

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MWANZA SUB-REGISTRY
AT MWANZA

CIVIL APPEAL NO. 64 OF 2022

(Appel from the Judgment in Revision Order of the District Court of Nyamagana District at Mwanza in Civil Revision No. 03 of 2022)

RIDHAWANI IDD MACHAMBO 1st APPELLANT
HAFSA RAMADHANI KURIA 2nd APPELLANT
SWALEHE SADIKI 3rd APPELLANT
RAMADHANI SADIKI 4th APPELLANT

VERSUS

ANNA MANFORD INUNU RESPONDENT

JUDGMENT

30th March & 31st July, 2023

ITEMBA, J.

This appeal arises from a revision application No. 3 of 2022 of the District Court of Nyamagana. The facts which gave rise to the said application and this appeal are that; sometimes in 1985 one Sadiki Ally, the deceased, died intestate. He left behind a house which is situated on Plot No. 211 Block "R" Rufiji Street, herein, the suit property. One of his sons, Swalehe Sadiki, the 3rd appellant, applied for and he was appointed by Mwanza Urban Primary Court an Administrator of the deceases' estates through Probated Cause No. 72/1999. In 2000, the said Swalehe Sadiki sold the suit property to one Peter Michael Mpazi, the respondent's

husband who owned it until 28/02/2018 when he died. Sometimes, around 2018, Ramadhani Sadiki, the 4th appellant, applied for and was appointed by Mwanza Urban Primary Court, an administrator of the estate of Sadiki Ally through probate cause No. 128/2018. When the 4th respondent realized that there was an existing administrator vide Probate Cause No. 72/1999, he complained to the Primary Court through a letter and the magistrate in charge *suo motto* consolidated and revised both Probate Cause 72/1999 and No. 123/2018 and issued a ruling herein '*uamuzi mdogo*' whereas she nullified the proceedings and set aside the orders from the Probate Cause No.72 of 1999 and No. 123 of 2018 including the appointment of Swalehe Saidi.

Later, Ramadhani Sadiki being the new administrator, sold the very same suit property to the 1st and 2nd appellant. On 4/05/2018 Anna Manford Inunu the respondent, was appointed by the Primary Court of Kizumbi in Shinyanga to be the administrator of the estates of her husband Peter Michael Mpazi. She transferred ownership of the suit property to herself. That is when she learnt of the existence of other transactions by Ramadhani Sadiki in respect of the same suit property. She complained to the District Magistrate in charge of Nyamagana (Hon. Mugendi DRM) through a letter, who revised the '*uamuzi mdogo*', nullified

all the subsequent proceedings thereof and upheld Probate Cause No. 72/1999.

The appellants appealed against such decision to the High Court (Hon. Kahyoza, J) one of the grounds being denied a right to be heard. It was ordered that the district court should offer both parties a right to be heard. That was done. The District Court (Hon. Manento, RM) quashed the proceedings in consolidated Probate Cause No. 72/1999 and 128/2018 and its ruling '*uamuzi mdogo*'.

The appellants were aggrieved and filed this appeal armed with 7 grounds as follows:

- 1. The District Court of Nyamagana at Mwanza erred in law in proceeding to hear, entertain and make orders in revision against Probate and Administration cause proceedings, ruling and orders by a 3rd party who had no locus stand in the said Probate and Administration cause No. 72 of 1999 and Probate Cause No. 128 of 2018.*
- 2. The District Court of Nyamagana at Mwanza erred by proceeding to revise probate and administration cause No. 72 of 1999 and Probate Cause No. 128 of 2018 in ignorance of the provisions of Rules 9 of the Primary Court (Administration of Estates) Rules, GN. No. 49 of 1971.*
- 3. The District Court of Nyamagana at Mwanza erred in law in failing to properly appreciate the record of proceedings, ruling and orders of what had transpired in probate and*

administration cause Na. 72 of 1999 and No. 128 of 2018, thus exercising its revisional powers erroneously.

- 4. The District Court of Nyamagana erred in law in proceeding to hear the revision without availing to the appellants a copy of the complaint letter that invoked its revisional jurisdiction thereby denying the appellants the full right to be heard.*
- 5. The District Court of Nyamagana erred in law in failing to properly appreciate the record of proceedings, ruling and orders of what had transpired in probate and administration causes no. 72 of 1999 and no. 128 of 2018, thus exercising its revisional powers erroneously.*
- 6. The District Court of Nyamagana at Mwanza erred in law in rendering a manifestly confusing decision that does not reflect the roles and duties of a revisional court.*
- 7. The District Court of Nyamagana at Mwanza erred in law in failing to appreciate that Probate Cause No. 72 of 1999 was actuated by lack of proper locus stand, misrepresentation and failures by a grantee of letters of administration to discharge his duties on the admission of that very grantee, who was a party before the District Court of Nyamagana and who never challenged the said decision to revoke his own letters of administration, the effect of the decision of the district court is to force the 3^d appellant to be an administrator of an Estate against, not only his own will, but also the will of the beneficiaries, who includes the deceased's wife.*

At the hearing, both parties were represented by learned counsels, Mr. Peter Kibatata for the appellants and Mr. David Muzahula for the

respondents. The applicants' counsel prayed for the appeal to be heard through written submissions and the respondents' counsel welcomed the arrangement.

In respect of the first ground, the appellant challenged the respondents that she filed a revision application while she had *no locus standi* in the probate and administration causes No. 72 of 1999 and No. 128 of 2018. He submitted that a 3rd party can initiate and pursue Revision proceedings against Probate Proceedings, Rulings and Orders in which they are neither the beneficiary of the estate, nor the family member of the deceased.

The learned counsel argued the 2nd, 6th and 7th grounds jointly. He submitted that, the Provisions of Rules 9 of the Primary Court (Administration of Estates) Rules, GN No. 49 of 1971 are clear in that the same Primary Court has powers to revoke or annul the grant on any of the grounds set forth in section 9(1) (a-e). That, the annulment or revocation powers can be invoked by a creditor or a beneficiary. That, at the Primary Court, in consolidated probate cause the said Swalehe Sadiki was present and he admitted to have been appointed without the consent of his relatives.

That, upon Revocation of an Administrator, the Primary Court had the jurisdictional mandate to appoint Ramadhani Sadiki in his place by consent of all beneficiaries per Rules 9(1) (a, b and) of the Primary Courts (Administration of Estates) Rules, GN No. 49 of 1971. He added that had the District Court properly gone through the records of the Primary Court, she would have noted that her Ruling had the effect of forcing Swalehe Sadiki to be an Administrator against his express wishes. Citing the case of **Hamza Byarushengo v Mwanga Hakika Microfinance Bank Ltd.** Land Case No. 45 Of 2019, At Page 11, he argued that the District's Court's had no right to interfere with the Primary Court's Ruling and Orders as that act amounted to was *res judicata*.

In respect of the 3rd ground, the appellant's counsel argued that even if the court were to disregard ground No. 1 and hold that the Respondent had locus standi despite being a 3rd party to the Estate, still a mere letter, which was not even availed to the appellants, was not the appropriate mode of conducting proceedings, especially since the respondent herein was claiming ownership rights as the basis thereof. That, claims of ownership requires proof; and the District Court cannot even properly reflect whether or not the Respondent herein had any lawful basis for initiating the Revision application which ultimately, deprived the

1st and 2nd Appellants of their property rights as buyers in good faith. He cited the case of **John Mjema v Shamsa Salum** Land Case Revision No. 30 of 2009, at pages 4 and 5.

In respect of the 4th ground, he complained that the right to be heard is a fundamental right. The appellants were not availed with the complaint letter and they had to operate through the written submissions by the Respondents, and to gather bits and pieces; an act which was erroneous. That, since the letter was akin to pleading, it ought to have been availed to all appellants, its' absence affected the validity of the proceedings. He cited the case of **Haji Mradi v Linda Sadiki Rupia** Civil Appeal No. 24 of 2016 at page 8 and 9. The appellant's counsel added that, this omission is similar to not reading a charge to an accused person and task him to enter a defence on the basis of the accuser's evidence.

In reply, the counsel for the respondent started by giving a detailed background of the dispute. In respect of the 1st ground, he submitted that this ground is a serious misconception of the law relating to the revisionary powers of the District Court. He stated that, the District Court of Nyamagana acted *suo mottu* in revising Probate cause no 72/1999 and 128/2018 and Probate Cause No. 72/1999, Probate Cause No. 128/2018 as per section 22(1) of the Magistrates Court Act, Cap. 11 RE. 2019. That,

the District Court has powers to revise proceedings of the Primary Court therefore, the issue of *locus standi* is not only irrelevant and misconceived but also a mere afterthought as the same ought to have been raised and determined by the Revisional Court. He added that, the Revisional Court vide Hon. Manento SRM was executing an order of the High Court of Tanzania at Mwanza issued by Hon. Kahyoza, J.

That, given an order of the High Court above, the District Court of Nyamagana would not indulge itself in determining the issues of *locus standi*. It was duty-bound to only determine the complaint by the respondent as directed by the High Court. That, it was expected for the Revisionary court to rule on legality and propriety in the three probate proceedings in the Mwanza Urban Primary Court and the status of administration of the estates of the late Sadiki Ally. That, the said probate proceedings had effect on the interests held by the respondent over the suit property.

Citing the case of **Asha Salum Faraji Vs. Silwani Galati Mwantembe**, Misc. Application No. 104 OF 2021 which made reference to the Court of Appeal case of **Arcopar (O.M) S.A v. Harbert Marwa & Family Investment Limited & Others** Civil Application No. 94/2012 CAT (Unreported), he argued further that, is a legal position that a person who

was not a party to the case before the High Court if he feels that he has interest in the suit property and cannot appeal his only remedy is to approach the court of appeal by way of revision.

That, revisionary powers of any court are supervisory in nature. As of Civil Appeal No. 82 of 2021, **Swalehe Juma Sangawe versus Halima Swalehe Sangawe** as cited by the appellants in their submission, is distinguishable and irrelevant.

In respect of the 2nd, 3rd, 6th and 7th grounds, he submitted that, he adopts aspects of his submission in the 1st ground of appeal. He added that, the Primary Court magistrate did not cite anywhere in the '*uamuzi mdogo*' that she derived her powers from Rule 9(1) as cited in the 2nd ground of appeal to make her orders. That, this submission is an afterthought. He admitted that Rule 9(1) provides for the powers of the Primary Court to revoke or annul the grant of administration and it does not provide any other powers apart from revocation and annulment contrary to what the Primary Court did in '*uamuzi mdogo*' *shauri la mirathi NA. 72/1999 NA 128/2018* where PPCM was clear that, she was conducting a revision to the proceedings in the said probate cause.

And that, in essence, the Primary Court Magistrate was revising its own proceedings, and this is not what Rule 9(1) as cited by the appellants

entails. That, Probate and Administration Cause No. 128/2018 was *res judicata* and the primary court dealing with it by quashing and setting it aside had become *functus officio*. Further to that, Rule 9(1) as cited by the appellant does not give power to the magistrate to fault transactions and undertakings by the Administrator upon revocation or annulment. That, after the Probate Cause No. 72/1999 and 128/2018 had been concluded, the Primary Court was not justified in summoning the land officer and nullifying a valid transaction of the Administrator, turning itself into a fact-finding machinery while the judiciary's mode of dispute settlement is adversarial and not inquisitorial.

That, if the primary court was genuinely trying to help the appellants, the court would have invoked Rules 9(2) of the Primary Court (Administration of Estates) Rules GN. No. 49 of 1971. That, for loss, negligence extravagance and waste of the disputed estates made by the 3rd Appellant as the administrator, the primary court would have stated how the heirs/beneficiaries can recover from him. This is what Hon. Manento SRM concluded that matters of land transaction, allegations of fraud and misappropriation of funds would be determined through Civil or Criminal proceedings in respective courts of competent jurisdiction and not the probate court. That, the law aims to protect third parties who have made payments bona fide to the administrator before their revocation.

He proposed the principle that revocation or annulment is not automatically followed by revocations of the administrator's undertaking unless under circumstances otherwise proved and not by mere allegations of fraud/misrepresentation.

He suggested that because there was no reason for revocation of grant in Probate Cause No. 72/1999 together with valid transactions thereof, the beneficiaries/heirs should recover from the administrator for mishandling of the estates because;

- (a) Swalehe Sadiki being the decease's son, of the age of majority, of sound mind and one of the heirs to the Estates of SADIKI ALLY, he was entitled to be appointed as an administrator of the Estates of Sadiki Ally under Rules 2 to the 5th schedule of the Cap.11 RE 2019 and there were no objections made. That, consent of the relatives is not a mandatory requirement of the law,
- (b) That, the application for grant of administration by Swalehe Sadiki was not made in ignorance of facts to render the same invalid in law.
- (c) As the appointment was made back in 1999 in presence of the beneficiaries some of who testified in favour of the grant, no objection to the grant which was recorded in court and ever since there has never been any complaint against the Administrator for over 21 years. That, the beneficiaries were either negligent or willfully slept on their rights over the said estates. They should

be *estopped* from denying the fact that they consented to the transactions by the Administrator.

He submitted that the case of **Asami Nemoto and Another Vs. Alex David Silaa and Another**, Misc. Civil Application No. 153 Of 2021 is misplaced and distinguishable.

That, the appellants are shamelessly trying their luck against a widow who timely took action to protect her late husband's property and that Form No. V and VI and No. L.R. 22 relates to the filing of inventories, identification of heirs and estates of the deceased and does not apply in the sale of land by the Administrator to another person.

He concluded the four grounds that there is no law which categorically ousts revisionary/supervisory powers of the District Court in probate matters especially if it touches the interests of a third party (respondent) whose jurisdiction falls within the primary courts.

In respect of the 3rd and 4th grounds of appeal, he submitted briefly that the District Court could not order parties to file formal applications by Chamber summons and affidavit since doing so could have amounted to re-writing the order of Hon. **Kahyoza, J.** and also stated in **John Mrema v. Shamsa Salum** Land Case Revision No. 30 of 2009_which concerns fresh suits or applications is completely irrelevant.

That, on the other hand, since originally the District Court was acting *suo motto* in revising the proceedings of the Primary Court due to complaints by the High Court directing a re-hearing of the revision, and the parties were heard in reply to the complaints by the respondent, there was no any injustice which was occasioned and the cited case of **Haji Mradi versus Linda Sadiki Rupia**, Civil Appeal No. 24 of 2016, is alien to this case because it is about the right to be heard.

Having gone through the records and grasping the long submissions by both parties, the issue is whether the appeal has merit. In that, whether the decision by the District Court against the appellant is lawful.

I have taken a note that; at the Primary Court in 'uamuzi mdogo in probate Cause No. 72/1999 and 128/2018 where the PPCM was conducting a revision to the proceedings she held *inter alia* that:

"Hivyo basi, kwa mantiki hiyo shauri namba 128/2018 halikupaswa kuwepo na kwamba wahusika walilifungua kimakosa na endapo walitaka kupata nafuu basi wangeendelea na utaratibu kama huu ambao leo umetuleta katika kupitia shauri hili Na. 72/1999. Hivyo basi uamauzi wa Mahakama hii ni kufuta shauri Na. 128/2018 na kwamba natamka na kutoa amri ya kwamba yote yaliyotokana na maamuzi ya shauri hili ni batili na Mahakama hii inaendelea na mapitio ya shauri Na. 72/1999."

When parties approached this court in Misc. Application No. 30 of 2022, they were heard and on 10th May 2022, this court (Hon. Kahyoza J.) determine the application and ordered the parties to be afforded their right to be heard. The order goes thus: -

"In the upshot, I allow the application, quash the proceedings, and set aside the revisional order. I order the District Court to call parties to address if regarding the issues in the first respondent's complaint and make a ruling. The District Court should do so with dispatch. Let me make it clear that it is not necessary for another magistrate to be appointed to hear the parties".

In due course of executing the order of this court, the file was remitted back to the District Court of Nyamagana, and parties were heard. The court determined the revision application and proceed to give orders whereas the Proceedings and orders in consolidated Probate Cause No. 72/1999 and 128/2018, and Probate Cause No. and 128/2018 were nullified. The District Court upheld proceedings and orders in Probate cause No. 72/1999 which is the reason for the appellants to prefer this appeal.

The law is settled under section 22(1) of the Magistrates Court Act, Cap. 11 RE. 2019 is to the effect that; -

22.-(1) *A district court may call for and examine the record of any proceedings in the primary court established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings.*

It was held in **Monica Nyamakare Jigamba vs Mugeta Bwire Bhakome as Administrator of The Estate of Musiba Reni Jigamba** Civil Application No. 199/01 of 2019 Court of Appeal, Dar Es Salaam that;

*‘We gathered from the oral submission of the parties that they are in agreement with the fact that the applicant was not a party in Miscellaneous Civil Application No. 46 of 2018. Since she was not a party she could not have appealed. **The only available remedy opened to her in this Court was to challenge that decision by way of revision.** This is the position we took in the case of **Ahmed Ally Salum v. Ritha Basmali and Another**, Civil Application No. 21 of 1999.’*

In the said decision, it was held further that;

‘In the present application, the 2nd respondent had neither filed a caveat nor objected to the appointment of the 1st respondent.

Therefore, the High Court properly proceeded to appoint and grant the letters of administration to the 1st respondent.

*Since the 2nd respondent missed the first boat and there is already in place an administrator of the deceased assets, **it was expected of her to approach the appointed administrator, the 1st respondent, and raise her concern to him.** This is the position we stated so in the case of **Mgeni Seifu v. Mohamed Yahaya Khalfani**, Civil Application No. 1 of 2009 (unreported). (emphasis supplied).*

Based on the above references, the following are the court's observations:

First; there is no dispute that the respondent was not a party in either probate cause No. 72/1999 or No. 128/2018, or the consolidated revision No. 72/1999 and 128/2018, before Mwanza urban Primary Court. Under the circumstances, she could not have appealed, her only remedy was to file a revision application. See the cases **Ahmed Ally Salum v. Ritha Basmali and Another**, Civil Application No. 21 of 1999 and **Monica Nyamakare Jigamba v Mugeta Bwire Bhakome as Administrator of The Estate of Musiba Reni Jigamba** (supra). Therefore, the respondent could have filed a revision application and would have been legally justified

However, I agree with the respondent counsel's submissions that, originally the District Court acted *suo motto* being moved by the respondent's letter; looking at paragraph one of the District Court judgments by Hon. Mugendi RM. Later, following an appeal to the High Court, it was ordered that both parties should be given a right to be heard by the District Court before issuing its revision order. In essence, this order was to the effect that both parties including the appellants, should be heard. The appellants appeared and made their respectful submissions. Therefore, the District Court was justified in its decision and there was no need to file any of the affidavits or counter affidavits. I also find this ground as an afterthought because as mentioned, the appellants appeared in the District Court and were ably represented by a learned counsel, they had an opportunity to raise this ground and to request for the respondent's letter but they did not.

Secondly; Application No. 128/2018 was *res judicata* to the Probate Cause No. 72 of 1999 having been preferred against the same deceased person Sadiki Ally estate and properties being the same Plot No. 211 Block 'R' Rufiji. See section 9 of the Civil Procedure Code, Cap 33 RE: 2019. See also the case of **Quality Group Limited vs Tanzania Building Agency Civil** Application No. 182 of 2016.

Thirdly; following a decision in 128/2018 being *res judicata*, all the proceedings emanating from probate cause No. 128/2018 and consolidated probate cause No. 72/1999 and 128/2018 were a nullity because the court had no jurisdiction to proceed on matters which are stemmed from a nullity. The District Court properly nullified all the proceedings and set aside the orders thereof.

Fourthly, following the correct orders by the District Court of quashing the proceedings and orders of '*uamuzi mdogo*', issued in consolidated probate cause No. 72/1999 and 128/2018 the decision in Probate Cause No. 72/1999, appointment of administrator and its orders thereof, remains unchallenged. In terms of the **Monica Nyamakare Jigamba (supra)**, the appellants may wish to approach the administrator for 'a gentleman agreement' over their interest in the property or to sue him in proper forum(s).

The appeal is hereby dismissed with no orders as to costs.

DATED at **MWANZA** this 31st day of July, 2023.



L. J ITEMBA
JUDGE