

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

**(PC) CIVIL APPEAL NO. 57 OF 2022**

*(Arising from Probate Appeal No. 01 of 2022 at Bunda District Court )*

**ELIZABETH MAKWABULO MASATU ..... APPELLANT**

**VERSUS**

**MASUA ZACHARIA MUGANGA .....RESPONDENT**

**RULING**

24<sup>th</sup> & 24<sup>th</sup> May 2023

**M. L. KOMBA, J;**

Appellant herein was aggrieved by the decision of District Court of Bunda at Bunda in Probate Appeal No. 01 of 2022 where she was objecting preparation and tendering of inventory and statement of accounts and the trial court proceed to record the same.

In summary, this appeal traces its roots after the death of ARISTARKO ZAKARIA MUGANGA who left behind some wives including the appellant with a number of children including the respondent. Deceased passed away on 16/06/2021 at Manyamanyama village. It was the respondent who applied for appointment of the administrator of the estate of their late father on 15/12/2021 at Bunda Urban Primary Court (the trial court) via **Probate**

**Cause No. 36 of 2021** where he was appointed and ordered to file necessary forms. After the clan meeting Administrator filed form No. V and VI (inventory and final Accounts). Upon satisfaction, the trial court admitted all forms and on 15/03/2022 the probate was closed.

Dissatisfied by the distribution of the deceased property which was filed in the trial court, appellant filled application to Bunda District Court, Probate Appeal No. 01 of 2022 in order for the said court to call and revise the record of the Bunda Urban Primary court at Bunda (**Probate Cause No. 36 of 2021**). In general, she was complaining that one house was distributed to other wives without considering that it was built by appellant and her husband. Moreover, two children of deceased were not included in the list of heirs. The District court dismissed the application on the ground that the appellant participated in the clan meeting and so she was aware of the distribution and she was supposed to object while they are at the trial court.

Dissatisfied, appellant filed this Appeal with four grounds which I will not reproduce them here for the reasons I will mention latter on. Today when the matter was scheduled for hearing the appellant was represented by Mr. Magwayega an advocate while the respondent stands solo, without

representation. Parties made submission on grounds filed. In the course of submission this court noted that **Probate Cause No. 36 of 2021** was already closed. Because it was part of the grounds of appeal, I invited parties to address this court on the closure of probate and its effect or consequence.

Mr. Magweyega, counsel for the appellant submitted that the probate was closed since 15/03/2022 but the appellant was not involved in the process that's why she is appealing. He said her right was infringed by the trial court. About the effect he said when probate is closed means the matter is ended.

**Respondent (Masua Zakaria Muganga)** informed the court that the file was closed at the Primary Court and that means the matter was ended at that point when the file was closed.

Literary, probate comes to an end on filling of Forms No. V and VI (Inventory and final Accounts) 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 36 of 2021 which was given on 15/03/2022 closed the matter with the result that the respondent ceased to be administrator of the estate of the Late ARISTARKO ZAKARIA MUGANGA. Having vacated office as an administrator, he has no capacity to sue or being sued in that capacity. Even 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 ceases to exist by operation of the law as already pointed above, there is no life administrators in our legal schemes. See **Beatrice Brighton Kamanga and Amanda Brighton Kamanga vs Ziada William Kamanga** (supra).

Apparently, the appellant's counsel and the respondent agree the probate was closed and therefore it was wrong for the appellant to have sued respondent in his capacity as an administrator. That means, the application was filed against a person who had no capacity to act as an administrator as his 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. The respondent in the case at hand was no longer administering the Estates of the Late Late ARISTARKO ZAKARIA MUGANGA since 15/03/2021 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.

Therefore, there was no valid application in Probate Application No. 01 of 2022 in Bunda District Court because by that time administrator had no such capacity and he was *functus 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. 01 of 2022 at Bunda District Court which was conducted with the capacity of administrator on the side of the respondent. Further to that, I strike out this appeal as it emanates from nullified proceedings and quashed decision.

As the orders 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 24<sup>th</sup> day of May, 2023.



**M. L. KOMBA**  
**Judge**