IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISRTY OF ARUSHA

AT ARUSHA

(PC) CIVIL APPEAL NO.18 OF 2022

(C/f Civil Appeal No. 3 of 2022, in the District Court of Karatu at Karatu, originating from Probate Cause No. 7 of 2021 in the Primary Court of Karatu,)

IBRAHIM MANING ..... APPELLANT

Vs

PROTAS PETRO ..... RESPONDENT

JUDGMENT

Date of last order: 28-2 2023

Date of Judgment: 21-3-2023

B.K.PHILLIP,J

This is a second appeal arising from the judgment of the District Court of Karatu at Karatu in Civil Appeal No.3 of 2022. The grounds of appeal are reproduced verbatim hereunder;

(i) That, the trial court wholly erred in law and facts by ordering the appointment of administrator of the estate of the late Maning Lagwen without prior appointment of the said administrator by the family/clan of the deceased Maning Lagwen and without hearing of the parties.

(ii) That, the trial magistrate erred in law and fact by not giving the reason of its departure from decision of the primary court which appointed appellant.

(iii) That, the trial magistrate erred in law and fact in failing to comprehend the legal duty and authority of the beneficiaries/

family of the late Maning Lagwen to approve letter of administration granted to the appellant.

(iv) *That, the trial magistrate erred in law in his exercise of judicial discretion provided under section 49 (1) of the Probate and Administration of Estate Cap 352 R.E 2002.*

A brief background to this appeal is as follows; The appellant and respondent are siblings, the sons of the late Petro Maning Lagwen.The appellant was the applicant in Probate Cause No. 7 of 2021 before Karatu Primary Court (Hereinafter to be referred to as " the trial court") in which he applied to be appointed as the administrator of the estate of the late Petro Maning Lagwen and the respondent was caveator. The respondent's caveat was dismissed for want of prosecution. Thereafter, the matter was heard on merit and the appellant herein was appointed as the administrator of estate of late Petro Maning Lagwen. The respondent was aggrieved by the trial court's decision. He appealed to the District Court vide Civil Appeal No. 7 of 2021. His appeal was successful. The District Court ordered the matter to be tried *de novo* before another Magistrate on the ground that respondent was denied his right to be heard. On 22nd October 2021, the trial started afresh before another magistrate and after receiving evidence from both sides the trial court appointed the appellant as the administrator of the deceased estate. Undaunted, the respondent lodged his appeal to the District Court of Karatu vide Civil Appeal No.3 of 2022. The appeal was heard by way of written submission. However, in its judgment the District Court did not deal with the grounds of appeal raised by the respondent herein as well as the written submissions filed by the parties, instead it ordered the parties to abide by the orders made by Hon. E.E

Mbonamasabo in the first appeal (Civil Appeal No. 7 of 2021). It ordered that an impartial and reputable person able and willing to administer the deceased estate should be appointed as the administrator of the deceased estate. Neither the appellant nor respondent should be appointed as the administrators of the deceased estate. Further, it was ordered that the case file should be remitted to trial court with a specific directive that the matter should not be tried *de novo*.

Back to the instant appeal, at the hearing of this appeal the appellant and respondent appeared in person. They were not represented. The appeal was heard viva voce. In his submission the appellant combined all grounds of appeal. His submission was to the effect that the late Petro Maning was his father. He was appointed by the trial court as the administrator of the estate of the late Petro Maning after the matter was heard *de novo* as ordered by the District Court in the first appeal (Civil Appeal No. 7 of 2021). He contended that the District Court set aside the trial court's judgment erroneously and erred in law for failure to discharge its obligations since it did not deal with any of the grounds of appeal lodged by the respondent. It just purported to rely on the order issued by Hon. Mbonamasabo in the first appeal which had already been complied with and the matter was tried *de novo* as ordered. He contended that all his family members are expecting him to distribute properties forming part of estate of the late Petro Maning to the heirs. He insisted that District Court erred to order the case file to be remitted to the trial court with erroneous orders therein. He was of wondering how can a matter be resolved without the parties being accorded opportunity to be heard. In conclusion of his submission he prayed this

appeal to be allowed and an order recognizing him as the lawful administrator of the estate of the late Petro Maning Lagwen be issued.

In rebuttal, the respondent submitted as follows; That the trial court's order is erroneous. The family of the late Petro Mining did not authorize the appellant to be appointed as the administrator of the deceased estate. The trial magistrate erred for not taking into consideration the testimony made by his witnesses. He contended that the late Petro Mining distributed all his properties when he was alive. There is no need of appointment of an administrator of the deceased's estate because doing so will lead to unwarranted chaos in the family for no good reason since there is nothing to be distributed. He was emphatic that the appellant was telling lies before the trial court. All the children of late Petro Maning were bequeathed the shares of their inheritance by their father, the late Petro Maning before his demise. Further, he argued that the late Petro Manning died at the age of 103 in 2018. The respondent argued strongly that at such age it is incomprehensible that the deceased had not yet distributed his properties to his heirs/children. In addition, he contended that deceased oldest son is 80 years old. He was bequeathed his share of inheritance by the deceased himself before his demise the same applies to the rest of children.

Moreover, he objected to the appointment of the appellant as the administrator of the deceased estate since there is nothing to be distributed to the deceased children/ heirs. He prayed that this court may be pleased to visit their home village in order appreciate his contentions.

In rejoinder, the appellant reiterated his submission in chief and further submitted that the properties of late Petro Maning have never being distributed among the heirs. Thus, they need to be distributed. He was authorized by the family members of Petro Maning to be appointed as administrator of the deceased estate. He maintained that the decision of the trial court is proper. It was made after receiving evidence from the respondent together with his witnesses.

I have carefully considered the arguments made by parties and am of a settled opinion that the issue for determination in this appeal is whether or not the decision of District Court is erroneous. It is not in dispute that the District Court did not deal with the grounds appeal filed by the appellant at all, instead it came up with its own reasons faulting the decision of the trial court; to wit; that is it did not comply with the orders made by Hon. Mbonamasabo in the first appeal, (civil appeal no. 7 of 2021) and ordered the case file to be remitted to the trial court, and gave orders which were different from the one made by Hon. Mbonamasabo. In fact, the court's records reveal that Hon. Mbonamasabo had ordered the matter to be tried *de novo* and that is what was done when the case file was remitted to the trial court. Under the circumstances, it is finding of this court that the District court's orders are erroneous because they purport to be derived from the orders made by Hon. Mbonamasabo in the first appeal whereas in actual fact there were no such orders. Most importantly, the District court did not determine the grounds of appeal filed by the respondent for no good reason.

From the foregoing, I am of a settled opinion that the impugned judgment is erroneous. In the upshot, this appeal is allowed. The proceedings of the District Court are hereby nullified and the judgment of the District Court is set aside. Further, I hereby order that the case file should be remitted to the District Court forthwith for the appeal to be heard *de novo* before another Magistrate. Each party will bear his own costs. It is so ordered.

Dated this 21st day of March 2023

B.K.PHILLIP

JUDGE