IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

PC CIVIL APPEAL NO. 07 OF 2023

(from Arusha District Court, Civil Appeal No 44 of 2021 Originated from Arusha Urban Primary Court Probate and Administration Cause No 264 of 2020)

JUSTO MMBANDO .....APPELLANT

VERSUS

GOODLUCK JOHN MMBANDO ..... RESPONDENT

JUDGMENT

21st November & 14th December, 2023

KAMUZORA, J.

Before the Primary Court at Arusha Urban (the trial court) the Respondent herein successfully petitioned for the grant of probate and letters of administration of the estate of his father, the late John Kunda Mmbando. As the record of the trial court reveals, during the petition of the grant of letters of administration, the caveat was raised against the Respondent by the Appellant herein who is also the son of the deceased. After the trial court heard the parties in respect of the caveat raised, it was satisfied that there was no reasonable ground to prevent the appointment of the Respondent as the administrator of their father's

estate hence, the caveat was overruled and the trial court proceeded to appoint the Respondent as the administrator of the estate of the late John Kunda Mmbando. Being aggrieved by the trial court's decision, the Appellant preferred an appeal to the District Court of Arusha (the 1st appellate court) in an attempt to challenge the trial court's decision. The first appellant court upheld the trial court's decision and supported the trial court reasoning that the caveat by the respondent before the trial court was more speculative and not backed with evidence. The magistrate reasoned that since the caveat was based on fact that the respondent failed to fairly distribute the estate, the Respondent could not perform his duties of administering and distributing the deceased estate before being appointed as an administrator. It was concluded that the Appellant herein preferred a premature complaint before the trial thus, the trial court was correct in overruling the caveat and appointing the Respondent as the administrator of their fathers' estate. The appeal was dismissed and is on that account that the Appellant preferred this second appeal on the following grounds: -

1) *That, the appellate Court erred in law and fact by holding that the complaint by the Appellant was premature while the Respondent has been openly showing disregard their sister's inheritance.*

2) *That, the appellate court erred in law and in fact to uphold the appointment of the respondent to be the Administrator of the estate of the late John Kunda Mmbando despite the objections from the children of the deceased that the respondent is not trustful and greedy to the Appellant's properties.*
3) *That, the appellate court erred in law by disregarding and failure to discuss and decide on other grounds of appeal by the Appellant.*

Hearing of this appeal was by way or written submissions and as a matter of legal representation, both parties appeared in person with no legal representation. Parties also filed their submissions which will be considered by this court in reaching its decision.

In his submission in support of the 1st ground of appeal the appellant submitted that, the 1st appellate court finding was based on the complaint that the female children were not given their shares to the estate. The appellant was of the view that before concluding so the first appellate court would have stepped into the shoes of the trial court and evaluate the evidence adduced by the witness during trial so that it would understand the complaint by all the members of the family. That, the 1st appellate court was in a position to order a fresh nomination of a proper person from the family to handle the task of being an

administrator of the estate than confirming the respondent's appointment.

On the 2nd ground the Appellant submitted that the 1st appellate court erred in appointing the Respondent as an administrator of the estate while the trial court proceedings reveals that almost all children of the deceased including the Appellant objected the Respondent's appointment as seen in the trial courts proceedings dated 19/10/2020.

On the 3rd ground of appeal, the Appellant submitted that before the 1st appellate court three grounds of appeal were raised by the Appellant herein but the 3rd ground of appeal was not determined by the 1st appellate court leading to unfair hearing on the part of the Appellant. The Appellant therefore prays that the appeal be allowed with costs by quashing and setting aside the decisions of two lower courts.

The respondent opposed the appeal and submitted in respect of the first ground that, the Appellant was unable to prove the misappropriation of the deceased's estate against the Respondent. That, there was no any justifiable ground adduced by the Appellant to warrant the refusal the grant of the letters of administration to the respondent. On the claim that another person from the family could be appointed as an administrator he responded that, the duty of the court is not to select

or appoint administrators of the deceased estate rather to grant the letters of administration to a person appointed by family members or beneficiaries of the estate.

On the second ground, it is the Respondents response that there is no any clear evidence on record except mere words from the appellant and his witnesses but they did not explain how they arrived to such findings on the act complained of. That is, there is no incidents of selfishness or extravagancy on record to support the submission. That, the character of the respondent does not have any relevancy in the circumstance of this case as per the provision of section 54(1) of the Evidence Act Cap 6 R.E 2019.

Responding on the third ground, the Respondent submitted that the first appellant court dealt with all the grounds of appeal and specifically the 3rd ground of appeal was considered and referred to under paragraph 4 of page 4 of the 1st appellate court judgment. To him, first appellate court determined all grounds of appeal jointly as they both related to error committed by the trial court in appointing the administrator of the deceased's estate.

In his rejoinder, the Appellant reiterated his submission in chief and added that the act of the trial court to appoint the Respondent despite

being objected by all family members, was illogical. He maintained that the Appellant was infringed of right to be heard as the third ground of appeal was not considered by the first appellate court.

I have considered records of two lower courts and the submissions by the parties in this appeal. There are three issues calling for the determination; **one,** whether the first appellate court was correct to hold that the complaint by the Appellant was premature, **two,** whether the first appellate court was correct to approve the appointment of the Respondent as the administrator of the deceased estate, **three**, whether there was consideration of all the grounds of appeal by the first appellate court.

In adjudicating this matter, I find it proper to determine jointly the first and second issues on whether the first appellate court was correct to hold that Appellant's complaint was prematurely and in concluding that the Respondent's appointment as an administrator of the deceased estate was correct. For proper assessment of these issues, I adopted the appellant's suggestion of re-evaluating the trial court's proceedings and see if the evidence tendered could justify the caveat raised against the respondent.

In his evidence the respondent listed the wife and 15 children of the deceased whom he recognised as beneficiaries to the deceased's estate and listed the deceased's properties to be administered. He also pointed out the properties that were distributed by his father before he died and the remained estate for administration. His petition for appointment as administrator of the estate was supported by one witness, Jackson John.

The Appellant herein faulted the respondent's competency in fairly administering the deceased's estate. He objected the respondent appointment on ground that the respondent started to show interest on properties of his siblings by forceful taking them even before he was appointed. That, he also failed to comply to the clan decision for he did not reconstruct the house of their late brother as agreed. That, the respondent denied their sisters right to inheritance to their deceased father's estate and planned to take what belongs to them. That, he also failed to stop his young brother Jackson from throwing out of the deceased's house, the relatives who were moaning their father's death and causing trouble by threatening tenants.

The appellant called six more witnesses who also objected the respondent's appointment; Verynice John Mmbando, Justine John Nkunda Mmbando, Ameline John Mmbando, Veronica John Mmbando

Eliamo John Mmbando and Agness John. Justine objected the respondent on ground that he is greedy and interested in other people's properties He did not explain further but insisted that they wanted an independent person to administer the estate and not anyone among the beneficiary. The remained five witnesses of the appellant objected the appellant merely because he failed to handle their house to them which was distributed to them during clan meeting. They however agreed that the said house is in possession of the caveator (the appellant herein) one Justo Mmbando. Most of the appellant witnesses had no reason for objecting the respondent for their concern was in not receiving what was decided as their share during clan meeting.

From the evidence of the appellant and his witnesses, nothing justifies untrustworthiness of the respondent which could render him unfit to administer the estate of the deceased. Besides, even the house which they claimed that the respondent failed to handle to female children was as in possession of the appellant as the testimony of his own witnesses. As well held by the trial court and the first appellate court, such claim cannot justify the respondent's competency because in no way he could be blamed for not distributing the estate before he was

even appointed. I therefore agree with findings of both two courts below that such a claim was raised prematurely.

On the argument that the respondent started to show interest on properties of his siblings by forceful taking them even before he was appointed, the same was not justified for apart from the appellant, no other witness was able to show how the respondent demanded properties belonging to other people. Other witnesses' claim was based on the fact that he did not handle the house to female children as agreed in the clan meeting. But that argument is already resolved above as the respondent could not be blamed for distributing the estate before being appointed to administer the same. On the argument that the respondent failed to stop his young brother Jackson from throwing out of the deceased's house, the relatives who were moaning their father's death and causing trouble by threatening tenants, the same is also not a good argument to justify the respondent's competence in administering the estate of the deceased. The crisis if any, is family matter which ought to be resolved by all family members. If Jackson was a trouble maker causing trouble to the estate, the respondent could not take any legal action before being appointed as administrator of the said estate.

It is important to note that, the issue on who should be an administrator had been discussed in number of cases and it is settled that in appointing an administrator to the estate of the deceased, the court can give first consideration to beneficiaries of the estate. However, that does not bare the court from appointing any person whom it thinks can fairly and faithfully administer the estate of the deceased. In the case of **Benson Benjamin Mengi and Others vs Abdiel Reginald Mengi and Another** (Probate and Administration Cause 39 of 2019) [2021] TZHC 3202 (19 May 2021) Tanzlii, this court discussed principles set by the court of appeal in different decisions and had this to say;

> *"In appointing the administrator of the deceased's estate, the main consideration is the reputation and capability of such person to act faithfully, diligently and impartially in administering the estate to the rightful owners. Therefore, the Court can appoint any reputable person who is not even a member of the family or officer of the Court for that matter to be an administrator of the estate of the deceased."*

From the above cited case, anyone raising caveat is bound to prove that the person petitioning for appointment is not a reputable person and is not capable of administering the deceased's estate fairly.

In the case at hand, the claim by the witness that they just want another person for administrator, is unfounded unless. It was not

demonstrated to the satisfaction of the trial court, the first appellate court and this court that the respondent did not meet the specified qualification of an administrator. The allegation that the Respondent is likely to misappropriate the deceased's estate and, or that, he failed to distribute the deceased's estate to the beneficiaries was prematurely raised and does not fit in a situation where the administrator is yet to be appointed. In my view, in absence of strong evidence touching competence, reputation, faithfulness, diligence and impartially of the respondent in administering the estate of the deceased, the caveat could not stand. This court therefore finds that the appointment of the Respondent was validly made by the trial court and properly confirmed by the first appellate court.

On the last issue, the appellant claimed that the 3rd ground of appeal was not determined by the 1st appellate court leading to unfair hearing on the part of the Appellant. The said ground read: -

> *"3. The trial court erred in fact to appoint the respondent because he has started to disturb and interfere the appellant's properties and open false charges at police station to acquire the said properties"*

From its judgment, the first appellate court assessed in general the issue on whether the caveat was substantiated by the appellant before

the trial court. The first appellate court was satisfied that the claim by the appellant was more speculative and carried no proof. On the basis of the decision of the trial court, even the claim that the respondent was disturbing and interfering the appellant's properties by opening false charges at police station, was likewise not proved.

When submitting in support of appeal before this court, the appellant was unable to show to this court if such allegation was proved before the trial court and the first appellate court neglected evidence to that effect. In his testimony before the trial court, the appellant never raised issue of criminal charges filed by the respondent against him. I therefore take the same position that the claim by the appellant that the respondent was causing disturbance and filed criminal cases intending to take his properties was a mere allegation not backed by evidence. Thus, the claim that the first appellate court did not consider that the respondent filed false charges intending to take his properties, is unfounded. The third ground of appeal is therefore baseless.

In summary, I find that the first appellate court was correct to hold that the complaint by the Appellant was premature hence, was correct to approve the appointment of the Respondent as the administrator of the deceased estate. There was also consideration of all the grounds of

appeal by the first appellate court. I uphold the decision of two lower courts. The Appeal before this court is devoid of merit hence, dismissed with no order as to costs for the parties are siblings and this appeal originate from probate matter of their father's estate.

DATED at **ARUSHA** this 14th day of December, 2023.

D.C. KAMUZORA

JUDGE