

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**TEMEKE SUB – REGISTRY**  
**(ONE STOP JUDICIAL CENTRE)**  
**AT TEMEKE**

**PC CIVIL APPEAL NO. 279 OF 2021**

(Appeal originating from District Court of Kinondoni Civil Appeal No. 101/2019 dated  
17/3/2020 before honourable Mwaisaka – R.M)

**BETWEEN**

**ZUWENA YASIN GORAGOZA ..... APPELLANT**

**VERSUS**

**PETER RICHARD KABODO ..... 1<sup>ST</sup> RESPONDENT**

**DAVID RICHARD ..... 2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

**OPIYO, J**

This application for appeal challenges the decision of the District Court of Kinondoni in Civil Appeal No. 101/2019 on the following grounds: -

1. That, the trial magistrate erred in law and in fact in the judgement by appointing Edson Kabodo as administrator of the estate of late Richard Kabodo by basing on evidence adduced by the respondent only.



2. That, the trial magistrate erred in law and in fact in the judgement by appointing co-administrator without considering legal procedures and without making any inquiry to satisfy as to whether the respondents are real sons of the deceased and if they conducted legal clan meeting.

Briefly, the appellant as the deceased's wife was appointed by the Primary Court as an administrator of the estate of the late Richard Kabodo Ndalemeye. In the process of a distribution of deceased's properties to the heirs; Peter Richard Kabodo and David Richard Kabodo brought into the trial Court's knowledge that they were also deceased's sons and so entitled to the distribution of his estate. The matter was heard and they were included into the list of deceased's heirs. The appellant excising her duty did not distribute deceased's estate to the added heirs. The matter was taken back to Court and the appellant's appointment was revoked after. They were then ordered to resort back to the clan meeting for proposal of the one to administer deceased estate. That is when clan meeting proposed one Edson Kabodo Ndalemeye.

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Being dissatisfied by revocation of her appointment, she appealed to the District Court, the matter was heard and the court reversed revocation order reinstating her and proceed appointing Edson Kabodo as a co-administrators of deceased's estate. The appellant being unhappy with the District Court's decision filed the current appeal.

The hearing proceeded orally. Only the appellant was represented by Mr. Frank Mposso, Learned Advocate. The respondents appeared in person. In support of the appeal it was submitted that, the appellant saw David (second respondent) for the first time in the clan meeting that was held on 27/2/2018. She told the meeting that she never knew him before and that David stated that he had never been at the deceased's home. She continued by stating that she listed heirs (Daniel, Halima, Beatrice and John) but the chair (Alexander Kabodo) listed his own list of heirs, including David.

She continued to state that, she was appointed as an administrator together with Halima and she listed deceased's properties to be one house and two motor vehicles. She stated further that, after being appointed she was told to return on 22/2/2019 and when she did it was



when she met Peter (1<sup>st</sup> respondent). The appellant further stated that both David and Peter were entertained by the Court as they had other minutes. In her view, respondents came to the estate through meeting held on 18/12/2019 which was not valid. She stated that the Court removed Halima and appointed Edson Kabodo even though she did not know or have trust in him. It was further stated that no parent blessed their appointment and that Edson Kabodo and the 1<sup>st</sup> respondent were not in the first meeting held on 27/2/2018. She continued that the deceased's family was not involved in their purported second meeting that brought the two into the estates.

In reply the first respondent stated that Edson Kabodo was appointed because the appellant was not involving them in the administration of the estate. His appointment was initiated by the need to find a neutral person who would be fair to all the heirs. On the second ground he stated that they produced evidence showing that they are deceased's sons. In his view, that matter of paternity was closed, how come the appellant bring this matter at now.



The second respondent stated that the appointment of the co-administrator came in because of the first administrator's failure to show co-operation. He continued that, it is not true that she does not know the co-administrator as he was appointed by clan members. He continued that, the court accepted them to be deceased's sons after bringing evidences to that effect.

In rejoinder, the appellant reiterated what she stated in her submission in chief, that I feel no need to reproduce them here.

In determination of the first ground of appeal, the issue for determination is whether the appointment of Mr. Edson Kabodo by the first appellate court was correct. From the records, the appellant was appealing against her revocation by the Primary Court, that directed to go back to the clan meeting for proposal of the one to administer deceased estate. By the time Mr. Edson Kabodo was yet to be a part of the proceedings relating to the estate of this deceased as he was not appointed by the trial court. It is the first appellate court that appointed him as a co-administrator. The first appellate court stated at page 5 and 6 of the judgement that the reason that made it to do so is for the



interest of justice based on the proposal of the family meeting. For easy reference I reproduce his word: -

*"Hence for the interest of justice and for fair administration of the estate. This Court do hereby step into the shoes of the trial Court and appointment of Edson Kabodo as it was proposed by the family meeting convened on 18/12/2019 to be co-administrator of the deceased estate."*

The question is whose prayer was it for Mr. Edson Kabodo to be appointed as such. The Edson Kabodo's issue was yet to be addressed by the trial court. The trial court directed filing a fresh petition by the one to be proposed by the family meeting after it revoked appellant's appointment. The appellant had appealed against such revocation, not against Mr. Kabodo's appointment or anything of the sort. It is noted that the appellant had abandoned the first and second grounds of appeal. After the abandonment of the second and third grounds of appeal, the only ground of appeal that remained was;

*"that the trial Magistrate erred in law and in fact for judgment and ruling associated with illegality by revoking the appointment of administratrix basing on the evidence adduced by the respondents only."*



There is nowhere on that ground the appellant prayed for the appointment of one Edson Kabodo to be an administrator of the deceased's estate. The District Magistrate acted *suo motu* on the matter without even giving parties a right to be heard. In the case **Danny Shasha V. Samson Masoro & 11 Others**, Civil Appeal No. 298 of 2020, Court of Appeal of Tanzania at Musoma at page 7 that: -

*"Therefore, we find merit in the second ground of appeal, which we accordingly allow. We find the judgment of the first appellate court to have been based on the proceedings of the DLHT which violated the right to be heard and occasioned a failure of justice to the parties who were condemned without being heard."*

For that, I find the ground of appeal having merit. It is therefore upheld.

In determination of the second ground of appeal, the appellate court is faulted for not considering the issue of whether respondents were real sons of the deceased. The respondents maintained that the issue was already determined by the lower courts. There was no need to bring it in this appeal. Going through the records of the District court, my eyes caught first paragraph of the appellant's written submission on grounds of appeal the appellant through her advocate Pius Esther, Advocate



abandoned the second and the third grounds. The grounds abandoned were the ones talking about the paternity of the respondents. As if that is not enough, in the last paragraph of her written submission before the District Court, she recognised the respondents as deceased's sons. That is why he did not prefer appeal when their paternity issue was determined. That signifies the fact that the issue was not disputed. It was illogical to bring it again before this court as one of the grounds of appeal. The matter that has already been settled and the appellant became content with to the extent of dropping pursuing the same at the first appellate court cannot be subject of appeal in the second appellate court.

In the case of **Melchiades John Mwenda V. Gizelle Mbaga (Administrix of the Estate of John Japhet Mbaga-deceased) & 2 Others, Civil Appeal No. 57 of 2018, Court of Appeal of Tanzania at Dar es Salaam**, at page 24 it was held: -

*"It is elementary law which is settled in our jurisdiction that the court will grant only a relief which has been prayed for"*

From the authority above, the abandoned grounds of appeal are as if they never existed, therefore the District Court Magistrate was right not





to discuss them. This ground of appeal fails as bringing it here was irregular.

Upon finding the first ground of appeal to have merit, I hereby quash and set aside the decision and decree of the first appellate court relating to appointment of Mr. Edson Kabodo as a co-administrator of the deceased estate. Its decree reversing the trial court's decision revoking the appellant's decision is upheld. Thus, the appellant remains the sole administrator of the deceased estate. She has to distribute the estate of the deceased taking into consideration all the deceased lawful heirs including the respondents herein.



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**M. P. OPIYO,**

**JUDGE**

**14/3/2023**