

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

**(IN THE DISTRICT REGISTRY OF ARUSHA)**

**AT ARUSHA**

**PC. CIVIL APPEAL NO. 23 OF 2023**

**(Originating from Arusha District Court in Civil Appeal No. 34 of 2023, from Arusha Urban Primary Court in Probate and Administration Cause No. 195 of 2017**

**OSIDAY LAIZER.....APPELLANT**

**And**

**CHARLES ELIAPENDA MOLLEL.....1<sup>ST</sup> RESPONDNT**

**LUCAS LOTALAKWAKI MOLLEL.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**12/12/2023 & 28/12/2023**

**GWAE, J**

The saga between the parties has its own history. There was one person called Zuhura Juma Mollel died intestate on the 10<sup>th</sup> day of October 2017 at the age of 85 years. After death of the deceased, one Manace Japhet Ralya petitioned in 2017 in the Arusha Urban Primary Court through Probate and Administration Cause No. 295 of 2017. However, one Yohana Lothi Lodararaki unsuccessfully filed an objection.

Dissatisfied by the trial court's decision the said Yohana Lothi appealed to the District Court against the decision appointing the said Manace on the ground that, he claimed that, all the properties left by the deceased are his on the contention that, the deceased gave him as a deed of gift. The District allowed the appeal and directed that the administration of the estate should start afresh. Aggrieved by the decision of the District Court (**Kisinda**-RM), the said Manace Japhet Raiya appealed to this court through PC. Civil Appeal No. 12 of 2019.

The Court (**Gwae, J**) upheld the decision of the District court. The orders of this court and the courts below were adhered to. The beneficiaries of the deceased person held a meeting and the appellant, Osiday Laiser was appointed as an administrator by the family members and the respondents herein acted as sureties.

The respondents were subsequently not satisfied by the manner the appellant was administering the estate. Thus, they unsuccessfully instituted civil case before the trial court. Aggrieved, the respondent preferred an appeal to the District Court, which allowed the appeal. The District Court consequently revoked the letters of administration of the deceased's estate granted to the appellant on the reasons that, he did not submit the inventory

and final accounts to the trial court. It further ordered return of the letters so granted.

The District Court's decision (**Meena-SRM**) aggrieved the appellant, thus this appeal comprised of three grounds of appeal to wit;

1. That, the 1<sup>st</sup> appellate court erred in law and fact for failure to take into account the time spent by the appellant herein in prosecuting objection raised by the respondents, hence erroneously held that the appellant was out of time
2. That, the 1<sup>st</sup> appellate court erred in law and fact for failure to take for entertaining appeal by the respondents while the respondents herein failed to show interest on the deceased's estate, thus lack locus stand
3. That, the 1<sup>st</sup> appellate court erred in law and fact for holding that the appellant has failed to file inventory of the estate while there was a request for extension of time sought and granted to that effect.

This appeal was disposed of by way of written submissions for and against the appeal through the parties' advocates namely; Mr. Lobulu Osijali and Ms. Mariam Saad who appeared for the appellant and respondents respectively. In his written submission, the appellant consolidated the 1<sup>st</sup> and

3<sup>rd</sup> ground of appeal. Therefore, I shall herein determine ground No. 1 and 3 together and then ground No. 2.

Arguing the 1<sup>st</sup> and 2<sup>nd</sup> ground, the appellant's argued that the revocation by the 1<sup>st</sup> appellate court on the reason that the appellant failed to file inventory within time was not founded by evidence since the appellant was appointed on 23<sup>rd</sup> October 2020 and sought and obtained extension of time through his letter dated 15<sup>th</sup> February 2021.

As to the 2<sup>nd</sup> ground of appeal, the learned counsel for the appellant argued that, the respondents have no locus stand taking into account the deceased left no immediate relative. He added that the respondents' kinship with the deceased is so farfetched or non-existent. According to the appellant's counsel, the only person interested in the estate is none than the appellant. He invited the court to Paragraph 2 (a) of the 5<sup>th</sup> Schedule to Magistrate Courts Act, Cap 11 R. E, 2019

In her response, the learned counsel for the respondent argued that if there was an extension of time that was after lapse of the statutory period. She added that the said letter is not sealed. Hence, no proof that the same was accepted by the trial court. She cited the case of **Amina Mabina vs.**

**Farida**, PC. Probate Appeal No. 9 of 2020, where this court (**Rumanyika, J** as he then was now JA) held;

*“The appellant’s failure to administer the estate to the finality, without extension of time but beyond the prescribed first four (4) months. The 1<sup>st</sup> appellate court was entitled to revoke the appellant’s (11) years old letters of administration”*

She went on citing the decision in **Sekunda Mbwambo vs. Rose Mbwambo** where it was held that, an administrator of estate is not required to monopolize the estate but he has responsibility to distribute the estate to the heirs or beneficiaries.

Responding to the 2<sup>nd</sup> ground, the respondents’ counsel stated that it is true that the respondents have no locus stand. She equally added that the appellant has exhibited ill motive as told the trial court that the deceased had heirs while in his written submission he stated that the deceased had no heirs or relatives. She then invited the court to the Paragraph 2 (c) of the 5<sup>th</sup> Schedule to the Magistrates Courts Act (supra).

Court’s determination on the **1<sup>st</sup> and 3<sup>rd</sup> ground of appeal**, I have noted from the records that on the 14<sup>th</sup> day June 2021, the appellant wrote

a letter addressed to the Magistrate i/c of Arusha Urban Primary Court, the letter which is not sealed. More so, the said letter was after the complaint lodgment by the respondents through their letter dated 17<sup>th</sup> March 2021. Thus, the judicial decisions cited by the 1<sup>st</sup> appellate court and respondent's advocate are applicable and justifiable for the revocation of the letters of administration granted to the appellant. Therefore, grounds 1 and 3 of appeal are non-meritorious.

***As to the 2<sup>nd</sup> ground,*** as it is not disputed that, the respondents were not close relatives to the deceased. Hence, they had no locus stand as far as close relatives of the deceased neither they beneficiary save that they stood as sureties. It is clearly indicated in their letter of withdrawal dated 14<sup>th</sup> June 2021 written by the respondents, sureties ("Maombi ya kujitoa katika udhamini wa Misimamizi wa Mirathi.....). Followed by formal objection filed by the respondents of 28<sup>th</sup> June 2022. That being the position, the appellant's 2<sup>nd</sup> grounds of appeal is misplaced since they were not after being appointed and granted letters of administration.

Having gone the minutes of the family of the deceased's father Juma Lodarak Molllel, it is clear as argued by the appellant's counsel that, the deceased had no immediate relative and taking into account of multiplicity

of cases of this nature. It is therefore for interest of justice, an impartial person or reputable person be appointed. This is done by virtue of Paragraph 2 (c) of the 5<sup>th</sup> Schedule to the Magistrate Courts Act (supra). This court sitting at Temeke-IJC (**Opiyo, J**) when faced with similar situation in **Maryam Charles Mbagwa another vs. Anna Charles Mbagwa, Civil Appeal No. 4 of 2021** where it was stated

*“In appointing the administrator of the deceased’s estate is reputation and capability of such person to act faithfully, diligently and impartially in administering the estate.....  
.....Therefore, court can appoint any reputable person who is not even a member of the family or office of the court for that matter to be an administrator of the estate of the deceased.”*

Guided by the provisions of the law and the decisions of the courts including that of **Maryam** (supra) I hereby appoint the Ward Executive Officer (WEO) to be assisted by street/village chairperson of the area where the deceased was residing. Alternatively. The Administrator General, if WEO or street or village chairperson will exhibit unwillingness before the trial court. I further proceed to set aside the order of the 1<sup>st</sup> appellate court directing the clan members to convey a meeting for the purpose of appointing an administrator since the same has demonstrated failure in the

administration of the estate. I am holding for an obvious reason that, there were previous meetings that, were held by the same clan members without any progress.

In the event, I find no merit in this appeal and dismiss it. However, the 1<sup>st</sup> appellate court's order directing the deceased's relatives to convey a meeting and appoint an administrator is set aside. For the interest of justice namely; preservation of the deceased's estate, I hereby direct that, the Ward Executive Officer (WEO) to act as an administrator of the deceased's estate assisted by street/village chairperson of the area where the deceased was residing. Alternatively, the Administrator General to come into play if WEO or street or village chairperson will exhibits unwillingness before the trial court. Given the nature of the matter, I make no order as to costs of this appeal.

It is so ordered.

**DATED at ARUSHA** this 28<sup>th</sup> December 2023

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal line extending to the right.

**M. R. GWAE**

**JUDGE**