

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

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**DC CIVIL APPEAL NO. 23 OF 2022**

**MUSSA ABDULNOOR MURO .....APPELLANT**

**VERSUS**

**REHEMA ABDUL MURO .....RESPONDENT**

**(Arising from the Ruling of Dodoma District Court)**

**Dated 22<sup>nd</sup> day of July 2022**

**In**

**Misc Civil Application No. 8/2022**

**.....**

**JUDGMENT**

Date of last Order: 24<sup>th</sup> October, 2023

Date of Judgment: 15<sup>th</sup> November, 2023

**SARWATT, J.;**

This is a Probate appeal, where the appellant challenges the decision of the District Court of Dodoma at Dodoma (trial court) in Misc. Civil Application No 8 of 2022 of not granting his application for revocation of the respondent as the administratrix of the estate of the late NEEMA SAIDI NSHUMBA.

The background of this matter is that the respondent, before the trial court, via Probate and Administration Cause No. 65 of 2021, applied and

granted the letters of administration on the estates of the late NEEMA SAIDI NSHUMBA. Upon such grant, the appellant lodged the said Misc. Civil application No.8 of 2022 for revocation of the same on the ground that the respondent acted mollified by including the properties which she knew were the subject of the estate of the late ABDULNOOR MUSSA MURO and not of NEEMA SAIDI NSHUMBA.

After the hearing of the application for revocation, the trial court dismissed it for want of merit. The decision was like putting salt in the flesh to the appellant, and now he is before this court by way of an appeal armed with three grounds, namely;

- 1. That, the court erred in law and fact for not disqualifying the respondent as an administratrix of the estate despite of the grave irregularities pointed out in the entire proceedings in the matter she was appointed.*
- 2. That, the court erred in law and fact for issuing to the respondent orders which were ultra vires.*
- 3. That, the trial magistrate erred in law and fact by delivering the ruling which is against justice and good concise.*

During the hearing of this appeal, both parties were represented. The appellant enjoyed the service of Mr. Fred Kalonga, learned counsel, while Mr. Mbunda Sedrick, learned counsel, represented the respondent.

In supporting the appeal, Mr. Kalonga first dropped out the 3<sup>rd</sup> ground of appeal. And thereafter, he submitted on the 1<sup>st</sup> ground contending that the reason for filing an application for revocation was because the respondent mollified included the assets of the late ABDULNOOR MUSSA MURO while administering the estate of the late NEEMA SAIDI NSHUMBA. Thus, the trial court incorrectly dismissed the same.

Also, Mr. Kalonga further stated that the order of the trial court to the respondent to expunge the properties that were not subject to the estate of the late NEEMA SAIDI NSHUMBA was not appropriate as the only remedy was to revoke the respondent as administratrix.

On the 2<sup>nd</sup> ground, Mr. Kalonga submitted that the Court's order for the respondent to file an inventory within six months was improper as it was not among the reliefs sought by the appellant.

Mr. Kalonga, having submitted as above, prayed this court to find merit in the appeal and allow the same accordingly.

On his part, the respondent through his advocate, Mr. Mbunda Sedrick submitted that this appeal has been over taken by event on the reason that the respondent, whose revocation as an administratrix is sought, has already filed an inventory and the Probate and Administration Cause no. 65 of 2021 which granted her letters of administration has been closed. Thus, he believes there is no more room for revocation. Mr. Sedrick cited the case of **Ahmed Mohamed Al Alaamar V Fatuma Bakari and Another**, Civil Appeal No. 71 of 2012, Court of Appeal at Tanga to back up his contention.

Mr. Sedrick also submitted that the appellant has no *locus* to file this appeal as he is not a beneficiary of the estate of the late NEEMA SAIDI NSHUMBA concerning the 1<sup>st</sup> ground he submitted that the appellant adduced no sufficient grounds to revoke the respondent on her position as an administratrix.

On the 2<sup>nd</sup> ground, Mr. Mbunda Sedrick submitted that there were no *ultra vires* powers taken by the trial court, instead that is inherent power of the trial court to order the respondent to file an inventory within six months so as to necessitate the respondent to complete the administration duties timely.

Lastly, with regard to the issue of the order of the trial court to expunge some properties, it is his submission that the order was correctly made by

the trial court, and in case the appellant was not satisfied with that order was not supposed to lodge this appeal but to file a fresh suit to the court with competent jurisdiction so as to determine the legal owner of the properties in question.

The respondent's advocate concluded his reply by urging this court to dismiss this appeal with cost for want of merits.

In his quick rejoinder, Mr. Kalonga reiterated his submission in chief. He insisted that the appellant has a *locus standi* to lodge this appeal for being an administrator of the estates of the late husband of the said NEEMA SAID NSHUMBA.

Having scrutinized the submission by the parties, with the aid of the trial Court's records, it is time for this court to make its findings on the rival matters before this court.

The first question to be answered is whether this appeal is plausible before this court subject to the contention raised by the respondent's advocate. As for the records of the trial court, this appeal originated from the Probate and Administration Cause No. 65 of 2021 which appointed the respondent as administratrix of the estate of the late NEEMA SAIDI NSHUMBA. And it is upon such appointment the appellant unsuccessfully

filed a Misc. Civil Application No. 8 of 2022 before the trial court for revocation of such appointment, hence this appeal.

The records of the Probate and Administration Cause No. 65 of 2021 reveal that the respondent, on 25<sup>th</sup> July 2022, appeared before the trial court and his advocates for filing inventory and accounts. The court, having received the same, marked the probate closed per section 107(2) of the Probate and Administration of Estates Act, [Cap 352 R.E 2002].

It is a settled law in our jurisdiction that administration must end by filing the inventory and accounts of the estate. For the matter at hand, it is evident that the respondent filed accounts of estates (form 81) and inventory of estates (form 80) which moved the trial court to close the matter. Basically, the closure of the probate means the respondent is discharged from his position as administratrix.

That being the case, I agree with the respondent's advocate that there is no grant of probate to be revoked subject to the cited case of **Ahmed Mohamed Al Lamar (Supra)** where the Court of Appeal stated that

*"Given the fact that the appellant had already discharged his duties of executing the will, whether honestly or otherwise, and had already exhibited the inventory and accounts in the High Court, there was no granted probate which could have been revoked or annulled ..."*

Therefore, I hold that this appeal cannot be entertained, but the appellant has an avenue to advance his claims over the said properties vide other remedies, including the institution of fresh suit against the respondent as it was expounded in the above-cited case of **Ahmed Mohamed Al Lamar (Supra)**.

In the event and for the preceding reasons, I find it needless to discuss the merit of the appeal, which was improperly brought before this court. In the result, the appeal is hereby struck out and considering the nature of the appeal and the fact that the parties to this appeal are siblings, I make no order as to costs.

Ordered accordingly.



A handwritten signature in blue ink, appearing to be "S. S. Sarwatt".

**S. S. SARWATT**

**JUDGE**

**15/11/2023**

**DATED at DODOMA** this 15<sup>th</sup> day of November, 2023.



A handwritten signature in blue ink, appearing to be "S. S. Sarwatt".

**S. S. SARWATT**

**JUDGE**

**15/11/2023**