

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
MOSHI REGISTRY
AT MOSHI
CIVIL APPEAL NO. 4 OF 2023

DAVIS EDSON MAMUYA.....APPELLANT

VERSUS

ESTHER G. MINJA RESPONDENT

JUDGMENT

28th August & 20th Sept. 2023.

A.P.KILIMI, J.:

The respondent hereinabove was appointed by Marangu Primary court on 03/02/2017 via Probate Cause no. 3 of 2017 to be the administratrix of the estate of the late Rosemary Godfrey Minja who was her sister. The deceased sister, before her demise on 01/09/2016 was appointed through another Probate cause No.7 of 2015 by the same court above on 21/08/2015 to be the administratrix of the estate of her late husband one Edson Nicolas Mamuya died intestate on 07/04/2014 and left one property Plot No. 9/2810/1 Block E MABIBO AREA (MBB/JTB/606) situated at Mabibo area within Dar es Salaam City.

The appointment of the respondent succumbed with several actions trying to disown her appointment. It was in the High Court at Dar es salaam in Probate and Administration cause no.5 of 2018, one John N. Mamuya filed application seeking administration of the estate of the late Edson M. Mamuya. The respondent (Esther G. Minja) filed the caveat therein claiming the deceased happened to be her sister's husband.

After hearing the said contentious, the High Court observed that, since the said estate left by deceased belonged to both, wife and husband (both deceased), and since each part, meaning from the wife side and from the husband side want to administer the estate. The High Court was of the view that, because already there is appointed administratrix (herein respondent) should continue to administer the same and for all. Thus, the court proceeded to dismiss the petition and ordered the respondent to file inventory at the Primary Court of Marangu. The High Court further directed that any one dissatisfied with distribution, to challenge at the same trial court. This decision remained unchallenged to date.

According to the record, it seem the above was complied with, but faced with objection as foresaw by the High Court above, this is revealed in the Ruling dated 21/12/2021 of Marangu Primary Court, wherein appellant

herein and others objected the distribution done by the respondent one Ester G. Minja, having heard them, the trial court referred the decision of the court in Probate and Administration cause no.5 of 2018 High Court at Dar es salaam, and form no.1 which was filled by Rosemary Godfrey Minja (deceased) which stipulated therein deceased children names, when she was petitioning for being appointed to be administrator of the estate of her husband by then, in considering above the trial court ruled out the distribution was not valid and ordered the respondent to refile form no.V and no.VI by redistributing deceased estates as directed.

The respondent Ester G. Minja aggrieved by the said decision of the Primary Court appealed vide Probate appeal no.2 of 2022 at the District Court of Moshi at Moshi, on 19/5/2022 the said District court dismissed the appeal and upheld the decision of the trial court, this court reasoned at page 7 of its judgment that, the appellant did not show why she bequeathed herself a house which is situated at Plot no. 9/2810/1 Block E Mabibo area in Dar es salaam, the property of the deceased without considering the rights and the interest of the son of the deceased and other beneficiaries. The record shows no body has appeal against this decision.

Thereafter, nothing continued, it was when the appellant Davis Edson Minja, decided to move the Trial Primary Court of Marangu, this time praying Ester G. Minja's appointment as administrator of estates of the deceased be revoked. Having heard them on merit, the said Primary Court on 16/8/2022 revoked her appointment and ordered her to surrender the document evidencing the grant and a full account of administration to the court as per rule 9(2)(b) of **The Primary Courts (Administration of Estates) Rules** G.N. No. 49 of 1971 and further under rule 9(2)(b) of the same law, appointed one David Edson Mamuya (appellant herein) to be the new administrator of the deceased estate.

The same yielded into dissatisfaction of revoked administrator, she then filed appeal at the District Court of Moshi via Probate Appeal no.3 of 2022. After hearing parties in appeal, the District Court found the Esther G. Minja has failed to discharge her duty as administrator of collecting the property of the estate and distribute to rightful heirs as ordered by trial court on appointing date, for over five years. Thus, confirmed her revocation by the trial court.

Next, in considering another order of the trial court of appointing Davis Edson Mamuya, the District Court referred paragraph 2 (b) of Magistrate Court Act Cap. 11 R.E.2019, and observed that is neither beneficiary of the estate of Rosemary nor declared by the court to be impartial and reputable person or not an officer of the court. Consequently, the said District Court quashed and set aside his appointment as administrator of this estate. Instead, it provided for the parties' advice of finding diligence and faithful persons from respective family or clan of Mamuya and Minja families, who should be able to administer and complete the administration of this estate.

The appellant aggrieved by the decision and order of the District court has knocked the door of this court, basing on the following grounds;-

1. The district court erred in both law and fact by quashing and setting aside the appointment of the appellant as an administrator of the estate of Rosemary Godfrey Minja in Probate and Administration cause No 03 of 2017 before Marangu Primary Court without accounting justifiable reason for it to depart with the trial court to appoint the appellant as an Administrator.
2. That the district court erred both in law and in fact for failure to take judicial notice from the Judgment of the High Court of Tanzania at Dar es salaam in Probate and Administration Cause No 05 of 2018 which find that the estates of the late Rosemary Godfrey Minja and that of the late Edson Nicholas Mamuya are the same and directed the respondent above to file an inventory before Marangu Primary Court so that the administration on those estates may be completed.

3. That the District court erred in both law and fact by directing the clan of Mamuya and that of Minja to appoint new administrator without considering that such an advice cannot be implemented and it has already failed of previous proceeding.
4. That the district court erred both in law and in fact by holding that the appellant has no interest whatsoever on the estates which he was appointed to be administrator hence arrived into a wrong conclusion by revoking the appellant.
5. That the district court erred both in law and fact by prolonging the process of the administration of the estates of the late Edson Nicholaus Mamuya and Rosemary Godfrey Minja unnecessarily and leave the said estate unprotected to date.

When the appeal came for hearing, appellant was represented by Mr. Michael Nyambo learned advocate while Mr. Henry Njowoka learned advocate represented the respondent, they all agreed and prayed to argue this appeal by way of written submission. I thank them for timely and elucidated submissions and I will refer to them in due course whenever necessary.

Mr. Nyambo arguing in support of the grounds of appeal submitted that, the district court while revoking the administration of the appellant did not give justifiable reason as to why it departed from trial primary court decision. The district court just pointed that the respondent had no qualification to be appointed as an administrator because he is neither the beneficiary of the estate of Rosemary nor declared by the court to be

impartial and reputable person not even the officer of the court hence his appointment will be against the law and will jeopardize the interest of beneficiaries of deceased estate. The district court failed to show justifiable reasons to its decision, to state which law and how that law is contradicted.

In respect to the second ground Mr. Nyambo argued that, the district court failed to take judicial notice from the judgment of the High Court in Probate and Administration Cause No. 5 of 2018 which find that the estates of Rosemary Godfrey Minja and that of Edson Nicholas Mamuya are the same. If the court could have taken that judicial notice it couldn't say that the appellant did not qualify to be appointed as administrator of the estate of Rosemary Godfrey Minja in Probate cause No. 3 of 2017. He then insisted that the district court or any lower court is bound by that decision basing on the doctrine of stare decisis which was well explained in the case of **Juwata vs. Kiwanda Cha Usafirishaji Wataifa** [1988] TLR 146.

Arguing in support of the third ground, Mr. Nyambo submitted that, the district court erred in law and fact by directing the parties to conduct clan meeting so as to appoint new administrator without considering that advice could not work. The appellant submitted that the directive cannot be implemented because the parties are already declared to be antagonistic.

In respect to ground number four, the counsel submitted that the district court erred both in law and in fact by holding that the appellant has no interest whatsoever on the estates which she was appointed to be an administrator hence arrived into a wrong conclusion by revoking the appellant, He further submitted that the district court was wrong to reach to that conclusion. The interests of the appellant over the said estate has been well said in primary court ruling dated 16/08/2022 and affirmed by District court.

Submitting in respect to ground number five, Mr. Nyambo argued that, the district court decision of revoking the appellant and order the family clan to appoint another person other than the applicant aimed to administer and proceed with the Probate No 3 of 2017 aimed at prolonging the process of administration of the said estate unnecessarily because as it was well explained in the decision of the primary court of Marangu dated 16/08/2022.

The counsel further submitted that it is well established principle that litigation should come to an end and not last for all the time. To buttress this, he invited me to referrer cases of **Issa Hassani Uki vs. Republic**, Criminal Application [2019] TZCA 374 (TANZLII) and **Tanganyika Land**

Agency Limited And 7 Others vs. Manohar Lal Aggrwal Civil Application No. 17 of 2008 (unreported).

Responding to the above, Mr. Henry Njowoka started by submitting general that, Primary Court and the District Court were not supposed to reopen the matter but rather to direct the Appellant to follow a proper channel to challenge the distribution as pointed out by Mgonja J, thus, since the orders issued by Primary Court and the District Court on appeal are nullity as the said Courts were not clothed with jurisdiction to entertain them. This is because there are orders of the superior Court in Probate and Administration Cause No.5 of 2018 at the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam presided by Hon. Mgonja J. To fortify this he has urged me to see the case of **Dativa Nanga vs. Jibu Group Company Limited & Another** [2023] TZCA 39 (TANZLII). The counsel added that it should be noted that an order of the Court however bad it is remained valid until when it is overturned by a superior Court. To bolster this stance the counsel referred the case of **Paskali Nina vs. Andrea Karera** [2023] TZCA 35 (TANZLII).

Further Mr. Njowoka responding specifically on the grounds raised, contended in respect to ground number one that, the reasons for revocation

are clearly stated at page 15 of the District Court judgment. Therefore, there was nothing to revoke as Probate Cause No.3/2017 which Hon. Mgonja, J. saw it to be similar to what the Appellant is pursuing, was already closed. Secondly the reasons for revoking the Respondent though not stated are found in Probate Cause No.3/2017. Appointing again the Appellant while his uncle failed in Probate and Administration Cause No.5 of 2018 at the High Court of Tanzania, Dar es Salaam District Registry, would be going against the orders of a superior court over the very same matter.

In respect to second ground, the counsel contended that, according to Probate and Administration Cause No.5 of 2018 at the High Court of Tanzania, Dar es Salaam District Registry, the matter was closed, there is nothing to fault the decision of the District Court. It remained the distribution of the properties in Probate Cause No. 3/2017. Therefore, this appeal is of no assistance as it is built on invalid orders of the District and Primary Court on appointment and revocation of the Appellant.

Responding on ground number 3 and 4 together, Mr. Njowoka argued what have been submitted by the Appellant Counsel in the 1st and 2nd grounds equally apply on the 3rd and 4th grounds. Therefore, prayed for dismissal of the two grounds for being devoid of merits because all the orders

challenged in the two grounds are of no effect upon the closure of Probate Cause No. 3/2017. Mr. Njowoka also in respect to 5th ground had the same view with the appellant that this probate is prolonged while it was already closed.

In rejoinder, the counsel for appellant briefly reiterated his submission in chief and further submitted that, after the estate of the late Rosemary Godfrey Minja in probate no 3 of 2017 and that of Edson Nicholas Mamuya declared to be the same by the High Court in the case above, made automatically the appellant to have an interest of the said probate no. 03 of 2017. Therefore, the respondent cannot challenge the decision of the High Court in Probate and Administration Cause No.5 of 2018, if the respondent was aggrieved by the said order, she could have challenged it in a competent court. Therefore, the primary court acted promptly by receiving and acting on the directives of the High Court above which directed the respondent to file an inventory of Probate cause No 3 of 20 17 before Marangu Primary Court.

I have considered the grounds of this appeal and the entire submissions of both learned counsels. This being the second appellate court, I am mindful, it is a trite law, that where there are concurrent findings of

facts by two courts below, the second appellate court should not disturb the findings, unless, it is clearly shown that there has been a misapprehension of evidencing a miscarriage of justice or violation of some principle of law or procedure. (See the case of **Bushanga Ng'oga V. Manyanda Maige** [2002] TLR 335).

As shown above, in this matter there were concurrently finding in respect to revocation of the Esther G. Minja as administratrix, but was not the same in respect to the appointment of the appellant herein, since at the first appellate court the appointee was removed from being administrator. Thus, in my view the main point to be considered in this appeal is, whether the trial court was justified to revoke letters of administration issued to the respondent and appoint appellant instead of.

Before I proceed, I wish to highlight factors to be considered in revocation of the grant of letters of administration in Primary Court are provided by the law under Rule 9 (1) of the Primary Court (Administration of Estate) Rules G. N. No. 49 of 1971 which provides;

"9 (1) Any creditor of the deceased person's estate or any heir or beneficiary thereof, may apply to court which granted the administration

to revoke or annul the grant on any of the following grounds–

(a) that the administration had been obtained fraudulently;

(b)that the grant had been made in ignorance of facts the existence of which rendered the grant invalid in law;

(c)that the proceedings to obtain the grant were defective in substance so as to have influenced the decision of the court;

(d) that the grant has become useless or inoperative;

(e)that the administrator has been acting in contravention of the terms of the grant or willfully or negligently against the interests of creditors, herein or beneficiaries of the estate.

[Emphasis added]

Conveniently, I would wish to start with the second ground, I entire agree with the appellant that, the High court of Tanzania at Dar es Salaam in Probate and Administration cause number 05 of 2018 held that the estates of the late Rosemary Godfrey Minja and that of the late Edson Nicholas Mamuya are the same and directed the respondent above to file an inventory

before Marangu Primary Court so that the administration on those estates may be completed. But I don't agree with appellant's argument that the District Court did not take judicial notice. I reserve my reasons which now I give.

In order to apprehend the decision above of the High Court if it was obeyed or not, I think the chronological of events narrated above are very elaborative. The High Court in Probate and Administration cause(supra), at page 13 of its judgment was very clear when ordered that the respondent herein (who was the caveator therein) to file inventory at the Primary Court of Marangu and ordered any one dissatisfied with distribution to challenge at the same trial court.

I am aware this decision of High Court remained unchallenged till now. However, I am also in agreement with my learned sister Mgonya, J (as she then was), when she observed at page 13 that the estate left belonged to the two, wife and husband (both deceased), and since each part, I mean from the wife and from the husband want to administer the estate. She was of the view that because already there is appointed administratrix (herein respondent) should continue to administer the same.

Nonetheless, I subscribe on how the said High Court observed in respect to the issue of distribution of this estate, first it acknowledged that appellant was appointed as administratrix in Probate Cause no. 3 of 2017 at Marangu Primary Court. Second the High Court went on to determine the issue of will and rejected it, and third recognized the children of the deceased identified by Rosemary before her demise. For ease of reference, I reproduce what the said High Court Judgment observed at page 12;

" I take it to say that from the evidence of the caveator (appellant) the court is in dilemma that the division of the estate is according to the deceased wishes, there is no oral will or written will that has been availed in court to support what the caveator states. According to the circumstances of the case the beneficiaries of the estate are well known to be the children of the deceased herein since Rosemary identified them even though as the married couple they were not blessed with issues and the existing children being born out of wedlock do not bar them to enjoy their father's property. This was long well settled by the Law of child Act of 2009 under section 10 of the Act"

[Emphasis is mine]

Moreover, at page 13 the High court further stated that;

"Caveator (respondent) is ordered to file inventory which will state as to how the estate has been distributed and anyone who is not satisfied by such inventory shall have the room to challenge the same at the court where the inventory is filed of which is the appointing court that is Marangu Primary Court."

[Emphasis is mine]

Therefore, from the above directives from the High Court, the respondent complied and went to file inventory at Marangu Primary Court, the appellant dissatisfied with her distribution, went at the trial court and challenged the distribution, the said distribution by respondent was rejected by the trial court and ordered the respondent to re-distribute, the respondent was aggrieved and appealed at the District court wherein she lost the appeal. Upon remaining silence after she lost an appeal at District Court. The appellant filed revocation of the respondent as administrator at the trial court, which was granted and was appointed instead of.

Therefore, since all pointed above were initiated by the order of filing inventory issued by the High Court above, it is my considered opinion all courts below took judicial notice of this case, even the district court, it is the fact that, the case went to District Court by way of appeal from the trial court. And to answer the argument of Mr. Njowoka in this respect, it is also clearly that the said High Court did not appoint a new administrator, but directed the existed one, who is the respondent to file inventory and if anyone want to challenge should do so at the trial court. Thus, the High Court did not close this probate matter not to be challenged if the distribution is not justifiable, also did not order the respondent not to be revoked if she fails to exercised her duty as administrator. In view of the above compliance of the order of the High Court, the case of **Dativa Nanga vs. Jibu Group Company Limited & Another** (supra) and **Paskali Nina vs. Andrea Karera** (supra) cited by respondent's counsel are distinguishable from the circumstances of this case.

Now, the next question is whether the respondent failed to exercise her duty. It is my view, the respondent having lost the appeal in the District Court, she ought to have respected the order of the trial court to redistribute the said estate and file inventory. Since she did not further appeal, thus, her

act of remaining doing nothing is like to hold the deceased estate undistributed contrary to the duty imposed to her. It is also a practice that the probate and administration cause come to an end after filling of Forms No. V and VI and after the court makes an order closing the matter. It is the closing order that discharges the administrator of his functions and duties. To borrow a leaf from the wording of my brother Mlacha,J. (as he then was) in the case of the **Beatrice Brighton Kamanga & Amanda Brighton Kamanga vs. Ziada William Kamanga** Civ. Rev. No. 13/2020 (unreported) H/C Dar es salaam. He observed that;

"There is an end in probate and administration matters. The matter comes to an end on filling of Forms No. V and VI and after the order of the court dosing 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. The position the High Court and primary court on this aspect is the same. Inventories and statement of accounts must be filled within the period stipulated under the law so that the matter may come to an end"

As pointed out above, the respondent, as administrator, did not comply with

the order of the trial court of redistributing, her option to appeal ended at the District Court and nothing continue, in my view she has decided to end her administration herself, this is unacceptable in law. Thus, it was right and I concede with the trial court and second appellate court to revoke her administration of this estate. In above regard and reasoning also answers the first ground of this appeal, because, it justifies reasons for the trial court to appoint the appellant as a new administrator though was rejected by this district court in appeal. In view of the above, I find the first and second grounds devoid of merit, thus dismissed forthwith.

In respect to the issue whether the appellant has interest in probate as argued in ground number four, I also subscribe with the observation of my learned Sister Mgonya, J. (as she then was) at page 12 as quoted above. Since it is a fact that the appellant herein is the child born out of wedlock by the late Edson Nicholas Mamuya. Therefore, the fact that, the estate in dispute belonged together by two deceased as Husband and wife, I am settled that the appellant has interest in this estate, as it was observed above that the wife of deceased when she was seeking a letter of administration at the trial court recognized the children of her late husband. Therefore, in

above regard the District Court was not correct to hold that the appellant has no interest on this estate. Thus, I am settled this fourth ground is allowed and sustained.

In respect to ground number three, the appellant alleging that the district court erred to direct the clan of Mamuya and that of Minja to appoint the new administrator without considering that such an advice cannot be implemented and it has already failed on the previous proceeding. First of all, according to the record, there is no evidence that the same was tried and failed to reach the settlement between the two clan.

Secondly, despite the fact that, the court may appoint any other person from amongst the heirs, executors or beneficiaries of the estate to be the administrator of the estate. However, I think this should be done after court satisfy that the normal way of clan or family selecting the one among them to execute the said administration of estates has failed. Prudent dictates that, the purpose to let the clan or family doing so, is to customized and validated their views and concerns to the administration of estate, it brings clan and family blessings/ bond to the administrators and further watchful to his/her administration. Moreover, clan/family validation brings a mutual tie between the society belonged to the deceased. I think this is the gist of

rationale of court to allow clan or family meeting to select the person whom they are acquainted and believe will handle with care of the administration of the estate of their beloved ones.

Therefore, in view of the above, the act of Primary court appointing directly the respondent herein lacks to my view sociosexual ties of deceased society in appointing the administrator of the estate, which I think instead of ending antagonistic between them and the family, it might trigger them. Taking the circumstances of this matter at hand, where in essence, it is administration of estate of two deceased from two different family, who acquired the same properties stated above. In my view I think prudent dictate, this case still need family or clan engagement before the law takes its pace. Thus, I am of considered opinion the above logic when considered to the circumstances of this matter, I am of the view the District court was rightly and logically to advise the two family of Mamuya and Minja family to sit together and find a diligence and faithful persons from respective family or clan to administer the estate of the deceased. In view thereof, I am of considered opinion the second appellate was right to order the said direction, this third ground also fails.

Lastly, is the fifth ground, the above observation in ground number three of appointing a member from the two family, will not prolong this matter, as it was right argued by the appellant's counsel that litigation should come to an end. (See **Beatrice Brighton Kamanga & Amanda Brighton Kamanga vs. Ziada William Kamanga** (supra). I have taken consideration the time the first appointment by the trial court, therefore, the above is the interim time to rescue the broken society after the demised of deceased who caused their family unity.

In view of the above, I order the above exercise of the two family of Mamuya and Minja to sit and propose for new administrator/administrators of the estate, who will be impartial, be done within three months from the date of this judgment. These three months given end on 20/12/2023. After this time lapse, if nothing will be done as directed above, I order the Trial Court of Marangu Primary Court in the same Probate case number 03 of 2017 to invoke the provision of paragraph 2 (b) of the 5th schedule of the Magistrate Courts Act, Cap 11 R.E 2019 and appoint an impartial person to administer this estate accordingly.

In the premises, the decision of the first appellate court is affirmed with additional of timelines above, moreover, I also order the respondent to

surrender the document evidencing her appointment and she should full account of administration whatever she did if any, to the trial court. This must be done in accordance to the Primary Courts (Administration of Estates) Rules, GN 49 of 1971 under rule 9 (2) (b). No costs granted.

It is so ordered.

DATED at **MOSHI** this 20th day of September, 2023.



X 

JUDGE
Signed by: A. P. KILIMI

Court: Judgment delivered today on 20th day of September 2023 in the presence of Mr. Ali Kimweli advocate for Respondent, also Appellant present and respondent absent.

Sgd: A. P. KILIMI
JUDGE
20/09/2023