

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**PC. CIVIL APPEAL NO. 40 OF 2023**

***(Originating from Civil Revision No. 2 of 2023 before Shinyanga District Court, the same Originating from Probate Cause No.52 of 2003 Mjini Primary Court)***

**MILIKIORI MTEI MALANDU ..... APPELLANT**

**VERSUS**

**BERTHA PATRICK ..... RESPONDENT**

**JUDGEMENT**

***16<sup>th</sup> & 31<sup>st</sup> August 2023***

**F.H. MAHIMBALI, J**

The respondent herein on 24/01/2023, wrote a letter of complaint to the District Resident Magistrate in Charge, complaining among others the appellant who is co-administrator of the late Gasper Patrick Malandu be revoked his administration of estates of the deceased on the incidence that, he has bequeathed some of the estates to legal heirs without involving the respondent. She also contended that the verdict of the trial court is not fair and so she prayed for revision of the trial court verdicts.

The Hon. Magistrate In Charge after so moved by the respondent, he composed the ruling to the effect and revoked the letters of

appellant failed to file inventory to the trial Court and he has failed to corporate with the respondent in administration of the estates. Similarly, the learned magistrate ruled out that, there was misappropriation of deceased estates. He finally appointed the respondent to be sole administratrix of the estates of the deceased and ordered her to accomplish the remained activities.

The appellant was aggrieved by the decision of the District Court, he has then appealed to this Honourable Court with the limbs of six grounds of appeal;

- 1. That the District Court grossly erred in law and in facts for revoking the appellant as administrator of the estates of the late Gaspar Patrick Malandu without affording him the right to be heard.*
- 2. That, the District Court erred in law and in holding that the appellant mis appropriated the properties of the late Gaspar Patrick Malandu without there being evidence to that effect.*
- 3. That the District court erred in law and in facts in holding that the appellant did not involve the family and the primary court in transferring the deceased house into the name of Godfrey Gasper Malandu while there is no law that requires consent of family or*

*Court before an administrator of estates distribute or dispose the deceased properties.*

- 4. That the District Court erred in law and in facts in revoking the appellant's appointment as administrator of the estates of the late Gaspar Patrick Malandu without considering his explanation available in the primary court proceedings dated 0n 13/1/2023 that he was having murder case and that his mental health was affected with such case which made him to stay in custody for a very period as such he had good cause for not filing inventory.*
- 5. That the District Court erred in law and in facts in revoking the appellant's appointment as administrator of the estates of the late Gaspar Patrick Malandu but failed to revoke respondent's appointment while the respondent herself did not perform her duties as administratrix of the estate since when she was appointed on 15/11/2005 as such the principle of who comes into equity must come with clean hands is against the findings of the District Court.*
- 6. That the District Court erred in law and in facts in opening revision without summoning all person who are likely to be affected with the said revision.*

During the hearing of this appeal the appellant had legal representation of Mr. Pharles Malengo and Restuta Peter both learned advocates while the respondent appeared in person and unrepresented.

Mr. Malengo arguing to the first ground of appeal submitted that the gist of the complaint is, the District Court opened revisional proceeding *Suo Mottu* and immediately thereafter the District Court set date for the decision.

Mr Malengo submitted that this was done without affording the appellant with the right to be heard which is against the constitutional guaranteed right envisaged under Article 13(6)a of the Constitution.

He cited the case of **Mbeya Rukwa Auto Part & Transport Ltd vs. Gestina George Mwakyima, (2003) TLR 253** to the effects. He contended that the District Court's denial to accord the right to be heard the appellant is unmaintainable by law. Thus, the said decision cannot stand in the eyes of the law as it is unlawful.

With the second ground of appeal, Mr. Malengo argued that there was no evidence on misappropriation of the properties of the deceased's property of the late Gaspar Patrick Maladu by the appellant.

He submitted that the alleged house in plot No. 75 A Block K, central Arca its transfer deed is between Godfrey Mtei Gasper, Mustapha Athuman Swalehe and Annath Seif Theonest. When the appellant was in prison, the said plot was allocated to Godfrey Mtei Gasper as the sole owner of the said property.

Mr. Malengo alluded that, the District Court's findings are not justifiable as per evidence in record which establishes that there was distribution by the lawful heirs of the said estate.

On the third ground of appeal Mr. Malengo submitted that the District Court erred in holding that there ought to have been consent of the family to the said decision since there is no any aspect of law for such requirement. He referred this court to the case of Joseph **Shimbusho VS. Mary Grace Tigerwa, Civil Appeal No. 183 of 2016** at page 26.

On the 4<sup>th</sup> ground of appeal Mr. Malengo argued that the District Court erred in revoking appellant's appointment as administrator of the estate of the late Gasper Patrick Mwandu without considering his explanation available on trial court's proceedings dated 13/1/2023. And therefore, according to the decision of District Court, ruled without sufficient cause.

On the 5<sup>th</sup> ground of appeal Mr. Malengo submitted that, it was not justifiable for the District Court to revoke the appellant's appointment as administrator and left the respondent proceeded with the administration duties. He averred that the law requires that he who comes to equality must come with clean hands. He referred this Court to the decision in the case of **Tanzania Posts Corporation vs. Victor Masalu, Revision No. 14 of 2015** at page 10. He also added that since the respondent had failed to discharge her administration duties, she was not justified to proceed with the administration duties.

On the 6<sup>th</sup> ground of appeal Mr. Malengo averred that the District Court erred in law and in facts in opening revision Suo Moto without summoning persons who are directly affected with the said revision proceedings. The said revision case, didn't consider the rights of other persons. It was therefore incubated that the parties were not accorded the rights to be heard by the court. He cited the case of **Ridhiwani Iddi Machubo vs. Anna Mantold Innumu, Misc. Civil Application No. 30 of 2022**, High Court Mwanza to that effect.

Mr. Malengo then pressed for the ruling and proceedings of the District Court be fired and order for de-novo before another Magistrate.

On the side of the respondent, she adopted her reply to the petition of appeal to form part of her submission.

She also added that the appellant had been relaxed from 2003-2005, there is nothing done here in between.

On the issue of mental illness to the appellant, the respondent stated that there is no evidence that he has now recovered. She then pressed for dismissal of appeal with costs.

In rejoinder Mr. Malengo submitted that as between 2003-2005 the appellant has been busy with the prosecution of the case filed by respondent. The evidence that the appellant had been mentally sick ought to have been established only if there was given the right to be heard. Mr. Malengo finally reiterated what he submitted in chief.

Having heard both parties on merit, I have to determine this appeal and the main issue to be considered is whether this appeal has been brought with sufficient cause.

I have scanned the District Court's proceedings and the submission of the parties, and I find prudent to discuss ground No.1 and ground No.6 which entail the merit of this appeal.

It was argued that, soon after the respondent had lodged her complaint to the District Resident Magistrate in Charge, the said Magistrate suo motto opened revision case file, digested the complaint by himself, composed a ruling in consideration of the lodged complaint and consequently delivered a ruling revoking the administration status of the appellant without according the parties with the opportunity of being heard on the matter.

I am aware that, the District Court is conferred with revisional jurisdiction on matters arising from primary courts as provided under section 22 of the Magistrate Courts Act Cap 11 RE 2019.

However, such jurisdiction should be exercised judicially. It is improbable for the Court to pronounce decision without hearing the parties or being addressed on certain facts by the parties to a suit.

Notably Section 22 (3) of the Magistrate Act(supra) provides that;

*".. In addition to the provisions of subsection (2) of this section, no order shall be made in the exercise of the court's revisional jurisdiction in any proceeding of a civil nature increasing any sum awarded, or altering the rights of any party to his detriment (other than an order quashing proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of the lower court to the extent necessary*

*to make it conform thereto) unless such party has been given an opportunity of being heard”.*

However, section 22 (4) of the same Act provides that;

*“No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject of a revisional order under this section”*

Now, in the case at hand the respondent filed her complaint to the District Court on 24/01/2023 and the District Court without hearing the parties eventually delivered its ruling on 31/3/2023.

The records do not provide anywhere as the parties were heard on merit. Neither the appellant nor the respondent was heard on the matter. The District Court only delivered the ruling basing on complaints lodged by the respondent. Indeed, the magistrate erred in law and so the delivered ruling is in controversy with Section 22 (3) of the Magistrate Court Act (Supra).

The Honourable Magistrate denied the parties with the right to be heard as contended by Mr. Malengo, that the right to be heard is fundamental right in any proceedings affecting the parties to the suit.

The principle of right to be heard has been explained in numerous decisions which the Court of Appeal has taken such right as paramount right for dispensation of justice. Mindful, no person shall be condemned unheard. See the case of **Pili Ernest versus Moshi Musani, Civil Appeal No.39 of 2019, DPP versus Sabina Tesha and Others (1992) TLR 237, Transport Equipment versus Devram Valambia (1998) TLR 89, Abbas Sherally and Another versus Abdul Sultan Haji Mohamed Fazaboy, Civil Application No.33 of 2002.**

However, in the course scrutinizing the District Court proceedings, I have noticed that, the court excised its jurisdiction over the matter which was time barred. See section 22 (4) of the Magistrate Act (supra)

For the foregoing reasons, I shall not dwell into determining other grounds of appeal. In the event, I am inclined to exercise the revisionary powers vested in this Court as hereby do, nullify the proceedings of the District Court and the Ruling entered thereto. Consequently, I order a retrial of the Civil Revision No. 2 of 2023 pursuant to the requirements of the law in place if the said concern still prevails. For the interest of justice, it is ordered the matter be heard before another Magistrate.

No orders as to costs.

It so ordered.

DATED at SHINYANGA this 31<sup>st</sup> day of August, 2023.



F.H. Mahimbali

**Judge**