IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

PC. PROBATE APPEAL NO. 02 OF 2022

(Arising from decision of the District Court of Nzega in Probate Appeal No. 02 of 2022, originating from Probate Case No. 16 of 2002, Nzega Urban Primary Court)

JAMES THOMAS..... APPELLANT

VERSUS

JOHN MHOJA THOMAS..... RESPONDENT

Date of Last Order: 01/03/2023
Date of Delivery: 29/03/2023

JUDGMENT

KADILU, J.

The appellant is contesting the respondent's administration of estate of the late Thomas Erasto Gando Luhende who died on 20/5/2002 at Ijanija hamlet within Nzega District in Tabora Region. This probate matter has spent about twenty (20) years moving to and from primary and district courts before it finally landed to this court on 16/6/2022. The delay was largely caused by differences and mistrust in the polygamous family. The late Thomas Erasto Gando Luhende was alleged to have several wives, but they all divorced him in 1970s except his youngest wife who survived him.

The deceased left thirteen (13) children, a house and nine (9) big farmlands. He also left behind a will distributing his properties to all his children. The case started in the primary court of Nzega Urban as Probate

Cause No. 16 of 2002. The petitioner, William Thomas was appointed as Administrator of the deceased's estate on 11/12/2002. Before Nzega Urban primary court had appointed William Thomas, John Mhoja Thomas who is his brother from the other wife appeared to object the appointment. The primary court dismissed the objection and proceeded to appoint William Thomas as the administrator of the estate.

From there, one Herman Thomas purported to appeal to the District Court of Nzega alleging to be dissatisfied with the decision of Nzega Urban primary court. The District Court dismissed the purported appeal on the ground that the said Herman Thomas was not a party to the proceedings in the trial court. William Thomas was therefore confirmed the administrator of the deceased's estate. However, up to the year 2018, William had never discharged his administration duties and file an inventory to the court. As a result, John Mhoja Thomas applied to Nzega Urban primary court for revocation of William's appointment and his appointment as administrator instead.

The application was granted. John Mhoja Thomas was appointed on 09/3/2018 whereby he was required to prepare the inventory and statement of account and file it to court in September, 2018. He failed to accomplish his administration duties within stipulated time-frame. On 22/3/2022, James Thomas Luhende made an application to Nzega Urban primary court praying for revocation of John's appointment as administrator of estate for the reasons that John had failed to distribute the estate as per the will and that,

he was appropriating the estate for his own benefit. James urged the court to appoint him thereof.

John informed the court that he could not distribute the estate as a serious conflict had emerged amongst the heirs, each side seeking for a better share. Nonetheless, the primary court revoked John's appointment and appointed James Luhende Thomas on 04/4/2022. He was required to file the inventory and statement of account on 21/4/2022. John appealed to the District Court of Nzega challenging the decision of the trial court. The appeal was allowed on 31/5/2022. The district court granted John Mhoja Thomas two months from 31/5/2022 within which to complete the administration task and file the inventory to the court.

Aggrieved by the decision of the district court, James Thomas filed the present appeal to this court, armed with four grounds of appeal as follows:

1. *That, the first appellate court erred in law and fact by extending time to the respondent to complete his duties as an administrator.*
2. *That, the first appellate court's Magistrate erred in law and fact when he based his decision on the premise that convening family meeting is a legal requirement in appointing and revoking the administrator of estate.*
3. *That, the first appellate court erred in law and fact by failing to consider a glaring proof of misappropriation of the deceased's estate by the respondent.*
4. *That, the first appellate court's Magistrate erred in law and fact when he disapproved the trial court's mode of revocation of the respondent's appointment.*

The appellant prayed this court to allow the appeal with costs. The respondent on the other hand, prayed the appeal to be dismissed with costs. During the hearing, the appellant appeared in person, without legal representation while the respondent had the services of Mr. Edward Malando, learned Advocate. Submitting in ground one, the appellant said that it was not proper for the district court to grant the respondent more time to complete his duties as the administrator because he had already failed to do so within the time which he was granted by the primary court. The appellant added that the respondent lost the qualifications of an administrator since he stayed for four (4) years without distributing the deceased's estate and file an inventory to the court.

Responding to this ground of appeal, Advocate for the respondent stated that the respondent had good reasons for not completing his duties within time and that is why the district court granted him more time. The respondent alleged that he reported the challenges he was facing to the appointing court for directives. In determining this point, I have consulted Rule 9 (1) (e) of the Primary Courts (Administration of Estates) Rules, G.N. No. 49 of 1979 which stipulates *inter alia* that:

> *"Any creditor of the deceased person's estate or any heir or beneficiary thereof, may apply to court which granted the administration to revoke or annul the grant on the grounds that the administrator has been acting in contravention of the terms of the grant or willfully or negligently against the interests of creditors, herein or beneficiaries of the estate."*

From the above provision, it is undisputed that the primary court has jurisdiction to appoint an administrator but also power to revoke the appointment after the satisfaction that one of the reasons listed under Rule 9 cited above has existed. In the appeal at hand, the records show that the respondent failed to complete the administration duties due to misunderstanding amongst the heirs. It was not stated in anywhere that the respondent acted in contravention of the terms of the grant or had willfully or negligently acted against the interests of the beneficiaries of the estate so as to justify his revocation.

In his reply to the appellant's application for revocation, the respondent explained clearly the initiatives he was undertaking to resolve the conflicts and proceed with his administration duties, but were fruitless. From pages 13 to 15 of the district court's typed judgment, the first appellate court observed that the revocation of the respondent's appointment would not be a solution for the standstill in this probate matter as the administrators have been appointed and revoked in numerous instances due to lack of cooperation from the heirs. For these reasons, I find the first ground of appeal short of merit and I dismiss it.

It is also the appellant's complaint that, the first appellate court's Magistrate erred in law and fact by basing his decision on the premise that convening family meeting is a legal requirement in appointing and revoking the administrator of estate. This ground of appeal should not take much of my time as it was totally refuted by the learned Counsel for the respondent.

My careful perusal of the district court's proceedings and judgment has failed to observe any such holding by the court. During the hearing of this appeal, the appellant told the court that their family is totally disintegrated and there is no way a family meeting can be held. With due respect, the appellant's elaboration had no linkage with his complaint in this point. Therefore, the second ground of appeal has failed for lack of proof.

The appellant complains further that, the first appellate court erred in law and fact by failing to consider a glaring proof of misappropriation of the deceased person's estate by the respondent. Responding to this ground of appeal, Advocate for the respondent contended that the allegation is a serious one which needs proof. It is common ground that misappropriation of the estate of the deceased is a criminal act which needs proof beyond reasonable doubt in a criminal prosecution and not otherwise. In the case of ***Ahmed Mohamed Al Laamar v Fatuma Bakari & Another***, Civil Appeal No. 71 of 2012, the Court of Appeal addressed the remedy which was available to the respondents who had a similar allegation. The court stated that:

> ***Firstly***, *if the respondents genuinely believe that the appellant acted in excess of his mandate or wasted the estate and/or subjected it to damage or occasioned any loss to it, through negligence, they are free to sue him.* ***Secondly***, *if they are also convinced that he either fraudulently converted some properties forming part of the estate, and/or that he deliberately exhibited a false inventory or account, they are equally free to institute a criminal proceeding against him in accordance with the provisions of the governing laws.*

In the instant case, it is not clear as to why the appellant has been unwilling to pursue these courses of action against the respondent while he adamantly pointed out to the lower courts intimating that the respondent had misappropriated the estate of their deceased father. Short of that, I find this ground of appeal as misconceived and I proceed to dismiss it accordingly.

Lastly, the appellant allege that the first appellate court erred in law and fact by disapproving the trial court's mode of revocation of the respondent's appointment. The learned Counsel for the respondent was of the view that the district court was correct because at the time the appellant was applying to be appointed as administrator of estate, the respondent had completed the distribution of estate to the heirs and filed an inventory to the granting court. To him, overturning the decision of the primary court would cause more harm to the heirs than good.

On this ground of appeal, I have noted that on 31/5/2022, the district court of Nzega granted the respondent two months within which to finish his administration duties. The two months were to expire on 30/7/2022. On 20/7/2022, the respondent filed an inventory to Nzega Urban Primary Court. Therefore, on 16/6/2022 when the appellant filed the appeal to this court, there was no estate to be distributed and any attempt to revoke the respondent's appointment would be meaningless and inoperative. In the circumstances, the appellant's prayer has already been overtaken by events.

It is a long-standing position of the law that there is no endless administration of estate in our jurisdiction. The matter comes to an end on filing of the inventory by the administrator. The Court of Appeal was faced with akin scenario in the case of ***Ahmed Mohamed Al Laamar v Fatuma Bakari & Another*** *(supra)* whereby it observed as follows:

> *"Given the fact that the appellant had already discharged his duties of executing the will, whether honestly or otherwise, and had already exhibited the inventory and accounts in the High Court, there was no granted probate which could have been revoked or annulled."*

As shown above, the revocation of administration is only possible where the matter has not been closed. Where the matter has been formally closed and the administrator is discharged, there will be no granted probate to be revoked. To this end, I dismiss the fourth ground of appeal for lack of legal base. For the reasons that I have stated, the appeal is dismissed with costs.

Order accordingly.

KADILU, M.J.,
JUDGE
29/03/2023

Judgment delivered in Chambers on the 29th Day of March, 2023 in the presence of Mr. John Thomas Mhoja, the respondent. Right of appeal is fully explained.

KADILU, M. J.
JUDGE
29/03/2023.