

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

PC PROBATE APPEAL NO. 2 OF 2021

[Arising from the Urambo District Court in Civil Revision No. 22 of 2020 which originated from decision of Ussoke Primary Court in Probate Cause No. 3 of 2014.]

MARIAM JUMA KATEKILE *(As administratrix of the estate of the late Sofi Jumanne Sama)*.....**APPELLANT**
VERSUS
GEMA NKANA CHIFUNDA..... **RESPONDENT**

.....
JUDGEMENT
.....

Date of Last Order: 31/03/2023

Date of Delivery: 16/05/2023

AMOUR S. KHAMIS, J

Mariam Juma Kategile as administratrix of the estate of the late Sofi Jumanne Sama preferred this appeal against Judgment and Decree of the District Court of Urambo in Civil Revision No. 22 of 2020.

The impugned Judgment originated from Judgment of the trial Ussoke Primary Court in Probate Cause No. 3 of 2014 between parties herein.

The appeal is premised on two grounds, namely:

1. That the Hon. appellate District Court erred in law and fact to write judgment without reasons for the decision.
2. That the Honourable appellate Court erred in law and fact to deliver an order in the Judgment in favour of the respondent while the respondent's grounds of appeal failed.

Subsequently, Mariam Juma Katagile as administratrix of the estate of the late Sofi Jumanne Sama filed an amended petition of appeal premised on two grounds, namely:

1. That the appellate Court erred in law and fact to quash the proceedings and set aside the ruling and order in probate and administration cause no. 3 of 2014 while Ussoke Primary Court had jurisdiction to entertain the appointment of administrator of the estate of the late Sofi Jumanne Sama.
2. That the appellate District Court erred in law and fact to hear Civil Revision while the Probate Cause No. 2 of 2014 was already closed.

Throughout this appeal parties were duly represented. Mr. Kanisius Ndunguru, learned advocate appeared for Mariam Juma Katagile as administratrix of the estate of the late Sofi Jumanne Sama and Mr. Karoli Mulembe Karilo, learned advocate, acted for Gama Nkana Chifunda.

The appeal was heard viva voce and both counsel made spirited submissions.

Whereas Mr. Kanisius Ndunguru urged this Court to uphold the two grounds of appeal, Mr. Karilo Mulembe Karilo was of the view that the appeal was devoid of merits and moved the Court to dismiss it with costs.

I have carefully considered the parties' rival submissions and examined Court records as shown in Civil Revision No. 22 of 2020 of the District Court of Urambo and Probate Cause No. 3 of 2014 of the Ussoke Primary Court.

The overriding issue in this appeal is whether the trial Ussoke Primary Court had jurisdiction to entertain Probate Cause No. 3 of 2014.

Addressing this issue at page 6-7 of the typed judgment, the appellate Magistrate held that;

“In the present case, it is not disputed that at the time of his death, the deceased, Sofi Jumanne Sama was working at Urambo District Council as an accountant. It is also not in dispute that the deceased had a lot of properties in Dar es Salaam from the foregoing, it appears that the deceased had two fixed places of abode, in Dar es Salaam and Urambo. As deceased had two fixed places of abode in Dar es Salaam and Urambo therefore the appointment proceedings ought to have been conducted either in Dar es Salaam or at Urambo, the place he was living before his death...”

Subsequently the appellate Magistrate held that;

“... As the appointment proceedings was conducted at Ussoke Primary Court such proceedings cannot be left to stand....”

The last part of the holding is the centre of dispute before me.

However, this issue was adequately addressed by this Court in **Fabian Robson Bisaya** as administrator of the estate of the late **Fanuel Bisaya, Pc Probate Appeal no. 2 of 2019.**

At page 19 of the typed Ruling, this Court ruled that;

*“In my understanding of paragraph 1(1) of the **fifth schedule to the Magistrate Court Act (Supra)**, the phrase the fixed place of abode within the local limits of the Court’s jurisdiction” is not restricted to the actual residence of the deceased at a time of his death, but includes ownership of any immovable property within the jurisdiction of the trail Primary Court.*

This position is not different from the one obtained in the case of **Bruno Sospeter and Mapinduzi Sospeter Vs Salvatory Beyanga, (PC) Civil Appeal No. 32 of 2020** (unreported) wherein this Court at Bukoba, held that;

*“That means the Primary Court in Karagwe District is one, though there can be several centers of Primary Courts such as Kayanga, Nyabiyonza, etc. This means further that the Primary Court of Nyabiyonza is a Primary Court of Karagwe, and a Primary Court of Kayanga is also a Primary Court of Karagwe. Those two have territorial or geographical jurisdiction within Karagwe District in which they were established. In the case of **Mrisho Pazi Versus***

Tatu Juma (1968) HCD119, it was held interalia, that each Primary Court within a district has territorial or geographical jurisdiction over the whole district.”

In the present case, there is equally one Primary Court of Urambo with two centers; Urambo Urban Primary Court and Ussoke Primary Court. Going by the above stated legal position, a person may file an administration matter in either Urambo Urban Primary Court or Ussoke Primary Court, in disregard to the residential connotations.

For these reasons, the appellate Magistrate misdirected himself in quashing the proceedings and setting aside orders of the Ussoke Urban Primary Court in Administration Cause No. 3 of 2014.3 therefore the first grounds of appeal succeeds.

The second ground of appeal is that the appellate District Court erred in law in entertaining Civil Revision No. 22 of 2020 while Probate and Administration Cause No. 3 of 2014 was already closed by the trial Court.

Mr. Ndunguru contended that the trial Court’s file was closed and therefore no further revision could be done by the District Court.

However, Mr. Karilo contended that requisite procedures for closure of probate and administration cause in the Primary Court were not met. He contended that a document presented by the appellant at the Primary Court for distribution of deceased properties did not conclusively close the administration cause.

Rule 5 of part 1 to the **fifth schedule** of the **Magistrate Courts Act, Cap 11 R.E 2019**, provides that an administrator appointed by

a Primary Court shall with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and costs of the administration and then distribute the estate of the deceased to the person or for the purposes entitled thereto.

Rule 11 of the same law provides that after completing the administration of the estate, the administrator shall account to the Primary Court for his administration.

In **Ahmed Mohamed Al Laamar Vs Fatuma Bakari and Asha Bakari, Civil Appeal No. 71 of 2012** (unreported) the Court of Appeal at page 6 of the typed Judgment quoted the trial Judge's holding with approval, thus;

"Once the execution process is completed the best alternative, in case of future complaints, one would suggest that the applicants be advised to institute an action against the respondent..."

My attention was drawn to a document titled **"Ufuatao ni mgao wa mali za marehemu Sofi Jumanne Sama kwa wategemezi ambao ni watoto na mke"**

This document signed by the appellant herein is dated 18/03/2015 and certified by the trial Magistrate on 01/04/2015. The trial Court's judgment was delivered on 18/06/2014 and certified as true copy of the original judgment on 14/03/2016.

Upon further examination of the trial Court's proceedings, I noted that on 27/05/2016, the trial Magistrate in presence of two

members (assessors): Pili Seleman Kasanga and Selemani Omary Msumeno, made the following order:

“MAHAKAMA:

Msimamizi wa Mirathi amekabidhi orodha ya mali alizokusanya na kugawa kwa warithi. Baadhi ya mali bado zinafuatiliwa ambazo ziko mikononi mwa watu wengine.

Hakimu

27/05/2016”

The above order translates to mean that the trial Court received the account on the deceased’s estate from the administratrix which shows the list of collected properties and manner of their distribution. The list also show that some of the properties are still in the hands of her persons.

Records further show the District Court of Urambo was moved to revise the trial Court’s proceedings through a letter by KSK Legal Consultants with no reference number but dated 08/09/2020.

Subsequent to that letter, Gema Nkana Chifunda, the respondent herein, through KSK – Legal Consultants, filed Misc. Civil Application No. 22 of 2022, in the District Court of Urambo on 09/09/2020.

With these facts on record, I am in no doubt that when the respondent moved the District Court of Urambo to revise the trial Court’s proceedings, Administration Cause No. 3 of 2014 at Ussoke Primary Court was duly closed.

Therefore, the District Court of Urambo Wrongly exercised its revision powers as the correct avenue for the respondent was to file an action against the appellant in a competent forum.

For the aforesaid reasons this appeal succeeds and the Judgment and Decree of the District Court of Urambo in Civil Revision No. 22 of 2020 are hereby quashed and set aside.

I hereby uphold the trial Court's judgment and orders made therein. I make no order for costs. It is so ordered.



AMOUR S. KHAMIS

JUDGE

16/05/2023

ORDER: Judgment delivered in open Court in presence of Mr. Saikon Justine holding brief of Mr. Kanisius Ndunguru, advocate for the appellant and in absence of the respondent. Right of appeal explained.



AMOUR S. KHAMIS

JUDGE

16/05/2023