

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA

(PC) CIVIL APPEAL NO. 73 OF 2022

(Arising from Probate Appeal No. 4 of 2022 of the District Court of Musoma At Musoma)

BIKARA ERASTOAPPELLANT

VERSUS

PENINA ERASTO JOSIAH.....1ST RESPONDENT

SALOME ERASTO TOGA.....2ND RESPONDENT

JUDGMENT

16 March & 4 May 2023

M. L. KOMBA, J;

Appellant herein was aggrieved by the decision of District Court of Musoma at Musoma in Probate Appeal No. 4 of 2022 where he was objecting appointment of Administratrixes herein who are his mother and his step mother. Appellant's major claims was decision over objection which was raised by him and the trial court overruled the same and proceed to appoint the respondents.

In summary, this appeal traces its roots after the death of ERASTO JOSIAH TOGA who left behind two wives who are respondents and the number of

children including the appellant. It is not known exactly date when the late passed away and that was not an issue. The deceased left behind an estate which included landed property and piece of land contain houses in Musoma Municipality. It was alleged that there was a will which was signed by administrator of the deceased illegally as the deceased was illiterate so the will was supposed to be attested by four people as a minimum (two clan members and two non-clan members). After a full trial the will was nullified by the High Court via PC Civil Appeal No. 6 of 2019 and order parties to file probate case as if the deceased dead intestate. The order was complied of and probate cause No. 17 of 2016 (denovo) was filed on 07/01/2020. Respondents applied and were appointed as administratrixes of the estate of the late ERASTO JOSIAH TOGA following the clan meeting proposal.

Appellant herein filed objection proceedings before Musoma Urban Primary Court originating from Probate no. 17 of 2016 challenging appointment of respondents as administratrixes that they will fail to administer the deceased estate. He lost both at Primary Court and District Court (Probate Appeal No. 12 of 2020) and he appealed to this court (Kisanya, J) PC Probate Appeal No. 7 of 2021. High court directed trial Magistrate to compose new judgement in consultation with assessors which was done on 16/12/2021

and declared respondents to continue with administration of the deceased estates.

Dissatisfied, appellant filed Probate Appeal No. 4 of 2022 in the District Court of Musoma at Musoma armed with nine (9) grounds of appeal. District court dismissed an appeal for lack of merit. As intimated earlier, dissatisfied, the appellant lodged this appeal to this Court containing four (4) grounds. But I shall not reproduce them for reasons which will be apparent soon in this judgment.

At the hearing of the appeal, appellant stand solo, without representation while Mr. Wambura Kisika, learned advocate, appeared for both respondents. While studying the file for the purpose of composing judgement I came across with some issues which needed parties to address this court. Therefore today morning when parties appeared for judgement the court probed the parties to address on the following issues;

- 1. Whether administratrixes were discharged from their duties after filing the account and inventory, and if the answer is affirmative,**

2. Whether there was court order to extend time for administratrixes over the respondents.

Appellant was of the submission that administratrixes are still into power as they are yet to submit bank account of the deceased as directed by the trial court. Because they are still into power then the second issue of extension of time is inapplicable. When asked whether he had a time to peruse court file he answered he has never peruse the file but the case is not active as the case files are here in High Court.

1st respondent informed the court that they were discharged from their duties when they completed their tasks, she did not remember the date but it was October 2020. Since then they have never apply for extension of time nor any person applied for extension of time so that they can continue to administer the estate of the late ERASTO JOSIAH TOGA.

Having heard parties' submissions to the questions posed by this court, there is no dispute that Probate cause No. 17 of 2016 (denovo) was filed on 07/01/2020 and was decided on 11/05/2020 whereby respondents herein was appointed as administratrixes of the estate of the late ERASTO JOSIAH TOGA, they were ordered to file inventory on or before 25/06/2020. On the

.same date they were ordered further to close probate by 11/09/2020 which was within four (4) months from the date of their appointment.

Record shows that clan meeting was held on 21/06/2020 which among other things appointed respondents to be administratrixes of the Estate of deceased ERASTO JOSIAH TOGA. It is in record that inventory and statement of Accounts (forms V and VI) was filed on 16/07/2020 and court ordered administratrixes to make a follow up of the deceased bank accounts and to report over the same on 31/07/2020. Bank accounts report was submitted to trial court on 20/10/2020 and on 30/10/2020 both administratrixes applied to close probate. Having no business to transact, the trial court granted the application and relieve them from duties on 30/10/2020. It was said there is an end in probate and administration matters. The matter comes to an end on filling of Forms No. V and VI and after the order of the court closing the matter. The emphasis here is that, the administrator must present his reports to the court in time which will proceed to put the matter to an end.

As was said in the Case of **Beatrice Brighton Kamanga and Amanda Brighton Kamanga vs Ziada William Kamanga**, Civil Revision No. 13 Of 2020 HC At Dar es Salaam that "there was no life time administrator", the order of the trial Court in Probate Cause No 17 of 2016 which was given

30/10/2020 closed the matter with the result that respondents ceased to be administratrixes of the estate of the Late ERASTO JOSIAH TOGA. Having vacated office as an administratrixes, they have no capacity to sue or being sued in that capacity. And if the matter remains pending for a longer period, let's say 3 years, without such a report or extension of time from the court, the appointment cease to exist by operation of the law as already pointed above, there is no life administrators in our schemes. See **Beatrice Brighton Kamanga and Amanda Brighton Kamanga vs Ziada William Kamanga** (supra).

Apparently, both appellant and counsel for the respondents agree that it was wrong for the appellant to have sued respondents in their capacity as an administratrixes. That means the suit was instituted against persons who had no capacity to act as an administratrixes as their activities will be rendered illegal just as was decided in **Andrew C. Mfuko vs George C. Mfuko** (an administrator of the Estate of late Clement N. Mfuko), Civil Case no. 320 of 2021 where it was held that;

'On our part having heard the advocates submission to the question we posed, there is no dispute that the order of the High Court in the Probate case closed the matter with the result that the respondent ceased to be an

*administrator. Having vacated the office as administrator he could not sue or be sued in his capacity as administrator..... That means the suit was instituted against a **person who had no capacity to act as an administrator regardless of the fact that the order closing the Probate Cause may have been erroneous.***

It does not matter whether the fact that the order closing the Probate Cause may have been erroneous. Respondents in the case at hand were no longer administering the Estates of the Late ERASTO JOSIAH TOGA since 30/10/2020 when the matter was closed and ceased to perform legal role from that date thus incapable of suing or be sued in that capacity. That mean all proceedings after such court order were conducted contrary to the law and they are worthless to be maintained. See also **Ahmadi Daud Nyabu (the Administrator of the Estate of the late Daud Mathew Nyabu) vs Rehema John Lyimo (the administratrix of the Estate of late Jamila Daud Nyabu)**, Probate Appeal No. 01 of 2023 HC Morogoro.

Since there was no valid appeal as Probate Appeal No. 4 of 2022 was filed on 27/07/2022 and determined on 12/09/2022, by that time administratrixes had no such capacity and they were *funtus officio*.

Court of Appeal in the case of **Hadija Masudi as the Legal Representative of the late Halima Masudi vs. Rashid Makusudi**, Civil Appeal No. 26 of 1992 (unreported) once said;

*'We have found it necessary to give a chronological background to this case since the outcome of the appeal is to say the least, a startling demonstration of the truth that **this Court like all courts can do justice only in accordance with the law and not otherwise...**'*
(Emphasis is added).

I proceed to nullify proceedings and quash decision over Probate Appeal No. 4 of 2022 which was conducted at the capacity of administratrixes of the respondents. Further to that, I strike out this appeal as emanates from nullified proceedings and quashed decision.

As the order I have made results from an issue raised by the Court *suo motto* and since it is a matter concerning probate, I make no order as to costs.

It is so ordered.

DATED at **MUSOMA** this 04th day of May, 2023.



NK
M. L. KOMBA
Judge

Judgement delivered to day 4th May 2023 in chamber before the parties.



NK
M. L. KOMBA

Judge

04 May, 2023