

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**PC CIVIL APPEAL NO. 19 OF 2021**

(C/F Arusha District Court, Appeal No. 30 of 2021, Emanated from Arusha Urban  
Primary Court, probate Cause No. 108 of 2008)

**LINETH OSWALD TEMU ..... APPELLANT**

**VERSUS**

**FELIX LEON TEMU..... RESPONDENT**

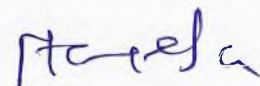
**JUDGMENT**

18/04/2023 & 23/05/2023

**MWASEBA, J.**

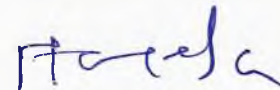
Being aggrieved by the whole decision of Arusha District Court in  
Probate Appeal No. 30 of 2021, the appellant appealed to this court  
based on the following four (4) grounds:

- 1. That, the Hon. District Court Magistrate erred in law and fact when she upheld the decision of the trial court and ignored the fact that no estate to be administered by the Respondent of which all properties of the late Stanslaus George Temu were willingly incorporated and fully administered in the Estate of the Late Oswald Stanslaus Temu uncontested vide Probate Cause No. 151 of 2009.*



- 2. That, the First appellate court ignored the law that an Administrator is worth nothing without estates/properties to be administered.*
- 3. That, Appellate Magistrate erred in law and fact when ignored the issue of time limitation submitted by both counsels.*
- 4. That, the District Court abdicated its duty of analysing the evidence adduced at trial and hence arrived at a wrong decision.*

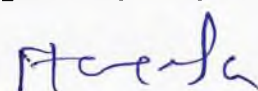
Briefly, the epicenter of the dispute between the parties arises from the Probate Case No. 106 of 2008 filed before Arusha Urban Primary Court where Mr. Oswald Stanslaus Temu petitioned to be appointed as administrator of the estate of the late Stanslaus George Temu, his late father. He was appointed by the trial court as administrator, however, he died before he could distribute the properties to the heirs as per the orders of the court. On 14/05/2020 the respondent herein went to the trial court with an objection that the late Oswald Stanslaus Temu did not do his job properly until the day he died. The trial court advised parties to select another person who will be appointed as administrator of the Late Stanslaus George Temu and on 29.07.2020 the respondent went to the trial court with the minutes of the family, and he was appointed by the court to be the administrator of the estate of the late Stanslaus George Temu.



However, on 15/10/2020 the wife of the late Oswald Stanslaus Temu (the appellant herein) filed an objection against the respondent herein for the reasons that the properties of the late Stanslaus George Temu and the late Oswald Stanslaus Temu are ones, and they were under her custody for twenty (20) years. Having heard both parties, the court dismissed the objection and appointed Mr. Felix Leon Temu as Administrator of the Estates of the late Stanslaus George Temu.

Being aggrieved by the trial court's decision, the appellant unsuccessfully appealed to Arusha District Court where the trial court's decision was upheld because the respondent was properly appointed as the administrator of the estate of the late Stanslaus George Temu. Being dissatisfied with the said decision she is now before this court challenging the 1<sup>st</sup> appellate court's decision based on the grounds adduced herein above.

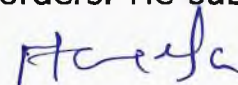
At the hearing of the appeal, the appellant was represented by Mr. Lengai Merinyo learned advocate, while the respondent was represented by Mr. Mattuba Nyerembe learned counsel. With the consent of the parties and leave of the court, the appeal was argued by way of written submission.



Submitting in support of the appeal, on the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal which were argued jointly, Mr. Lengai learned Counsel for the appellant complained about the act of the 1<sup>st</sup> appellate court to ignore the fact that the properties of the late Stanslaus George Temu were incorporated and fully administered in the estate of the late Oswald Stanslaus Temu uncontested via Probate Cause No. 151 of 2009. It was his further submission that when the appellant was nominated in the clan meeting all the properties need to be administered were listed, therefore the respondent had no property to administer after being appointed by the court via Probate Cause No. 106 of 2008 that's why he filed an objection at the trial court which were dismissed.

Mr. Lengai submitted further that Probate No. 151 of 2009 was not contested and already closed, there is nothing to be administered by the respondent herein. He argued further that, no criminal proceedings were instituted against her. His arguments were supported by several cases including the case of **Saada Rashid vs Abdalah Rashid**, P.C Civil Appeal No. 12 of 2020 (Unreported).

Responding to the 1<sup>st</sup> and 2<sup>nd</sup> ground of appeal, Mr. Mattuba contended that Probate Cause No. 106 of 2008 and Probate Cause No. 151 f 2009 are two different petitions with two different valid orders. He submitted



further that when the court was appointing the appellant did not set aside the order of appointing his late Husband as administrator of the estates of his late father. It was his further submission that an administration of the estate of the deceased is not inheritable and that the appellant cannot inherit the property of his late husband's father by being an administrator of the estate of her late husband. Further to that, if that were possible then she could have proceeded with Probate Cause No. 106 of 2008 instead of filing a new probate cause No. 151 of 2009. He submitted further that as the properties of the late Stanslaus George Temu were never administered by the late Oswald George Temu it was proper for the trial court to appoint another Administrator to administer the properties which are "Nyumba moja- Moshi na shamba, Nyumba mbili -Arusha na Kiwanja" as evidenced by the Probate Cause No. 106 of 2008. He argued that these grounds have no merit and ought to be dismissed.

Coming to the 3<sup>rd</sup> ground of appeal, Mr. Lengai, learned counsel for the respondent complained that the 1<sup>st</sup> appellate court failed to determine the issue of time limitation. He submitted further that the respondent moves the court regarding the properties of the late Stanslaus George Temu in 2019 at Himo Primary Court before he moved to Arusha and

*Arusha*

restore Probate Cause No. 106 of 2008. Thus, he argued that from 5/4/1999 when the late Stanslaus George Temu died till 2019/2020 when the respondent reaches the door of the court, twenty-one (21) years already lapsed. Thus, the respondent's claim was initiated out of the prescribed time. He supported his argument with the case of **Yusufu Same and Another vs Hadija Yusuph**, (1996) TLR 347.

Replying to this ground, Mr. Mattuba learned Counsel for the respondent argued that this ground has no merit because the respondent filed an application at the trial court to replace the late Oswald Stanslaus Temu who was the administrator in Probate Cause No. 106 of 2008. He submitted further that a period does not run to the file already in court even if it was abandoned. He added that the appellant could have opted to set aside Probate Cause No. 106 of 2008. Mr Mattuba also distinguished the cited case of **Yusufu Same** (supra) and argued that two estates of two different people cannot be combined. He concluded that the lower court was properly assisted by the parties as per **Rule 3 (2) of GN No. 22 of 1964**. Thus, this ground has no merit and he prayed for it to be dismissed.

Coming to the last ground of appeal, Mr. Lengai learned counsel submitted that the trial court abdicated its duties as per **Rule 3 (2) of**

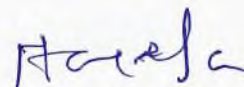
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**G.N No. 22 of 1964.** He argued further that subsection (1) of the cited law supports the act of the appellant to incorporate the estate of the late Stanslaus George Temu and administered the same to its finality via Probate Cause No. 151 of 2009 and the same is already closed. He prayed for the court to analyse the evidence and allow the appeal with costs.

Responding to the last ground of appeal, Mr. Mattuba contended that the 1<sup>st</sup> appellate court critically analyzed the evidence and reached to a fair and just decision by confirming the decision of the trial court which appointed the respondent. He argued that this ground has no merit and prays for the appeal to be dismissed with costs.

In a brief rejoinder, the appellant's counsel submitted that the Temu clan had abandoned the estates of the late Stanslaus George Temu, and the same was incorporated under the estate of the late Oswald Stanslaus Temu via probate cause No. 151 of 2009.

I have given keen deliberation to the arguments for and against the instant appeal, it appears from the trial court's decision and the records that in this appeal the main issue for determination is whether the appeal has merit or not.



I wish to start with the 1<sup>st</sup> and 2<sup>nd</sup> ground of appeal where the appellant complained that there is no property to be administered by the respondent as the same was joined and administered with the properties of the late Oswald Stanslaus Temu. On his side, the respondent objected that there were two different petitions, and that administration cannot be inherited, one has to be appointed by the court. **Item 5 of the 5<sup>th</sup> schedule of the Magistrate Court's 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 the debts and costs of the administration, and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court."*

In our present case, the records of the trial court revealed that after being appointed the late Oswald Stanslaus Temu did not distribute the properties to the heirs until his demise in 2009.

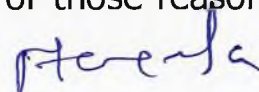
As per **item 2 (c) of the 5<sup>th</sup> Schedule of the Magistrate Court Act**, the administrator who fails to administer the properties of the deceased, his administration shall be revoked by the court.





In our case, the administrator of the estate of the late Stanslaus George Temu died before he filed an account and inventory, therefore, the properties were not yet administered and distributed to the rightful heirs. For that reason, the trial court was correct to appoint another administrator to replace the one who passed away to finish the work of collecting the properties of the deceased and distributing the same to the heirs. The arguments raised by the appellant that upon being appointed as the administrator of the estate of the late Oswald Stanslaus Temu means she was also appointed to administer the properties of the late Stanslaus George Temu, her late father in law, was contrary to the law. I concur with Mr Mattuba learned counsel for the respondent that the administration work is not inherited but administrator need to be appointed by the court. Thus, this court finds no merit on the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal.

Coming to the 3<sup>rd</sup> ground of appeal it is undisputed facts that the respondent herein did not file a new case at the trial court rather than filing an objection to the same file used to appoint the late Oswald Stanslaus Temu as an administrator of the estate of the late Stanslaus George Temu and the same was still pending as it was never closed and the inventory and accounts were yet to be filed. For those reasons, this



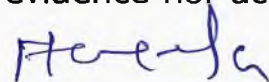
court subscribes to the submission of Mr. Mattuba that time cannot run while the file is pending before the court.

As for the last ground of analyzing the evidence, this court is aware that the 1<sup>st</sup> appellate court has a duty where it sees the trial court failed to analyze the evidence, step into the shoes of the trial court, analyze the evidence, and come up with the same or different decision. The same was held in the case of **Obed Mtei vs Rukia Omari** (1989) TRL 111 where the Court of Appeal observed that:

*"This is the first appeal, and this Court has the power to reappraise the evidence and draw an inference of facts I am keenly aware that it is in the rare circumstances that an appellate Court would interfere, for instance, where the trial Court had omitted to consider or had misconstrued some material evidence, has acted on a wrong principle or had erred in its approach in evaluating the evidence by allowing speculative views to affect his decision,"*

See also the case of **Martha Michael Weija vs The Hon. Attorney General & 3 others** [1982] TLR 35.

In our case at hand, having gone through the records of the 1<sup>st</sup> appellate court, this court noted that the evaluation of the evidence was properly conducted without misconstruing some evidence nor acting on



a wrong principle of law. For that reason, this ground too is found with no merit.

In the upshot, I hold in this appeal there are no extraordinary circumstances that require me to interfere with the findings of the 1<sup>st</sup> appellate court and the trial court. Therefore, I proceed to dismiss the appeal with no order as to costs since the matter emanates from the probate cause.

It is so ordered.

**DATED** at **ARUSHA** this 23<sup>rd</sup> day of May, 2023



*N.R. Mwaseba*

**N.R. MWASEBA**

**JUDGE**