

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**CIVIL REVISION NO. 2 OF 2023**

*(Arising from the Court of District Delegate of Rombo District at Rombo dated 27<sup>th</sup> February, 2023 in Probate and Administration Cause No. 2 of 2021 and originating from the Ruling of the same court and cause dated 10<sup>th</sup> November 2022)*

**JOHN PETER URASSA .....1<sup>ST</sup> APPLICANT**

**PETER ALEXANDRY SHIRIMA .....2<sup>ND</sup> APPLICANT**

***VERSUS***

**SEBASTIAN HIEROMINI SHIRIMA** *(As Administrator of the Estate of the Late GABRIEL HENDRY LEBAI)* ..... **RESPONDENT**

**RULING**

11<sup>th</sup> & 29<sup>th</sup> Sept. 2023.

**A.P.KILIMI, J.:**

The respondent mentioned hereinabove applied for letters or administration of the estate of GABRIEL HENDRY LEBAI died intestate on 5<sup>th</sup> day of August, 2020 at the District Court of Rombo. He filed the same on 29<sup>th</sup> day December, 2021. Before his appointment he was counter attacked by the first applicant mentioned above by filing caveat on 17<sup>th</sup> February, 2023 on the same court objecting the respondent to be appointed as administrator of said estate.

Subsequently, the petitioner therein (respondent) filed four preliminary objections on point of law to the effect that; **first**, that, there is no caveat filed in the Court and served to the Petitioner as per the mandatory requirement of the law; **second**, That the caveat purported to be filled in the District Court on 15th day of February 2020 was hopelessly time barred; **third**, That, the Appearance by Caveator filed in the District Court is misconceived and total disregard of the mandatory provision section 59 (2) of the Probate and administration of Estates Act, Cap. 532 read together with Rule 82 (2), 2A, 28, 2C and 3 of the Probate rules; and **Fourth**, the purported Caveator was having no Locus stand in that proceeding.

The District Court having heard both parties in respect of the said objections, on 10<sup>th</sup> November, 2022 ruled out that, the mandatory procedures stipulated under section 58 and 59 of the Probate and Administration of Estate Act, Cap 352 and Rule 82 of the Probate Rules were not obeyed by the caveator, and then sustained the objections raised, hence force dismissed the caveat. Further the said court proceeded to note that, since the caveat was entered on 17th day of February 2022, held the same was already expired. Subsequently, the District Court dismissed the application with costs.

Later, the District Court continued with the hearing of application of letters substantively and on 27<sup>th</sup> February, 2023 granted the letters of administration of the estate above to the respondent.

Now, back to this matter at hand, the two applicants above have moved this court by way of chamber summons under Section 79(1) (a), (b) and (c) read together with Section 95 of the Civil Procedure Code, Cap. 33 R. E 2019 and any other enabling Provisions of the Law supporting with their affidavit, praying for orders as follows; **First**, this court be pleased to call for, examine and determine the propriety and legality of the proceeding and decision of the Court of District Delegate of Rombo dated 27<sup>th</sup> February 2023 in Probate and Administration Cause No.2 of 2023; **Second**, this court be pleased to exercise its supervisory powers over the Court of District Delegate of Rombo and rule on the correctness of the procedures after the caveat been entered in Probate and Administration Cause No.2 of 2023; **Third**, this court be pleased to exercise its revisional powers vested to it by the law and revise the decision of the Court of District Delegate of Rombo in Probate and Administration Cause No.2 of 2023 for contravening the Law and procedure; **Fourth**, any other relief/reliefs which this Honourable Court may deem fit and appropriate to grant and costs of this matter.

In responding to the above application, respondent filed counter affidavit with notice of preliminary objection on the point of law to the effect that; **first**, the Applicants have no locus standi in the current application and **second**; the application is misconceived and incompetent before this Court as it contravenes section 72 (1) of the Probate and Administration of Estates Act, Cap. 352.

When this application came for hearing the said objections, the applicants enjoyed the service of Mr. Constantine Kimario learned counsel whereas the respondent stood himself unrepresented. These objections were argued by way of written submissions.

Supporting objection, the respondent submitted that, the decision sought to be revised by this Honorable Court in Probate and Administration Cause No. 2 of 2021 in the Court of District Delegate of Rombo District at Mkuu was non contentious proceeding as there was no caveator entered an appearance, thus, the same was granted under Rule 76 of the Probate rules. The respondent further argued in view of the above the applicants has no right of appeal or revision, because they lack a locus standi, because were

never party in the Probate matter stated above. To support his view asked this court to consider the provision of Section 72 (1) of the Probate and administration of Estates Act, Cap.352.

The appellant further submitted that, if the Applicants were not satisfied with the appointment of the Respondent as an administrator in the Probate and Administration cause No.2 of 2021, which was non contentious case, the correct avenue for the Applicants was to seek for revocation of the grant of letters of administration as clearly provided for under the whole of Section 49 of the Probate and Administration Act, Cap. 352 read together with Rule 29 (1), (2), (3), and (4) of the Probate Rules and not rushing to this Court by way of Revision. Then thereafter, applicants would have appealed or apply for Revision to this Court if their application for Revocation is denied.

Responding to the above submissions, Mr. Kimario learned counsel, conceded that in the eyes of the Law Applicants herein were not party to Probate and Administration Cause No.2 of 2022 above although they attempted to become party thereto through filing of caveat unsuccessful. Therefore, the only remedy available to them is an application for revision

as rightly pursued. To buttress this assertion, the counsel referred me the case of **Jacqueline Ntuyabaliwe Mengi and 2 Others vs. Abdiel Reginald Mengi And 5 Others**, [2021] TZCA 583 (Tanzlii).

In respect to whether the Application before this Court contravened the provisions of Section 72(1) of the Probate and Administration of Estates Act, the counsel contended that, this provision is clear and unambiguous in the sense that, one, it gives right to appeal to an aggrieved person to a contentious proceeding and two it only applies when the challenged decision emanates from contentious proceedings otherwise its applicability ceases from applying. Therefore, since decision of the Court of District Delegate of Rombo in Probate and Administration Cause No.2 of 2022 was non-contentious thus, in essence such section is inapplicable against the Applicants, thus, doesn't fit to the instant matter.

In respect to the issue of locus standi, the counsel contended that, the respondent had misconceived in principles, the counsel relying again on the case of **Jacqueline Ntuyabaliwe Mengi and 2 Others** (supra) submitted that, Applicants being not party to the proceeding before the said case can do none other but Revision which is only available remedy and no law was

mentioned by respondent bars the same. In respect to provisions cited for revocation, the counsel for applicant contended that the cited sections and the proposals made are inapplicable in the present matter they only applicable when the Court is moved by an application to revoke the grant of probate or letters of administration which is not in this case.

I have dispassionately considered submissions of both parties, and having scanned the prayers sought by the applicants for revision and the record of the trial court. I have seen this matter speaks itself straight forward, thus the point to be considered is whether objections raised are meritorious.

As, I have highlighted above, in this matter sometime at the trial court was contentious, this is when the first applicant in this matter filed a caveat, and the District court on 10<sup>th</sup> November, 2022 dismissed the said caveat. And the fact that the applicants on prayers number two sought also to revise on the correctness of the procedures after the caveat been entered in this matter at the district court. I am enforced to refer Section 72 (1) of the Probate and administration of Estates Act, Cap.352 which provides for

appeals from an order granting or refusing probate or letters of administration. And for reference, I reproduce hereunder;

*"72(1) An appeal shall lie from an order granting or refusing probate or letters of administration made in contentious cases as if such order were a decree, and from any other order made in such cases if an appeal would lie there from in a suit according to the provisions of the Civil Procedure Code or any enactment replacing the same."*

[ Emphasis added]

Despite the fact that the first applicant, his caveat was not heard, in my interpretation of the above law, his intent for dwelling into contentious case cannot go for nothing upon being knocked out by way of objection, because the above ended on decision of preliminary objections did not go to the merit of the contentious itself. therefore, in view of the above law it was right for applicants to move the court by way of the revision. But, in my opinion in this matter the applicants were late to exercise this right, therefore passed by event. I am saying this because pursuant to that caveat being



dismissed, the district court on the same matter proceeded to hear the main application and granted letters of administration to the respondent.

In such regard, as rightly submitted by the respondent, since the decision granted letters to respondent was non contentious, the legal way is not to appeal or revision but is for the Applicants to apply for revocation of the grant of letters of administration issued under Section 49 of the Probate and Administration Act, Cap. 352 read together with Rule 29 (1), (2), (3), and (4) of the Probate Rules, rather than by way of appeal or revision as the applicant did.

The case cited by the applicants of **Jacqueline Ntuyabaliwe Mengi And 2 Others vs. Abdiel Reginald Mengi And 5 Others**, [2021] TZCA 583 (Tanzlii), in that case, it is true applicant was not a party therein but, the court was dealing to see whether the applicant disguised in filing revision instead of appeal. Then the court to settle the same interpreted the provision of section 4 of the Appellate Jurisdiction Act Cap.141 R.E.2019 which is not applicable in this court, and observed that since the first applicant was called to testify as court's witness in the said Probate cause; she ought to have appealed against the decision of the High Court, more so

because most of the grounds which have been raised by the applicants are based on evidence attracting an appeal than revision. The court also, added that despite the Court being conferred with both the appellate and revisional jurisdiction against the decisions of the High Court, such powers do not co-exist. Whenever there is a right of appeal then, that right must be pursued first. Therefore, in view of the above, I am settled that the facts of this case are distinguishable from the circumstances of this matter at hand.

In sum of the light of my foregoing findings, I am satisfied that, since the applicants has wrongly moved this court, instead of moving the district court by the provisions stated for revocation of the granted letter of administration, upon which if they could have failed therein for revocation at District Court. They could have locus to step into this court legally. I am settled opinion the Applicant have lacked *locus standi* to bring this matter in this court.

In conclusion thereof, I find the first objection meritorious, consequently I proceed to dismiss this application with an order that each party to bear its own costs.

It is so ordered.

**DATED at MOSHI** this 29<sup>th</sup> day of September, 2023



X

JUDGE

Signed by: A. P. KILIMI

**Court:** - Ruling delivered today on 29<sup>th</sup> September, 2023 in the present of Mr. Constantine Kimario Advocate for applicants and all applicants and Respondent present.

**Sgd: A. P. KILIMI**  
**JUDGE**  
**29/9/2023**

**Court:** - Right of Appeal Explained.

**Sgd: A. P. KILIMI**  
**JUDGE**  
**29/9/2023**