in Court. The case of ***ELIAS MADATU VS JOSEPH MAKOYE LAMECK, Appeal No. 1 of 2019 HC***, was cited to support the Appellant's submission.

Moreover, the Appellant has informed the Court on the provision **Rule 71 of PAEA** that the same required there to be consent of the beneficiaries to the estate of the deceased before granting the same to a party applying to be appointed. This was not the case in the application complained against by the Appellant and the appointed administratrix misled the Court on reasons as to why she should be appointed not considering that the Appellant was the only surviving beneficiary of the deceased's estate who was his lovely wife married in Catholic Church. The Appellant claims in the time of their marriage they never divorced nor did they separate.

Submitting on the **second ground** of appeal the Appellant stated before the Court that the procedures for appointing the Administratrix the Respondent herein were fraudulently procured. It is so since the Respondent procured false information to the Court that there was a meeting which appointed her knowingly that to be false and that the brothers and the sisters of the deceased are the valid heirs to the estate. This information was provided intentionally without considering the Appellant to be the only beneficiary of the deceased estate. Reference was made to the contents of the ruling of the Kinondoni District Court all in aiming to show that there was no meeting of the deceased relatives that appointed the Respondent hence making the procedure of appointing the Administratrix to be unlawful.

In reply the Respondent on the **1<sup>st</sup> and 3<sup>rd</sup> grounds** of appeal stated that, countering to the allegations set out in the 1 and 3<sup>rd</sup> grounds of appeal the same are devoid of merits. From the Courts proceedings of which reference should be made to was clear that on **08/11/2018** the Kinondoni District Court ordered publication to be made of the citation to the matter of appointment of an Administrator that was before it. On **11/11/2018** the citation was made in Mwananchi News Paper.

The Respondent also submits that from the above the appointment of the Respondent cannot be regarded as being defective. After the citation was published any party that intended to object had the chance to do so, the purpose for publication is to invite objections from any interested party. Once there is no objection then a party is appointed to be an administrator upon an application in Court. Proof of citation was attached in the Kinondoni District Court supplementary affidavit and hence there was no wrongful procedure as claimed by the Appellant as well as there was no sufficient reason advanced by the Appellant here in to cause the Court revoke the Respondent's appointment.

Moreover, the Respondent claims that the Appellant's frequent attacks on defects of the Mwananchi Newspaper of not indicating where the grant was to be made did not prejudice

anyone since the records under paragraph 4 as reiterated in the Respondent's submission prove that the Appellant was aware and had in knowledge of the Respondent's appointment to be the Administrator since **30/08/2019**. However, the said omission was by the printing press but still the same would not prejudice anyone who was interested to object the appointment since the name of the parties appeared in the said citation if efforts were made the venue would have been known. The Appellant has not also stated as to how such an anomaly had prejudiced him from challenging the application for appointment that was in Court.

Arguing the **2<sup>nd</sup> ground** of appeal the Respondent contended that, the claim by the Appellant that the procedures for appointing the Respondent as the Administrator of the deceased estate were fraudulently procured is misconceived. The Respondent had presented to the Court minutes of a family meeting that appointed her to petition for being an Administratrix to the deceased's estate. And the same were not fabricated. The Respondent further insists that the Appellant failed to satisfy the Kinondoni District Court and raise sufficient grounds to cause the Court revoke the Respondent. The allegations that the Respondent appointment was tainted by fraudulent acts was not proved as well. The Respondent cited a case to cement on failure of the Appellant to prove the fraud he referred was committed

by the Respondent for the latter being appointed Administrator of the deceased's estate.

Finalising her submission, the Respondent informed the Court that the deceased died intestate in **2011** and it was until **2018** whereby the Respondent petitioned for Letters of Administration and was subsequently granted the same upon the deceased estate. The Respondent informed the court that the Respondent's decision was caused by the Appellant's long misuse of the deceased's estate and selling the properties without petitioning for Letters of Administration. Hence the Respondent had been insisting the Appellant to petition for the Letters of Administration of the deceased but he showed no interest. It is from the above the Respondent prayed the appeal be dismissed for being meritless.

Having gone through the submission of the parties for and against the appeal before this Court. It is at this point this Court is at a position to determine the same.

In determination of the **1<sup>st</sup> and 3<sup>rd</sup> ground** of appeal as jointly submitted by the appellant, this Court finds that the appellant states to be aggrieved by the proceeding of appointing the Respondent herein. Stating his complaint, the latter claims there was no citation published to notify an interested parties of an application filed with regards to the deceased's estate. The

Appellant went further in arguing that the citation that was made in the newspaper contained a defect where the venue which the matter was filed was not disclosed and claimed that the same was to infringe him of the right to appear in the said proceeding while he is the husband and only beneficiary of the deceased.

The Respondent on the other side from the records claim that the contention that there was no citation published is not true, hence a citation was published and proof brought to Court. The defect on the citation of not showing the Court where the matter was filed was a defect of the Publishers of the newspaper. But still such anomaly did not in any way cause the Appellant any injustice, as still he could have to Court and object from the time he had the knowledge of the Respondents appointment, but failed to have sufficient reasons to cause the Court to Revoke the Respondent's appointment.

Having gone through the Court records before me in respect of the Petition for letters of Administration of the Deceased's Estate; Petitioner being the Respondent herein, I find no fault of procedure. The records of **Probate Administration Cause No. 32/2018** show that an order was made for citation on **12/10/2018** and on **11/11/2018** the Mwananchi Newspaper at page 28 published a Citation in Respect of **Probate Cause No. 32/2018**. In that citation, the Petitioner was **SALOME**



**BARNABAS MISANA** and the Deceased was **SOPHIA BENEDICT MWOBAHE**.

It is from the said citation I am of the firm view that this information was enough to show that someone had petitioned to administer the deceased estate. For any interested party to the said estate that required to object and conduct due diligence of the said probate, he was supposed to know the Court in which the Application was filed. The said Court would have been known to the party requiring to object.

However, in the circumstance of this matter the above would have been easy since the Petitioner's name was on the citation. The Appellant who is stated to be the deceased's husband could have communicated with the Petitioner who is a sister to the deceased, that makes the two to be in laws. It is a known fact that circumstance both the Appellant and Respondent two know each other as it is revealed in the records where the Petitioner and her witness in **Probate Cause No. 32/2018** name the Appellant to be the deceased husband.

Under those circumstance, the Appellant could have called to inquire on the Court where the matter was filed. There is nowhere in the submissions the Appellant states that he communicated with the Respondent to inquire on the Court where she had filed the Petition and the Respondent denied to

disclose it to him. The Respondent in the record has stated to have informed the Appellant of the intention to petition for letters of administration and even the family meeting that was to be held but the Appellant took no interest. From this fact the Appellant did not counter to such fact. It is the law that the same amounts to an admission of the said facts.

However, petitioning of Letters of Administration of the deceased estate is solely known to be the right of any person interested in the deceased estate. And in the circumstance of this matter the deceased died in 2011. The Appellant being the husband had the right to petition for Letters of Administration. But from the records, since the Respondent seems to have interest in the said deceased estate the same has the right too to petition for the same and upon compliance of the law and procedure being complied to a grant of the same is lawful as it has occurred in this matter.

Moreover, the Appellant has not in any way shown how the citation not stating the Court where the matter was filed had affected him. Further, how the actions of the Respondent since being granted the Letters of **Administration** has infringed his rights. It is in the record, that since **2011** when the deceased died the Respondent petitioned for Letters of Administration in **2018**. The Appellant being the deceased's husband had ample

time to petition as well if he had interest in being the Administrator of the deceased's estate. ***It is from the above, that I find the 1<sup>st</sup> and 3<sup>rd</sup> grounds appeal has no merits.***

With regards to the **2<sup>nd</sup> ground** of appeal, the Appellant states to be aggrieved with the procedure of appointing the Respondent since the said procedure was founded on false information. The Appellant also referred to the family meeting that appointed the Respondent and claimed that he was not part of the same. The latter also averred that the Respondent informed the Court that the Brothers and Sisters of the deceased are the beneficiaries leaving the Appellant who is the Husband to the Deceased.

The Respondent refuted the fraud allegations by the Appellant and claimed they were unfounded and not proved that is the reason the Court failed to revoke the Respondent in those circumstances.

From the above, it has been the position that a family meeting or a clan meeting is not a legal requirement of law in appointing an Administrator to a deceased estate, such meetings are for the families to propose an Administrator who is then appointed by the Court. It should be known the requirement of the said minutes is a matter of practise. The records before me contain in it minutes of the Respondent's family members choosing the

Respondent to petition for Letters of Administration. The whole context of her interest is based on the fact the deceased who is her sister had properties that she personally acquired and were not jointly acquired with the Appellant herein. I have closely gone through the records and I find the records short of stating who the beneficiaries were or an inventory that shows the Respondent has disposed off any property without considering the Appellant as he is one of the beneficiaries and the same is known to the Respondent.

As alluded above in the consolidated grounds that any person believing to be interested in a deceased estate has the right to Petition for letters of administration. The Respondent being interested in the same followed the procedure and was appointed Administratrix of the deceased's estate. I am of the firm view that the Kinondoni District Court in hearing and making a decision of the application for revocation channelled to a rightful decision. **Hence the second ground of appeal is meritless.**

It is from the above this Court does not find reasons to fault the findings of the Kinondoni District Court. In the event therefore, **I uphold the decision of the said Court.**

**This appeal is dismissed for lacking merits.**

Considering the nature of this matter, each party is to bear their own costs.

It is so ordered.

Right of appeal explained.



**L. E. MGONYA**

**JUDGE**

**07/03/2023**