THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA
(IRINGA SUB-REGISTRY)
AT IRINGA

PROBATE AND ADMINSTRATION APPEAL NO. 01 OF 2023

MARIA CLEMENCE SANGA (as the Administratix of the Estate of the Late CLEMENCE BENARD SANGA) ..... APPELLANT

VERSUS

1. LUCY BENARD SANGA
2. HAPPY CLEMENCE SANGA } **..... RESPONDENTS**
3. ESTHER CLEMENCE SANGA

(Being an appeal from the Judgment and Decree of the District Court of Iringa at Iringa)

(Hon. E. A. Nsangalufu (SRM))

Dated the 16th day of November, 2022

in

Probate Appeal Case No. 03 of 2022

JUDGMENT

Date of last order: 04.03.2024
Date of Judgement: 19.03.2024

S.M. KALUNDE, J.:

This is a second appeal against the decision of the Bomani Primary Court (hereinafter **"the trial court"**) in Probate Cause No. 86 of 2012. The present appeal originates from the Judgment and Decree of the District Court of Iringa sitting at Iringa (hereinafter **"the first appellate court"**) in Probate Appeal Case No. 03 of 2022.

In brief, the factual background in this matter is as follows: in 2012, the appellant petitioned for letters of administration of the estate of the late Clemence Bernard Sanga. The Bomani Primary Court, which heard the application, granted the letters of administration to the appellant. It is worth noting that, the appellant was the wife to the late Clemence Bernard Sanga. While the respondents were his children.

It would appear that the appellant failed to discharge her obligations as the administratix. Subsequently, around March, 2022, after a wait of almost ten (10) years, the respondents Lucy Bernard Sanga, Happy Clemence Sanga, Esther Clemence Sanga, approached the trial court seeking for orders, *inter alia*, revoking the appellants letters of administration. The applicant were daughters of the deceased. In their application for revocation, the respondent attached minutes of a family meeting appointing them as alternative co-administrators of the estate of the late Clemence Bernard Sanga.

Having heard the parties, the trial court appointed the respondents as co-administrators of the estate of the late Clemence Bernard Sanga. Aggrieved by the decision of the trial court the appellant appealed to the first appellate court on the following grounds of appeal:

"1. *That, the trial court erred in law and fact to entertain an application for revocation of the appellant as Administratrix of the estate of the deceased while he administratrix of the estate at the primary court was already being closed.*

2. *That, the trial court erred in law and fact to rely on the unsupported evidence by the respondents that the appellant did not administer the estate properly.*

3. *That, the trial court erred in fact and law by nullifying the closure of the administration of state by the appellant while all procedure was followed.*

4. *That, the trial court erred in law and fact by not taking into contraction that the appellant was a sole wife of the deceased hence she is at a better position to know all the estate of the deceased."*

In resolving the appeal, the first appellate court, made a finding that the procedures for closure of probate proceedings had not been complied with, as such the trial court was justified in entertaining and resolving an application for revocation of letters of administration. The first appellate court observed that important procedures for closure of probate proceedings had not been complied with by the trial court and the appellant. The learned trial magistrate sitting in the first appeal took note that, despite failure to observe probate closure proceedings, the

appellant was, partly, still an administratix of the estate of the late Clemence Bernard Sanga. In view of that, she resolved that it was wrong to appoint the respondents as co-administrators. In resolving the matter, the learned magistrate appointed the District Administrative Secretary (hereinafter **"DAS"**) as co administrator of the estate of the late Clemence Bernard Sanga.

This is the decision the appellant is impugning in the appeal before this court. Her petition of appeal lodged to this court contains three (3) grounds of appeal as follows:

> *"1. That, the first appellate court erred in law and facts to appoint the District Administrative Secretary as co administrator of the estate of the late Clemence Bernard while Probate Case No. 86 of 2021 has already been closed since 12th November, 2020 and the administratrix has discharged her duties.*
>
> *2. That, the first appellate court erred in law and facts to appoint the District Administrative Secretary as co administrator of the estate of the late Clemence Bernard in absence of the prayer to that effect.*
>
> *3. That, the first appellate court erred in law and fact to hold that procedure was not followed while the same were properly followed."*

Before the court for hearing, the appellant was represented by Mr. Moses Ambindwile, learned advocate while the respondents were represented by Mr. Cosmas Kishamawe, learned advocate.

In support of the appeal, Mr. Ambindwile argued that the position of the law in probate matters is that once a matter is closed nothing can be done to appoint another administrator to administer the same estate that has already been dealt with by the previous administrator. In the view of Mr. Ambindwile, the first appellate court misdirected itself in appointing the DAS as a co-administrator in a matter that had already been closed. To support this contention, the learned counsel cited the case of **Ahmed Mohamed Al Laamar vs Fatuma Bakari & Another** (Civil Appeal 71 of 2012) [2012] TZCA 135 (6 July 2012) TANZLII.

Regarding the unilateral appointment of the DAS as a co-administrator, Mr. Ambindwile argued that the first appellate court had no jurisdiction to proceed to appoint a co-administrator without a prayer from either of the parties. He argued that the issue was raised and decided upon by the first appellate court in the judgment without affording the parties a right to be heard. The learned counsel submitted that deciding on an issue without hearing the parties was fatal. For this, he cited the case of **Benjamin Mungo vs Sisi Auction Mart &**

General Brokers & 3 Others (Land Appeal 1 of 2022) [2022] TZHC 10490 (8 July 2022) TANZLII.

In view of the above submissions, Mr. Ambindwile advised the court to allow the appeal and thereby quash the decision of the first appellate court.

Replying to the above submissions Mr. Kishamawe submitted that the procedure for closure of probate proceedings at the trial court were flawed. In elaborating his point, the learned counsel stated that while it was expected that the trial court will involve all the beneficiaries of the estate, there was no evidence that the trial court involved all the heirs and beneficiaries before closure of the probate proceedings. He argued that the records in the trial court demonstrated that all the beneficiaries were not summoned or involved in proceedings leading to the closure of the matter. Reverting to the records, Mr. Kishamawe argued that the records of the trial court on the 12th November, 2020 when the matter was allegedly closed do not even indicate the appellant was present. All is seen is her submissions in the proceedings. The learned counsel concluded that the matter was not close. Imploring that the trial court was justified in entertain the revocation proceedings.

Concerning the appointment of DAS as co-administrator, Mr. Kishamawe was of the view that the first appellate court was justified as it stepped into its duty in ensuring that interests of the parties are protected. The learned counsel cited the case of **Sekunda Mbwambo vs. Rose Ramadhani** [2004] TLR 439 for a position that the objective of appointing an administrator of the estate is the need to have a faithful person who will, with reasonable diligence, collect all the properties of the deceased and distribute the same to all those who were dependants of the deceased during his lifetime.

I have dispassionately considered the rival submissions of the parties in light of the records; I think it is now opportune to resolve the appeal. Particularly, I shall endeavor to answer the question issue whether probate granted on the 12th November, 2020, was properly closed and consequences emanating thereof. In doing that, I shall not take the orthodox approach attendant to our jurisdiction in resolving appeals, instead I will examine the historical background of the matter, albeit briefly, while in the process identifying and resolving key issues in controversy.

There is no dispute that on the 15th September, 2012, the late Clemence Bernard Sanga passed on leaving behind his lovely and loving

family and loved ones. Thereafter, on the 09th day of October, 2012, after obtaining the family blessings, the appellant applied to be appointed an administratix of his estate. Subsequently, on the 22nd day of January, 2013, she was issued with letters of administration. In the order granting her the letters, she was directed to submit an inventory within thirty days from her appointment.

Upon grant of the letters of administration, the records are silent as to what transpired after the 22nd day of January, 2013 until around the 29th August, 2016 when the trial court convened to resolve an issue whether the appellant could repair the grave where the late Clemence B. Sanga was resting. The issue was closed on the 06th September, 2016.

Having resolved the issue relating to maintenance of the grave, things went cold again for almost four years until around the 23rd day of September, 2020. This time, out of the blue, the appellant informed the trial court that she intended notify the beneficiaries of her intention to close the proceedings. The beneficiaries, including the respondents were not present. Prior to that on the 16th September, 2020, the appellant filed an inventory, Form No. V, listing all the assets and liabilities of the deceased. The matter was adjourned to the 13th October, 2020 and an order for service to the beneficiaries was issued.

Thereafter, on the 13th October, 2020, it was only the appellant who was present none of the beneficiaries or the respondents was present. On the day, the appellant informed the trial court that, despite having dully served the respondents, they have failed to enter appearance. Believing that the appellant had served the respondents, the court ordered the matter to come for closure of probate proceedings on the 12th November, 2020. As it is, the matter was indeed closed on the 12th November, 2020. The proceedings of the trial court for the day were as follows:

> ***"Tarehe: 12/11/2020***
>
> *Mbeye yangu: R. Telemkeni, Hakimu*
> *Mwombaji: Yupo*
> *Washauri:*
> 1. *Bosco ..... yupo*
> 2. *Mwajuma ..... yupo*
>
> ***Msimamizi:*** *Wanufaika wamejulishwa kufika Mahakamani kuja kusema kile pengine wanachodai kama hawajapata kwenye mgao lakini hawajafika licha ya kufanya jitihada nyingi wafike hapa mahakamani, maana yake watakuwa wamelizika na mgao waliopata wa mali za marehemu na mirathi hii ya muda mrefu toka 2012, hivyo ninaomba mirathi hii ifungwe ili mimi niendelee na shughuli zangu pia ana uthibitisho wakuwajulisha.*

R. TELEMKENI
HAKIMU
12/11/2020"

The above proceedings show that the learned trial court magistrate was informed that the beneficiaries were dully served and they have failed to enter appearance. The appellant informed the court that he had proof of service. However, we are not informed whether proof of service and refusal for each of the beneficiaries was tendered and admitted in court. I have examined the records and noted that there is a copy of summons allegedly served to the first respondent of the 26th October, 2020, and her response was that during the time she was sick and could not attend before the court. She requested that the matter be adjourned so that she can recover from her sickness. The trial court did not attend to her prayer. Neither did the trial court bother to satisfy itself on whether or not the remaining beneficiaries were summoned.

Believing that the beneficiaries have been dully served and refused to enter appearance, the trial court concluded that they were satisfied with their share of the distributed assets. Accordingly, the trial magistrate proceeded to close the probate proceedings. The conclusion of the trial court is reflected as follows:

"Kwa kuwa mirathi hii ni ya muda mrefu toka 2012 pia wanufaika wamepata kile walichopata na hakuna aliyelalamika kwa namba yoyote kama hajapata mgao kwa muda huo wote wa takribani miaka 8.

Maana yake msimamizi amefanya wajibu wake wa kisheria ingawa amefanya kwa muda mrefu hivyo basi Mahakama hii haina namna ni kufunga mirathi hii kama alivyoomba msimamizi hivyo mirathi imefungwa na msimamizi atapaswa kuachia nyaraka zote alizopewa na Mahakama kwa kurudisha Mahakamani."

In the above remarks, the trial court observed that the matter was long overdue having spent eight years. The magistrate was of the view that matter can no longer remain pending before the court and that there were no justifiable reasons as to why the appellants prayer, to close the proceedings, should not be awarded. The magistrate closed the matter and ordered the appellant to return all instruments issued to her as the administratix.

It would appear that, after the order dated the 12th November, 2020, as between the trial court and the appellant, the matter was considered closed. Unfortunately, the respondents were unaware of the closure of the matter. As a result, on the 21st day of February, 2022 they

lodged a complaint at the trial court seeking for revocation of the letters of administration awarded to the appellant. The letter cited failure to collect and administered the properties as one of the grounds for the application.

Following the request, the trial court, though, through a different trial magistrate, appointed the respondents as co-administrators of the estate of the late Clemence Bernard Sanga. Before making an order appointing the respondents as co-administrators, the learned trial magistrate declared the order dated the 12th day of November, 2020, closing the probate proceedings, as null and void.

In light of the above factual background and submission of the parties, two issues emerge: one; whether on the 12th day of November, 2020, the probate proceeding in this matter were validly closed; and two, whether the trial court, after the order closing the probate proceedings, had jurisdiction and powers to entertain the respondents application to be joined as co-administrators.

In dealing with the first issue, I shall begin by examining the key objective of appointment of an administrator of the estate. As correctly argued by Mr. Kishamawe, the key duties of any administrator are to, by using all his efforts and diligence, identify and collect all the properties

and liabilities of the deceased; and payoff the liabilities and then distribute the remainder of the properties to all those who were the dependants of the deceased during his lifetime. For primary courts, these obligations are guided by rule 10(1) of **the Primary Courts (Administration of Estates) Rules, G.N. No. 49 of 1971**, which reads as follows:

> *"10. Statement of assets and liabilities and accounts of the estate*
>
> *(1) Within four months of the grant of administration or within such further time as the liabilities court may allow,* ***the administrator shall submit to the court a true and complete statement, in Form V, all the assets and liabilities of the deceased persons' estate*** *and, at such intervals thereafter as the court may fix,* ***he shall submit to the court a periodical account of the estate in Form VI showing therein all the moneys received, payments made, and property or other assets sold or otherwise transferred by him.***
>
> *(2) The statement and accounts referred to in subrule (1) may, on application to the court, be inspected by any creditor, executor, heir or beneficiary of the estate."*

[Emphasis is mine]

From the above excerpt it is clear that identification of the assets and liabilities of the deceased is done through filing of inventory ("**Orodha ya Mali**"), **Form V**; and the accounts of the estate through Form VI ("**Hesabu za Mirathi**"). Also see Joseph **Shumbusho vs Mary Grace Tigerwa & Others** (Civil Appeal 183 of 2016) [2020] TZCA 1803 (6 October 2020) TANZLII at page 18.

Next, I will consider whether the provisions of rule 10(1) of G.N. No. 49 of 1971 were complied with in the proceedings of the trial court. The answer is in the negative and I will illustrate: **Firstly**, I have pointed out earlier that, in the instant case, the inventory Form V was purportedly filed on the 16th September, 2020, almost seven years after the appellant was appointed the administratix. It is evident on record that, under rule 10(1) above an inventory was supposed to be carried out within four (4) months. In fact, the records indicate that, in the instant case, the appellant was granted a month. She did not comply with the orders of the court and neither did she comply with the mandatory provisions of the law.

Secondly, there is a clear indication that the trial court, sitting as a probate court, abdicated its duties to oversee the discharge of the appellants duties as the administrator. For example, if one month stated

in the order or the four months provided under subrule (1) of rule 10 were not sufficient the trial court had a discretion in extending time periodically until a true and complete statement of accounts has been filed. This was not done in the instant case resulting into pendency of the matter for several years. As I have pointed out earlier, after the appointment of the administratix on the 22nd day of January, 2013, the trial court did not issue any order relating to the administration of the estates until around the 06th September, 2016.

Addressing the importance and need to file an inventory and statement of accounts the Court of Appeal (Sehel, J.A) in the case of Joseph **Shumbusho vs Mary Grace Tigerwa & Others** (supra), at page 19, stated:

> *"Such accounts must be filed within a period of not more than one year or within such further time as specifically appointed by the court whereas the inventory is required to be filed within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint or require."*

In the instant case, the statement of the assets and liabilities and statement of account of the assets were filed more than seven years

after the appointment of the administratix in contravention of the orders of the trial court dated the 22nd day of January, 2013, which ordered the same be filed within thirty (30) days; and rule 10(1) of G.N. No. 49 of 1971, which requires the same to be filed within four (4) months. There is also no evidence that the trial court extended the period within which to file the statement or accounts.

Thirdly, I have initially pointed out above that the records contain an inventory which was ***"purportedly"*** filed on the 16th September, 2020. I said "purportedly" because there is no evidence on record indicating how the inventory made it into the court's records. It is evident that prior to the closure of the matter on the 12th November, 2020, the matter came before the court twice, that is on the 23rd day of September, 2020, and the 13th day of October, 2020. On both occasions it was not recorded whether the inventory was filed in compliance with rule 10(1) of G.N. No. 49 of 1971. Surprisingly though, the records contain an inventory allegedly filed before the trial court on the 16th day of September, 2020. In absence of the evidence in the proceeding of the trial court that an inventory has been filed, its mere presence in the records is as good as nothing.

In light of these observations, I think it is opportune to bring it to the attention of lower courts that where a law or rule of procedure of practice requires a particular document or instrument to be filed before the court; and that document or instrument is actually filed, it is prudent that the presiding officer must enter an entry into the proceedings indicating that such a document or instrument has been filed and that it has been adopted as part of the proceedings for a respective date. Otherwise, mere presence of such a document or instrument would raise questions as to how it made it into the records. An obligation to enter an entry is even more important in cases like the present one where the acknowledgement of filing brings with it a duty for other parties to inspect the inventory.

Fourthly, in addition to filing the inventory (Form V), rule 10(1) of G.N. No. 49 of 1971 requires an administrator to submit to the court *"a periodical account of the estate in **Form VI** showing therein all the moneys received, payments made, and property or other assets sold or otherwise transferred by him".* In the case under scrutiny, the trial magistrate entered an order closing the matter on the 12th day of November, 2020. I have pointed out earlier that prior to closure of the matter the case came before the court on two occasions. That is on the

23rd day of September, 2020, and the 13th day of October, 2020. On all three occasions, it was not indicated or recorded, in the proceedings, whether the said statement of accounts had been filed. The administratix did not inform the court of the matter and neither did the trial court enter and entry in the proceedings.

However, I gather that such an entry into the records would not have been possible, in the instant case, because by the time of the purported closure no statement of accounts had been filed. I say so because upon perusal of the records, I have noted that the statement of accounts in the instant case was filed on the 29th day of November, 2021, long after the matter was purportedly closed. Suffices to say that, by the 12th day of November, 2020, when the matter was closed, there was no statement of accounts filed before the trial court. I shall save the consequence this for later in this judgment.

Fifthly, law and practice require that, once a statement of the assets and liabilities or account of the assets of a deceased person is filed by the administrator in execution of his duties all interested parties should be allowed to inspect the said register or inventory. Specifically, rule 10(2) allows for the inspection of the statement and accounts by the creditors, executors, heir or beneficiaries of the estate. To put to

effect the above requirements, a presiding officer is required to enter an order in the proceedings requiring all the creditors, executors, heir or beneficiaries of the estate to come and inspect the said statement of the assets and liabilities or account of the assets. To do this, an opportunity must be afforded to the parties through a notification. But for the beneficiaries, summons must be issued for each and every one of them so that they may appear to inspect and confirm that all the assets and liabilities of the deceased have been accounted.

The rationale for inspection of the statement and accounts by the creditors, executors, heir or beneficiaries of the estate was stressed by this court (Hon. Mlacha, J as he then was) in the case of **Theresia Vicent Rimoy and Another vs Mecktilda Vicent Rimoy and Three Others** (8 of 2019) [2022] TZHC 15146 (12 December 2022) TANZLII where the court, at page 31, observed that once interested parties appear in court, the court may read and explain the contents thereof to them if they don't have enough knowledge or legal representation. Thereafter, the court stated:

> *"The aim of this exercise is to cause them understand the contents of the inventory and accounts of estates and see if there is any grievances against them. The exercise will make*

them understand in details what was collected, debts paid and the mode of distribution. Any person who has grievances against the inventory and or the accounts of estate will be at liberty to lodge a caveat to halt the process for much as the executor or administrator is not expected to be interfered but he has a duty to act fairly in collection of estates, paying debts and distributing the balance to the heirs. If there is an objection, the court will get an opportunity to hear the parties and, if need be, to make a direction to the executor or administrator to correct the mischief, if any. The administrator is bound to comply with the direction of the court. Failure to comply with the direction is a ground of revocation."

In the instant case, there is no evidence that each of the beneficiaries were properly informed or served with summons for inspection of either the statement of the assets and liabilities or statement of the accounts of the assets of the deceased. Thus, even assuming that the said statement or accounts of the assets were properly filed, there is no evidence that the beneficiaries were afforded an opportunity to inspect them so that they may consent or file their objection.

Putting all the above lapses aside, I think I should now address my attention to the pertinent issue for my determination, that is whether, the probate proceedings in the instant case were properly closed on the 12th November, 2020.

The learned counsel for the appellant, Mr. Ambindwile, believed that they were closed. He argued, and correctly so in my opinion, that once a probate matter is closed nothing can be done to appoint another administrator to administer the same estate that has already been dealt with by the previous administrator. For this, he cited the case of **Ahmed Mohamed Al Laamar case** (supra). It is true that, in the above cited case, the Court (Rutakangwa, J.A), at page 16, stated:

> *"In our respectful opinion, both common sense and logic dictate that one can only annul, repeal, vacate, put to an end, etc, what was previously granted or passed and is still operative or existing. Nothing which has already come to an end can be put to an end or vacated ..."*

Mr. Kishamawe, on the other hand, had other ideas. His view was that there was no closure because the procedures leading up to, and necessary to the closure were not followed. His view was therefore that,

the trial court was justified in reopening the matter and appointing the respondents as co-administrators.

To start with I must say that I have carefully gone through the landmark case of **Ahmed Mohamed Al Laamar** (supra) cited by the learned counsel for the appellant. In doing so, I have noted that, in its observations the Court made a categorical finding that the administrator of the estate in that respective case had legally exhibited an inventory and account in the High Court on 25th day of February, 1987. The Court noted further that, the fact that the administrator had exhibited an inventory and account was proved beyond any reasonable doubt by exchequer receipts. Accordingly, the Court stated that, by the 25th day of February, 1987, the probate proceedings were, in law, effectively closed. Having said that, the Court examined the status of letters of administration granted thereafter and stated:

> *"Given the fact that the appellant had already discharged his duties of executing the will, whether honestly or otherwise, and had already exhibited the inventory and accounts in the High Court, there was no granted probate which could have been revoked or annulled in terms of section 49(1) of the Act. As the appellant was already functus officio, as correctly argued by Mr. Akaro,*

the revocation or annulment order, in our respectful opinion, was superfluous."

In light of the factual background in this case and the above guidance of the Court, the pertinent question that I have to answer now, is whether the probate granted on the 12th November, 2020 were properly closed.

There is no dispute that probate proceedings are closed when an administrator exhibits, before the trial court, the inventory and accounts. However, I have shown in this judgment that the inventory, in the present case, was purportedly exhibited on the 29th day of November, 2021. Surprisingly though, the proceedings before the trial court as quoted above, demonstrates that the probate proceedings were closed on the 12th day of November, 2020. The inventory was therefore filed almost a year and two weeks after the matter was declared closed. Applying the reasoning in **Ahmed Mohamed Al Laamar case** (supra), since the inventory was filed on the 29th day of November, 2021, logic would dictate that the closure of the probates would follow afterwards and not a year before. Thus, by the time the trial court closed the probate proceedings the administrator had not discharged her obligations in exhibiting the inventory and statement of accounts. It

therefore a finding of this court that the probate proceeding in the instant case were not properly closed despite the orders dated the 12th day of November, 2020.

This court has stated on several occasions that, prior to closure of probate proceedings there are certain mandatory procedures and processes to be complied. Unless and until such procedures are complied with a probate mater cannot be said to have been legally closed. See **Theresia Vicent Rimoy and Another vs Mecktilda Vicent Rimoy and Three Others** (supra). Suffice to note that when procedures and processes for closure of a probate proceedings are not properly followed, including where no proper inventory or statement of account is filed, it cannot be said that the matter was properly closed. If this court, being a cradle of justice, proceeds to allow probate matters to be closed in the circumstances such as those demonstrated in the instant case, there would be chaos. Because, then administrators and perhaps lower courts in exercise of their probate mandates would just close probate matters as and when they wish without compliance with established rules and procedures. Off course, the route is different where an administrator exhibits a proper inventory and statement of accounts and a beneficiary or interested party is not happy with the

contents stated therein. Under such circumstances the route might be through criminal or civil proceedings. Here there is nothing to challenge in criminal or civil proceedings.

Having resolved that that probate proceedings in Probate Cause No. 86 of 2012 were not properly closed, the next tasking question concerns the status of the proceedings of the trial court and the order dated the 23rd day of May, 2022. In the said order, the trial court (Hon. R. Ruta (RM)) declared the closure of the probate dated the 12th day of November, 2020, null and void for failure to comply with the legal requirements including, *inter alia*, failure to allow the beneficiaries to inspect the statement of accounts. Having heard the parties, the trial court made the following observations:

> *"Hoja ya kwanza, ni dhahili kuwa mirathi hii haijafungwa kwa mujibu wa sheria licha ya mjibu maombi (msimamizi) kueleza kuwa mirathi hii ilishafungwa na mali zilishagawiwa, ingawa katika kuchambua nyaraka za Mahakama zilionyesha kuwa msimamizi alijaza na kuleta Mahakamani fomu ya orodha ya mali pamoja na fomu ya kufunga mirathi, mirathi hii haijafungwa kwani hizi hazikuletwa pamoja na muhtasari wa warithi waliogawiwa mali hizo kuthibitisha kuwa yaliyoelezwa kwenye fomu hizo ni ya kweli au laa, lakini pia hakuna kumbukumbu katika nyaraka za*

mahakama kwa msimamizi pamoja na warithi waliofika mbele ya mahakama kwa ajili ya kufunga mirathi, hivyo mirathi hii haijafungwa kwa mujibu wa takwa la sheria."

Having observed that the probate proceedings were not properly closed, and while at the same time, dealing with an application for revocation of the letters of administration granted to the appellant and subsequent appointment of the respondents as administrators, the trial court resolved that it was imprudent to annul the letters of administration granted to the appellant. Acknowledging that something has already been done, though after a long time, but appreciating that a lot needed to be done, the trial court believed it was wise to appoint the respondents as co-administrators to harmonise and fast-track the administration process. The actual conclusion of the trial court was phrased in the following terms:

"Hoja ya pili Mahakama imejadili juu ya utenguzi wa msimamizi wa mirathi ambayo waleta maombi wameeleza hoja ya kuleta hoja ya kuleta maombi haya ni kuwa mizimamizi hawashirikishi warithi wengine juu ya mali za marehemu baba yao, lakini pia walieleza kuwa msimamizi amekua akibadilisha majina ya mali za marehemu bila kuwashirikisha, hoja zote hizi zilipingwa na mjibu maombi kwa kuzikanusha kuwa sio za ukweli,

hivyo mahakama imeangalia kama ni sahihi kutengua usimamizi kwa kutoa amri kwa msimamizi asiwe msimamizi katika hili Mahakama imeangalia na kuona kuwa msimamizi huyu wa sasa ni msimamizi ambaye alitambuliwa kihalali kabisa kwa taratibu za mahakama, na amekuwa msimamizi wa mirathi kwa muda mrefu tangu mwaka 2012, hii ni dhahiri kuwa kipindi chote hicho kuna kazi alifanya katika jukumu la usimamizi wa mirathi, hivyo mahakama imeona kwa kumwachia suala zima ukusanyaji na ugawaji mali itachelewa zaidi ingawa hii sio sababu ya kukataa au kutokubali maombi ya waleta maombi, mahakama kupitia mamlaka iliyopewa chini ya fungu la 5(b) nyongeza ya tano ya MCA, CAP 11 R.E 2019 inawateuwa HAPPY CLEMENCE SANGA na LUCY BERNARD MSULE kuwa wasimamizi wa mirathi wakiungana na msimamizi wa awali MARIA CLEMENCE SANGA ili washirikiane kwa pamoja kwa ajili ya kukusanya na kugawa mali kwa warithi kisha kufika Mahakamani kufunga mirathi hii ambayo imekaa muda mrefu."

In light of the above orders in place, the issue that emerges for determination is whether the trial court had powers to declare null and void the closure of the probate dated the 12th day of November, 2020, and proceed to appoint the respondents as co-administrators.

improperly. Thus, once probate proceedings are closed whether rightly or wrongly, the primary court has no jurisdiction to reopen or review its own decision closing the matter. That mandate vests with a superior court either on appeal or revision.

That said, having examined the records in the case under inquiry, I am satisfied that the trial court erred in nullifying its orders dated the 12th day of November, 2020, because after delivery of such orders the trial court became ***fanctus officio***. As soon as the orders dated the 12th day of November, 2020, was delivered the trial court ceased to have jurisdiction to entertain the matter. As I have pointed out above, depending on the grounds, such orders might have been challenged in a superior court on an appeal or revision. Thus, since the trial court had no jurisdiction, it goes without saying that the proceedings of the trial court from the 01st March, 2022 to the 23rd day of May, 2022; and the orders emanating therefrom, including the orders dated the 23rd day of May, 2022, appointing the respondents as co-administrators, and its consequential orders were a nullity. It is worth noting here that, having nullified the trial court orders closing the matter dated the 12th day of November, 2020, the letters of administration granted to the appellant on the 22nd day of January, 2013 are still valid and legally operational.

Having nullified the orders dated the 23rd day of May, 2022, the proceedings of the District Court of Iringa sitting in Probate Appeal Case No. 03 of 2022, having emanated from unlawful proceedings, are also not spared. They are also nullified and the resultant judgment and decree set aside.

I am aware that, under section 49 of **the Probate and Administration of Estates Act [Chapter 352 R.E. 2002]** this court has jurisdiction to *"suspend and remove an executor or administrator ... and provide for the succession of another person to the office of such executor or administrator who may ceases to hold office".* However, owing to the circumstances in this matter, I give a benefit of doubt to the appellant and hope, this time, she will live up to the expectations and discharge her obligations.

For the fore going reasons, I invoke the revisionary powers of this court bestowed through section 72 of **the Probate and Administration of Estates Act (supra)** read together with section 79 of **the Civil Procedure Code [CAP. 33 R.E. 2019]** to nullify the proceedings, and quash and set aside the orders of the trial court dated the 12th day of November, 2020; and 23rd day of May, 2022, in Probate Cause No. 86 of 2012. In the same vein, and as I have alluded to above,

I quash the proceedings and decree of the first appellate court dated the 23rd day of May, 2022, in Probate Appeal Case No. 03 of 2022.

As a way forward, I remit the records to the trial court with a direction to the trial court to finalize the probate proceedings by directing the administrator to exhibit a statement of the assets and liabilities and statement of accounts as required by law. Given the age of the matter, I also order that the matter be concluded by a different magistrate within three (3) months from obtaining the original records.

In the circumstances of this case, I order each party to bear their own costs.

It is so ordered

DATED at **IRINGA** this **19th** day of **MARCH, 2024.**

S.M. KALUNDE

JUDGE