

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

PC. CIVIL APPEAL NO. 14 OF 2023

(Appeal from the decision of the District Court of Dodoma in Civil Appeal No. 26 of 2022 original Probate and Administration Cause No. 13 of 2021 Dodoma Urban Primary Court)

PEARSON JOHNAPPELLANT

VERSUS

ATUKUZWE KINGANOLA SANGA (Administratrix of the estate of late REHEMA SANGA.....RESPONDENT

JUDGMENT

Date of last order 7/9/2023

Date of Judgment: 7/11/2023

KHALFAN, J.

The above-named appellant petitioned for and subsequently was granted letters of administration of the estate of the late Rehema Sanga (the deceased) at Dodoma Urban Primary Court (hereinafter referred to as the trial court). It is on record that the deceased passed away on 25/11/2020.

It is on record that the appellant was given a total of 120 days within which to collect and distribute the deceased's estate and inventory be filed. However, it is on record that he did not discharge that duty as ordered. This prompted the respondent to lodge a complaint against the appellant as the



administrator of the deceased's estate that the same be revoked and he be appointed as the administrator of the said deceased's estate. seeking for his appointment as an administrator of the deceased's estate that it be revoked and in lieu thereof, the respondent be appointed as administratrix of the deceased's estate. The respondent's major complaint before the trial court was that the appellant had failed to file the inventory as required and also the appellant lied to the court in opening the bank accounts different from those accepted by the family members which made the court to issue payment in the said accounts hence denying the deceased's children the right to benefit from their mother's property.

After hearing the parties, the trial court revoked the appellant's appointment as an administrator of the deceased's estate and it appointed the respondent on that behalf. The appellant was dissatisfied with the decision of the trial court hence he lodged an appeal to the District Court of Dodoma (hereinafter referred to as the first appellate court). It is on record that after hearing the parties, the first appellate court dismissed the appellant's appeal for lack of merits. Being aggrieved with the decision of the first appellate court, the appellant has preferred the instant appeal with four grounds of appeal as follows:



- 1. That, the trial magistrate erred in law and fact by failing to consider the fact that the respondent failed to prove her allegations against the appellant in a required standard of proof.*
- 2. That, the trial magistrate erred in law and fact for failing to elaborate properly the evidence adduced by the appellant.*
- 3. That, the trial magistrate erred in law and fact by holding in favour of the respondent basing on her weak and contradictory evidence.*
- 4. That, the trial magistrate erred in law and fact by entertaining and delivering its judgment in favour of the respondent without knowing that it does not have jurisdiction.*

The appellant therefore, prayed that the appeal be allowed with costs. By parties' consensus, the appeal was disposed of by way of written submissions. The appellant was represented by Mr. Christopher Malinga learned advocate while Mr. Constantino Gwihava learned advocate, represented the respondent.

In his submission in support of the grounds of appeal, Mr. Malinga abandoned the second and third grounds of appeal and thus, argued on the first and fourth grounds of appeal.



In his submission in support of the fourth ground of appeal, Mr. Malinga argued that the trial court had no jurisdiction to entertain the probate matter because the deceased professed and lived a Christian life. He submitted that the jurisdiction of the primary court on probate matter is provided for under section 19(1) of the Magistrates' Courts Act [CAP 11 R.E 2019], (hereinafter referred to as the MCA) as well as the fifth schedule to the MCA.

Mr. Malinga argued that form No. 1 which was filed before the trial court together with the evidence adduced by the appellant before the trial court shows that the deceased was a Christian hence the trial court lacked jurisdiction to entertain the matter.

In reply, Mr. Gwivaha contended that it was the appellant who petitioned for letters of administration before the trial court and the decision was in his favour hence, he cannot complain that the trial court did not have jurisdiction. It was submitted that it is not reflected anywhere that the deceased lived a Christian life and also there is no evidence attached by the appellant in this appeal to substantiate his claim.

Mr. Gwivaha argued that the deceased lived a customary mode of life and that is why the appellant petitioned for letters of administration before the trial court. To buttress his arguments, Mr. Gwivaha cited the decision in the case of **Re Innocent Mbilinyi, deceased** (1969) HCD 283 in which the court established the mode of life test in case the deceased died interstate and also where there is dispute as to which law should be applied to administer the deceased's estate.

He argued that in view of the referred authority, it is the customary law which should have been applied to govern the deceased's estate since she lived a customary mode of life. He argued that the trial court had jurisdiction to entertain the matter in view of section 19 (1)(c) read together with the fifth schedule to the MCA.

In rejoinder, Mr. Malinga essentially reiterated his submission in chief maintaining that the trial court lacked jurisdiction to entertain the matter.

Having gone through the parties' submissions in respect of the fourth ground of appeal, the sole issue for my determination is whether the trial court had jurisdiction to entertain the matter.

In determining the fourth ground of appeal which raises the question of jurisdiction, although the same was never raised at the trial court as well as in the first appellate court, it is settled principle that an objection on jurisdiction of the court can be raised at any stage even on appeal. This position was underscored by the Court of Appeal in the case of **R. S. A. Limited v. Hanspaul Automechs Limited Govinderajan Senthil Kumal** Civil Appeal No. 179 of 2016 court of appeal of Tanzania at Dar es Salaam (unreported) in which it was stated that:

"It is settled law that, an objection on a point of law challenging the jurisdiction of the court can be raised at any stage, it cannot be gainsaid that it has to be determined first before proceeding to determine the substantive matter"
[Emphasis added].

The similar stance was also underscored in the case of **Shahida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 (unreported).

In his submission, Mr. Malinga correctly argued that powers of the primary court in matters of administration of the estate of a deceased person are governed by the provision of section 18 (1)(a) read together with Rule 1 (1) of the 5th Schedule to the MCA. In terms of section 18 (1)(a) of the MCA,



the primary court has jurisdiction in all the proceedings of a civil nature where the applicable law is customary law or Islamic law. In terms of Rule 1 of the fifth Schedule to the MCA provides that:

*"The jurisdiction of a primary court in the administration of deceased's estates, **where the law applicable to the administration or distribution or the succession to, the estate is customary law or Islamic law**, may be exercised in cases where the deceased at the time of his death, had a fixed place of abode within the local limits of the court's jurisdiction".*

[Emphasis added]

Mr. Malinga argued that the deceased was a Christian hence the trial court had no jurisdiction to entertain the matter. On the other hand, Mr. Gwivaha maintained that the deceased's mode of law was customary hence the trial court had jurisdiction to entertain the matter.

To solve this quagmire, as to whether the deceased was a Christian or followed customary mode of life, form No. 1 which instituted a probate matter before the trial court shows clearly that the deceased was a Christian. Apart from the said form which indicates that the deceased was a Christian, there is no evidence to the contrary that the deceased had intended her estate to be administered in any other law. Hence, the arguments by Mr.



Gwivaha that the deceased had a customary mode of life are not reflected anywhere in the record.

Hence, what is stated in form No. 1 which is essentially equivalent to plaint in a probate matter, should be taken into consideration. Be it that way, since the deceased was a Christian, the trial court lacked jurisdiction to entertain the matter. This position was succinctly stated in the case of **Ibrahimu Kusaga v. Emmanuel Mweta** [1986] TLR 26 in which it was stated that:

"A Primary Court may hear matters relating to grant of administration of estates where it has jurisdiction, i.e., where the law applicable is customary law or Islamic law". [Emphasis added].

The above stance was further subscribed in the decisions of **Emmanuel Baso v. Jackson John Mponenja** Pc Probate Appeal No. 7 of 2018, **Sikujua M. Mwasoni v. Sikudhani Hans Mwakyoma** Probate Appeal No. 10 of 2022 and **Rev. Florian Katunzi v. Goodluck Kulola & 7 others** Pc Probate Appeal No. 2 of 2014 (all unreported).

I have taken into account the arguments by Mr. Gwivaha that it is the appellant who lodged the matter before the trial court and the decision was



in his favour; hence, he cannot be heard to complain at this stage that the trial court lacked jurisdiction. With respect, jurisdiction of the court is a creature of statute hence it cannot be conferred by the party.

The court should, before embarking on adjudication journey, satisfy itself that it has jurisdiction over the matter. In the case of **Ramadhani Omary Mtiula v. The Republic**, Criminal Appeal No. 62 of 2019 (unreported) while referring to the decision in **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda and 20 Others**, Civil Appeal No. 8 of 1995 (unreported) the Court of Appeal observed thus:

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature ... **The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial...** It is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case."*[Emphasis added]

In the case of **Jumanne Leonard Nagana @ Azori Leonard Nagana & another v. The Republic**, Criminal Appeal No. 515 of 2019 Court of Appeal of Tanzania at Musoma (unreported) it was observed thus:



"The fate which befalls the proceedings and a decision made without jurisdiction is a nullity. Even where a court decides to exercise a jurisdiction which it does not possess, its decision amounts to nothing".

In view of the above brief analysis, the trial court lacked jurisdiction to entertain the matter. I therefore, find the merits on the fourth ground of appeal. The proceedings and decisions of the trial court are hereby quashed and set aside. Equally, the proceedings and decision of the first appellate court are hereby quashed and set aside as they arise from a nullity. Either party is at liberty to lodge a probate cause in a court of competent jurisdiction. Given the nature of the matter, I make no orders as to costs.

It is so ordered.

Dated at Dodoma this 7th day of November 2023.




F. R. KHALFAN

JUDGE