

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY (ONE-STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL No. 37 OF 2023

(Appeal from Misc. Civil Application No. 103 of 2021 from the Resident Magistrate's Court of Dar es Salaam, at Kisutu in which it originated from Probate & Administration Cause No. 38 of 2009)

ANDREW JOHN SAMBO.....APPELLANT

VERSUS

NICAS MASHIKA

(As administrator of the Estate of the late John Silvin Sambo)**RESPONDENT**

JUDGMENT

19th October & 21st December, 2023

BARTHY, J.:

In this appeal brought forth by the appellant, Andrew John Sambo, through Misc. Civil Application No. 103 of 2021, where he sought the revocation of the respondent Nicas Mashika, the administrator of the estate of the late John Silvin Sambo, and his own appointment as the administrator.

The application for the revocation of the administrator of the estate was lodged before the Resident Magistrate's Court of Dar es Salaam,

Kisutu (the trial court), which was subsequently dismissed on the 21st of June, 2023.

The appellant dissatisfied with the decision he raised three grounds of appeal, asserting errors in law and fact in the trial court's decision. These grounds primarily focused on perceived injustices regarding multiple applications in courts leading to appellant's failure to distribute deceased properties, alleged mishandling of evidence by trial court, and the court's failure to consider other grounds for revocation. The grounds of appeal are reproduced hereunder for easy reference as follows;

1. *That the trial court erred in law and in facts on its decision that, that the respondent's failure to distribute the deceased's properties within time is due to multiple applications in court and applicant is in possession over the deceased properties, hence resulted to unfair decision.*
2. *That, the trial court erred in law and in fact for failure to analyse and evaluate properly evidence on record, hence resulted to unfair decision.*
3. *That, the trial court erred in law and in fact for failure to consider other grounds of revocation shown by the appellant hence resulted into bias decision.*

Wherefore the appellant prays for the appeal be allowed with costs. At the hearing of the matter, the appellant was enjoying the services of Mr. Ashraf Muhidin, learned advocate and the respondent appeared in person. The parties agreed to dispose of the appeal by way of written submission of which both parties filed their submissions timely.

In presenting arguments, Mr. Muhidin the counsel for the appellant argued that, the court erred both in law and in fact by attributing the respondent's failure to distribute the deceased's properties was due to multiple applications present in court alleging that the appellant is in possession of said properties.

He contended that such claims were baseless since the administrator, under sections 107 and 108 of the Probate and Administration of Estate Act, Cap 352, R.E 2002 (PAEA) had specific powers and duties. He further emphasized that the respondent failed to adhere to these provisions, and any dissatisfaction should have been expressed through proper objections.

Mr. Muhidin highlighted that the administrator had not distributed any estate to date, and the respondent's accusation that the appellant was in possession of the deceased properties was unfounded.

He also argued that the respondent exhibited an untrue inventory out of time, leading to its rejection by the trial court on July 19, 2021, as

evidenced on pages 1 and 2, annexure AJS-3. He was therefore firm the respondent is evitable of his misconduct committed and cited the case of **Andrew John Sambo v Nicas Masika (administrator of the Estate of the late John Silvin Sambo)**, Civil Appeal No. 7 of 2022, High Court of Tanzania, Temeke Sub Registry (unreported) at page 4.

The appellant vehemently denied the claim that he was in possession of the deceased properties, stating that no application had been filed to support such an allegation. The appellant accused the respondent of deceitfully lying before the court to gain sympathy.

Addressing the second ground of appeal, Mr. Muhidin contended that the trial court failed to properly analyse the evidence, resulting in an unfair decision. The counsel pointed to the rejection of the registration of the inventory by the trial court on July 19, 2021, following objections from the beneficiaries who claimed had not received any share.

The trial court ordered a police investigation to determine if there was fraud. Mr. Muhidin was content the same raise the question of whether such actions amounted to misconduct warranting revocation. The counsel referred the case of **Sekunda Mbwambo v. Rose Ramadhani** [2004] TLR 439.

On the last ground, Mr. Muhudin argued that the trial court erred by neglecting other grounds for revocation. He stated that the application

was based on section 49(1)(b)(c)(d)(e) and (2) of PAEA, and Rule 29(1) of the Probate Rules of 2009 (the Rules).

He further claimed that the respondent's inventory filing was beyond the limitation period, and no reasons were provided for an extension of time by the respondent, which the trial court wrongly blessed. Therefore, Mr. Muhidin prayed for the appeal to be allowed.

In response, the respondent countered the first ground by providing a brief history of the matter. The respondent explained that the administration of the estate was initially filed by Anastazia Alexander, the deceased wife, and was later transferred to Nicas Masika (the respondent herein) after various legal proceedings. The respondent emphasized that the appellant had continuously filed multiple applications, leading to numerous delays resulting from legal battles.

The respondent also revealed that the appellant had secretly filed an application before the respondent's appointment, leading to objections by the deceased wife and subsequent dismissals. The respondent highlighted a series of legal actions initiated by the appellant, including applications to revoke him which was rejected, appeals and various applications demonstrating a pattern of obstructing the administration of the estate. The respondent invited the court to make reference to the case of **Sekunda Mbwambo** (supra) and resolve the dispute once and for all,

since the appellant is the one who enjoys and control the entire estate of the deceased.

In the rejoinder, the appellant rejoining to the respondent's arguments, reiterating the arguments made earlier on grounds of appeal and refuting the respondent's claims.

After a comprehensive review of the submissions, the court will join all grounds of appeal and address them in one issue, whether the trial court erred in its analysis of the evidence presented and reached unjustified findings, specifically in concluding that there was no valid ground justifying the revocation of the respondent from administering the estate of the deceased

With respect to the issue at hand, the appellant contends that the trial court, in its evaluation of the evidence presented, made errors leading to a flawed decision. The primary concern is the court's conclusion that the presence of multiple applications before the court hindered the respondent to file the inventory and distribute the estate to the heirs/beneficiaries.

This issue addresses the critical question of whether the trial court's assessment of the evidence and subsequent findings were flawed, leading to an unjustified determination that there were no grounds for the revocation of the respondent from administering the deceased's estate.

The appeal aims to rectify any perceived errors in the lower court's decision and secure a more just outcome in light of the presented evidence and legal standards.

This being the first appellate court it has the power to revisit and re-evaluate the entire evidence in an objective manner and come up with its own findings when necessary. See the case of **Leonard Dominic Rubuye t/a Agrochemical Supplies v. Yara Tanzania Ltd**, Civil Appeal No. 219 of 2018, Court of Appeal of Tanzania.

With respect to the issue at hand, the law is clear that upon appointment of the administrator by court to administer the estate of the deceased person under section 107(1) of PAEA he is required to file true inventory after collecting, administering, distribution or disposal of the estate within the period of six months.

The respondent was appointed by the trial court on 28/12/2011 to be the administrator of the estate and he only filed the inventory on 19th July 2021, which was contested before the court. therefore, it is up to this moment the estate of the deceased has never been distributed.

According to the records available, also gathered from the arguments of both sides, it is not in dispute that there were multiple suits which originated from the original probate matter. This was among the reasons

the trial court considered to have hindered the respondent discharge his duties on administration of estate.

Another reason advanced is being that the respondent exhibited untrue inventory which was filed out of time. I have gone through the records of the trial court and it shows the heirs/beneficiaries rejected to affirm the inventory of estate filed, therefore court did not approve it pending proper distribution and even investigation by police to see whether there was fraud or not.

In the scenario where the inventory has not approved, then the court will order the administrator to amend the inventory and refile after doing proper distribution of the deceased estate. This is not necessary the administrator has not exhibited true and correct inventory of the estate. As the circumstances of this case dictates.

However, there was also allegation of fraud which the trial court ordered the investigation of the same.

I would now consider the provision of section 49(1) of the PAEA, from which the respondent is faulted to have omitted to exhibit the inventory. It is now the settled law that the one who asserts must prove the allegation. As such, the appellant had the obligation to prove on how the respondent exhibited false or untrue inventory. As this type of conduct is considered to be the commission of offence leading imprisonment as

provided under section 107(4) of PAEA and therefore it is the ground for revocation of letters of administration when proved by the probate court.

It has been stated in number of times by courts that, the administrators may be revoked when they administer of the deceased estate unfaithfully or in a discriminatory manner. As it was stated in the cases of **Mwaiina Abdul Maquno v. Mwanahawa Maquno**, Civil Appeal No, 74 of 2004 Page 6 of 17 and that of **Sekunda Mbwambo v. Rose Ramadhani** (supra).

The records reveal that the appellant was behind the endless litigations, with about six suits instituted throughout the entire period from 2011 to the present date. This period coincided with the time during which the respondent was supposed to discharge his duties as the administrator of the estate. Indeed, the presence of multiple suits during these times hindered the respondent from effectively collecting and distributing the assets of the deceased to the heirs/beneficiaries.

Furthermore, aside from the multiple suits related to the original probate matter, the court could not find any other reason warranting this court to revoke the administrator of the deceased estate in relation to the claims advanced under section 41(1)(b)(c)(d)(e) and (2) of the PAEA.

In consideration of the analysis and reasons articulated above, this court finds that there is no justifiable basis to overturn the decision of the

trial court. The court is of the opinion that had the respondent not been distracted by the appellant, he would have been able to discharge his administrative duties.

Given the lack of merit in the grounds of appeal, it is hereby dismissed. Furthermore, due to the nature of this dismissal, no orders as to costs are issued.

It is so ordered.

Dated at Dar es salaam this 21st of December, 2023.




G.N. BARTHY

JUDGE

Delivered in the presence of appellant in person and Mr. Ashraf Muhidin and Ms. Beranadina RMA. The respondent in absent with the notice.