

IN THE HIGH COURT OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

PC CIVIL APPEAL NO. 67 OF 2022

(Arising from Probate Appeal No. 3 of Temeke District Court at One Stop Judicial Centre)

FATUMA SALUM ALLYAPPELANT

VERSUS

MOHAMED SALUM ALLY (the Administrator of the estate

of the late Salum Ally)RESPONDENT

JUDGMENT

Date of last order; 04/04/2023

Date of judgment: 27/06/2023

OMARI, J.

The parties are siblings, at the centre of their dispute is the estate of their late father, one Salum Ally. The Appellant herein is seeking to challenge the decision of the District Court of Temeke at the One Stop Judicial Centre in Probate Appeal No. 3 of 2022 on the following two grounds:

1. The District Court of Temeke at the One Stop Judicial Centre erred in law and fact by declaring that the Appellant's objection in the Temeke Primary Court regarding the administrator had no merit.




2. The Temeke District Court at the One Stop Judicial Centre erred in law and fact by failing to quash the decision of the Primary Court that Appointed the Administrator who was not the right person to be appointed as the administrator Salum Ally who died on 07/04/2014.

On the basis of the above grounds the Appellant is praying for this Appeal to be allowed, the decision of the District Court of Temeke at the One Stop Judicial Centre in Probate Appeal No. 3 of 2022 and that of the Temeke Primary Court in Probate Cause No. 537 of 2018 to be quashed, costs and any other relief that this court deems fit to grant.

The Appeal was disposed by way of written submissions; with the Appellant getting legal assistance from the Women's Legal Aid Centre while the Respondent appeared in person.

Seemingly combining the two grounds of appeal in her submission, the Appellant commenced by stating the District Court did not justly decide when it dismissed her Appeal. She submitted that as she had testified in the Primary Court and emphasized the same in the District Court the Respondent is not the right person to administer the estate. She reiterated what she said in the Primary Court, alleging the sale of the deceased's properties, unfair distribution of the estate and the misappropriation of the deceased's estate. Furthering her

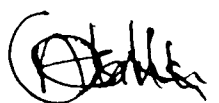


argument that the Primary Court appointed the wrong person she made reference to several decisions of this court and from **Saleii Doto v. Maganga Maige and Others**, PC Probate Appeal No. 6 of 2018 where it was stated:

'In appointing the admin 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'

Taking heed from the above she adamantly argued that her objection should have been heeded as it was meritorious because the Respondent does not possess the qualities to be an administrator and her reasoning was not founded on perception rather it is because the Respondent is not the right person.

The Respondent chose to submit on each ground as were submitted in the Memorandum of Appeal. Beginning with the first ground he submitted that the said ground is unmeritorious, the Appellant who is his sister is objecting his appointment to administer the estate of the late Salum Ally. He recounted that he was appointed after the first two administrators applied to withdraw for various reasons and the Primary Court granted their application. The Appellant was to be called to take up the administration in the stead of her brothers and she declined, this is clear in the Primary Court's Ruling in Probate Cause 527 of 2018. He went on to recount that she has unsuccessfully filed several appeals including Probate Appeal No. 18 of 2019, Probate Appeal No. 44 of 2020 both



in the District Court and Appeal No. 102 of 2020 at the High Court. The Respondent concluded his submission on the first ground by stating that the said ground is not meritorious.

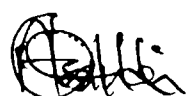
On the second ground, he submitted that the Temeke District Court did right by upholding the Primary Court's decision for there is no merit in the Appellants grounds. He went on to state that she, the Appellant, has failed to produce evidence of the allegations she is making against the administrator. Stating that the Appellant has not brought to court any evidence or even a list of the deceased's properties as evidence of her allegations. The Respondent concluded his submission on this ground by stating that none of the heirs is a minor, thus, they are able to run their affairs as the Appellant in one of the appeals was seeking for the administrator General to be appointed as the administrator. He therefore prayer for this Appeal to be dismissed with costs and any other relief the court deems fit to grant.

Having considered the rival submissions of both parties what is for this court to determine is whether this Appeal is meritorious. The District Court in its decision was of the view that an objection against the appointment of an administrator has to be on the basis of well-founded grounds from which the court can decide and refrain from appointing the person so objected. It went further to state that

in the current matter there is nothing on record to show the ardency of the Appellant's allegations. The learned magistrate then dismissed the Appeal and ordered the Respondent to file an inventory vide Form No. V within 45 days.

Before going into addressing the question as to whether the grounds are meritorious or otherwise it is perhaps pertinent to reflect on the decision of **Saleii Doto v. Maganga Maige and Others** (supra) that was cited by the Appellant. In the said decision the court called for a person who is appointed to administer an estate of a deceased person to have the qualities of being able to act faithfully, diligently and impartial in the said administration. The law did not leave it to the reputation and qualities of the would-be administrator, it imbedded checks and balances that would in turn guide the administrator of the estate who is given powers and autonomy to administer an estate, the guidelines also serve the purpose ensuring that the rightful owners get their inheritance from the administrator. To understand the cumulative effect of this one has to also understand the powers and functions of an administrator, which I describe below albeit in a nutshell.

The powers and functions of the Administrator are provided for under Rule 5 of the 5th Schedule to the Magistrate's Courts Act, Cap 21 RE 2019. Once an administrator has been appointed, he has the legal mandate to deal with the



estate that he is administering as he thinks it appropriate. The administrator though should be encouraged to seek advice and consult with the heirs, is an independent actor; so long as they are acting in good faith. Their functions include; identifying and collection of assets (the estate), identifying creditors and paying off the debts if any, identifying the heirs and distributing to them the estate then to file the inventory and accounts within four months of appointment as per Rule 10 (1) of the Rules; then close the administration.

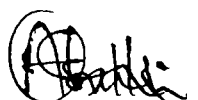
In the current Appeal one of the complaints by the Appellant is that the administrator so appointed is not the right person, he sold some assets as well as squandering others. Assuming that he did sell some assets, the administrator is legally empowered to do so if he thinks it is the right thing to do and what is more there is no legal requirement for the administrator to seek consent or advice from the heirs for the administrator to effect a sale; see **Mohammed Hassan v. Mayasa Mzee and Mwanahawa Mzee** [1994] TLR 225.

As for the allegations of squandering the estate, this also falls within the realm of the appointing court; that is where one is not given their entitlements or where the administrator is not carrying out their legal functions then the heirs can approach the appointing court for revocation of the administrator or sue

the administrator to claim their entitlement; see **Sekunda Mbwambo v. Rose Ramadhani** [2004] TLR 439.

This goes to show that albeit the administrator having a lot of powers and autonomy, administration is a very controlled process, it is also a time bound process in that and it has to come to an end. Once the heirs have all gotten their rightful shares, if any, and the transfers and transmission of the same is done and reported to court, the court then marks the matter closed. Once again putting a check to the immense powers of the administrator that he has to complete the task within a certain frame of time; see **Beatrice Brighton Kamanga and another v. Ziada William Kamanga**, Civil Revision No. 13 of 2020.

The Appellant has made allegations as already stated. I am alive to the principle that where a party seeks a court to give a judgement as regards a right dependent on the existence of facts which he or she asserts then the said party must prove those facts do in fact exist in terms of section 110(1) of the Evidence Act, Cap 6, RE 2022. In spite of the allegations made by the Appellant as regards to the Administrator not being the right person as he is selling and squandering the estate in addition to being unfair in his distribution, she has produced no evidence of the same. As held by the District Court there is nothing



on record to evidence the said allegations other than the mere averments by the Appellant; this makes both grounds of appeal unmeritorious.

Further, I must also state that, I am alive to the trite principle that the second appellate court should ordinarily be very cautious before varying two concurrent decisions of the lower courts. In **Helmina Nyoni v. Yeremia Magoti**, Civil Appeal No. 61 of 2020 while making reference to **Amratial Damodar Maltaser and Another T/A Zanzibar Silk Store v. A.H. Jariwala T/A Zanzibar Hotel** [1980] TLR 31 and **Neli Manase Foya v. Damian Milinga** [2005] TLR 167 as cited in **Martin Kikombe v. Emmanuel Kunyumba**, Civil Appeal No. 201 of 2017 (unreported) the Court of Appeal held that:

'It is trite law that the second appellate court(s) should be reluctant to interfere with the concurrent findings of two courts below except in cases where it is obvious that the findings are based on misdirection or misapprehension of evidence or violation of some principle of law or procedure or have occasioned a miscarriage of justice.'

In the present Appeal, the two lower court's decisions do not fit the exception to enable this court to interfere with their decisions for there is no misdirection or misapprehension of the evidence or any violation of some principle of law or procedure or even miscarriage of justice.

Consequently, the Appeal is dismissed. Therefore, the District Court's order of the administrator, the Respondent herein, to file an inventory vide Form No. V is upheld and he is ordered to do so within 45 days from the date hereof. The file be remitted to the Primary Court. Because of the nature of the matter and the parties relationship I make no order as to costs.

It is so ordered.




A.A. OMARI

JUDGE

27/06/2023

Judgment delivered and dated 27th day of June, 2023.


A.A. OMARI

JUDGE

27/06/2023