

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC CIVIL APPEAL NO. 28 OF 2022

(Arising from Probate and Administration Case No. 15 of 2021 in the District Court of
Nyamagana at Mwanza)

FAUSTINE BARNABAS IBENGWE APPELLANT

IN THE MATTER OF THE ESTATE OF THE LATE JULIANA

PASCHAL SHILAHU DECEASED.

JUDGMENT

29/5/2022 & 2/6/2023

ROBERT, J:-

The appellant, Faustine Barnabas, has lodged an appeal challenging the Ruling of the District Court of Mwanza in Probate and Administration Cause No. 15 of 2021. The District Court dismissed the appellant's petition for the grant of letters of administration of the estate of the late Juliana Paschal Shilahi. The dismissal was based on the appellant's alleged failure to comply with the requirements of section 56 of the Probate and Administration of Estate Act and Rule 24(4) of the Probate Rules.

Aggrieved, the appellant has raised three grounds of appeal in Swahili, which can be summarized as follows:

- (a) The Resident Magistrate in-charge of the District Court erred in law by dismissing the appellant's petition without granting the appellant the right to be heard.
- (b) The Resident Magistrate in-charge of the District Court erred in law by failing to consider that the appellant had complied with all the necessary legal requirements for the grant of letters of administration.
- (c) The Resident Magistrate in-charge of the District Court erred in law by dismissing the matter on the basis of the appellant's failure to comply with section 24(4) of the Probate and Administration of Estate Act, which is not applicable to the circumstances of this case.

During the proceedings of this case, the appellant appeared in person without legal representation. When provided with an opportunity to elaborate on the grounds of appeal, the appellant requested that his grounds of appeal be adopted and considered as the basis for determining this appeal.

Upon reviewing the proceedings of the District Court, it is evident that the court identified certain irregularities in the appellant's initial petition filed on 17/2/2022. Consequently, the District Court directed the appellant to rectify these errors in order to enable the court to consider his appointment as the administrator of the estate. On 24/2/2022, the District Court

acknowledged the receipt of the appellant's amended petition. However, due to the trial Magistrate handling another matter, the hearing was adjourned to 22/3/2022.

On 22/3/2022, the petitioner informed the court that he had already filed his amended petition as directed. Subsequently, the District Court scheduled the hearing of the petition for 14/4/2022. On the designated hearing date, the petitioner presented arguments in support of his petition for the grant of letters of administration. The District Court then set the date for the Ruling on 10/5/2022. Regrettably, on 10/5/2022, the District Court delivered a ruling dismissing the appellant's petition, not on its merits, but on the grounds that the amended petition did not include the appearance to petition as required by Rule 24(4) of the Probate Rules. Additionally, the attached documents differed in date from the amended petition. The appellant was not given an opportunity to address the court on these alleged irregularities.

The first ground of appeal asserts that the Resident Magistrate in-charge of the District Court erred in law by dismissing the appellant's petition without according the appellant the right to be heard. It is a fundamental principle of natural justice that parties should be given a fair opportunity to

present their case and respond to any allegations or irregularities raised against them. In this instance, the appellant was deprived of this basic right, as the District Court failed to afford him an opportunity to address the noted irregularities in his amended petition. This contravenes the principles of natural justice and constitutes a procedural error.

The second ground of appeal contends that the Resident Magistrate in-charge of the District Court erred in law by failing to consider that the appellant had complied with all the necessary legal requirements for the grant of letters of administration. The appellant argues that he complied with the law and prepared all the necessary documents required for the grant of letters of administration. This Court has examined the record and finds that the appellant did file an amended petition as directed by the District Court. While there were discrepancies in the attached documents' dates, these discrepancies do not automatically render the entire petition defective. The District Court failed to consider the overall compliance of the appellant with the legal requirements for the grant of letters of administration. It is crucial to assess the substance of the petition rather than technical errors that can be rectified. Therefore, the District Court erred in failing to consider the appellant's compliance with the law.

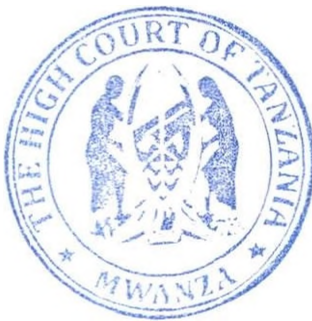
The third ground of appeal posits that the Resident Magistrate in-charge of the District Court erred in law by dismissing the matter based on the appellant's alleged failure to comply with rule 24(4) of the Probate and Administration of Estate Act. However, it is evident that rule 24(4) of the Probate Rules does not exist, and the District Court likely intended to refer to section 24(4) of the Probate and Administration of Estate Act. Nonetheless, this provision pertains to executors appointed by a will and does not apply to the present case, where the deceased died intestate and the appellant is not an executor appointed by the will.

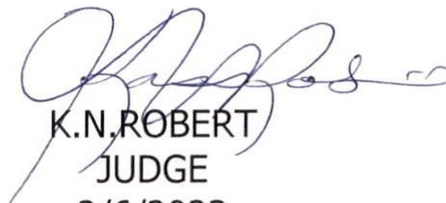
Considering the facts and circumstances of this case, as well as the legal arguments put forth by the appellant, it is apparent that the District Court failed to grant the appellant the right to be heard, disregarded the appellant's compliance with the necessary legal requirements, and incorrectly applied a provision that is inapplicable to the circumstances of this matter.

Accordingly, this Court allows the appeal and sets aside the Ruling of the District Court of Mwanza in Probate and Administration Cause No. 15 of 2021. The matter is remitted to the District Court for a fresh hearing of the appellant's petition for the grant of letters of administration before a different

magistrate. The appellant shall be accorded a fair opportunity to address the noted irregularities in his amended petition.

It is so ordered.




K.N. ROBERT
JUDGE
2/6/2023