

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
TEMEKE SUB-REGISTRY
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE
PC. CIVIL APPEAL NO. 14 OF 2023

(Arising from the decision of District Court of Ilala, at Kinyerezi in Probate Appeal
No. 15 of 2021)

VICTORIA MGAZA MALIGO.....APPELLANT

VERSUS

NASIM MGAZA BAKARI
(As administratrix of the Estate of the late Mgaza B. Maligo).....**RESPONDENT**

JUDGMENT

30th April & 24th May, 2024

BARTHY, J.:

The appellant herein aggrieved by the decision of District Court of Ilala, at Kinyerezi in Probate Appeal No. 15 of 2021 appeals to this court based on the following grounds;

- 1. The honourable court erred in law for its failure (sic) to consider that the filing of probate cause by the respondent at the trial court is tainted with serious illegalities and irregularities such that appointing the respondent to administer the estates of the late Mgaza Bakari Maligo without clan meeting.*

2. The honourable court erred in law to hold (sic) that there was nothing wrong.

Wherefore, the appellant prays for this court to quash and set aside the judgment and decree of the lower court, order the cost of the appeal to be paid by the respondent, and grant any other relief that this honorable court deems fit and proper.

In the course of hearing this case, the respondent failed to appear in court. Thus, on 22nd February 2024, this court ordered the service of summons by way of a substituted mode, instructing the appellant to publish the summons in a prominent newspaper with wide circulation.

On 30th April 2024, the appellant, represented by counsel Kiondo Mtumwa Rajab, informed the court that the summons by substituted mode had been issued and published in Mwananchi Newspaper on page 20. He thus prayed for the case to be heard ex parte. The prayer that was granted.

Submitting in favor of this appeal, Mr. Kiondo Mtumwa, the learned counsel for the appellant, argued that the gist of this appeal concerns non-compliance with the procedure in instituting the petition for letters of administration. He stated that there was no clan meeting

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convened to propose the respondent to petition for letters of administration.

In addition, he stated that the minutes of the clan meeting attached were forged, as they included the names of the appellant and other individuals who did not attend the meeting, and their signatures were forged.

Furthermore, Mr. Mtumwa stated that the issue of forgery involves an element of criminality, and its standard of proof is higher than in ordinary cases. To support his argument, he referred to the case of **Ratilal Gordhanbhai Patel v Lalji Makanji** (1957) EALR 314.

He added that proving forgery did not require expert proof, as the person who was said to have signed the minutes disputed having signed it. This signifies that the respondent did not obtain the consent of the family. Therefore, it was the appellant's prayer, based on the reason that the required procedures and practices for petitioning for letters of administration were not followed.

Before embarking on the deliberation of this appeal, it is important to appreciate the background of this matter. The respondent in this case petitioned for letters of administration to administer the estate of her late husband, Mgaza Bakari Maligo, before Buguruni Primary Court



(the trial court), and on 20th October 2020, she was granted the letters of administration.

Aggrieved by the said decision, Victoria Mgaza Maligo, who was the first appellant and in this matter is the appellant, together with Anifa Mgaza Maligo as the second appellant but not party to this matter, appealed to the District Court of Ilala at Kinyerezi (the first appellate court) on the grounds that the court erred in appointing the respondent without any proof of clan meeting that has included unlawful heirs, and based on forged documents for the appointment of the respondent. The first appellate court dismissed the appeal, which did not amuse the appellant herein, who again appealed to this court with the grounds of appeal stated above.

Having heard the arguments from the appellant's side, it should be noted that this being the second appeal, the court is not supposed to disturb the lower court's concurrent findings unless there is a misapplication of laws or misdirection of evidence (see the case of **DPP vs. Jafar Mfaume** [1981] TLR 149; **Amratlal Damodar Maltaser & Another, t/a Zanzibar Silk Stores vs A. H Jariwalla t/a Zanzibar Hotel** [1980] T.L.R 31).

It is without a doubt that the non-attendance of the respondent is not an automatic win for the appellant. The court must ascertain

whether the ground raised have merit and is sufficient to grant the prayer sought.

In the course of hearing, Mr. Kiondo abandoned the second ground of appeal and remained with the one ground only. With respect to the ground of appeal, Mr. Kiondo argued that the appointment of the respondent did not follow the appropriate procedures, as she was not appointed by a clan meeting. He also stated that the minutes of the clan meeting attached to the petition were forged.

Under rule 2(a) to (h) of the Fifth Schedule to the Magistrates' Courts Act, Cap 11 R.E. 2019, several factors may be considered by the primary court when appointing the administrator of a deceased's estate. Notably, the minutes of a clan meeting are not among the required considerations.

Typically, the court may appoint a person with an interest in the deceased's estate to administer it. In this matter, the respondent, being the wife of the deceased, has a legitimate interest in the estate. Therefore, she qualified to petition for letters of administration before the primary court in accordance with the law.

It is now settled law that a clan or family meeting is not a mandatory requirement when petitioning for letters of administration. However, such meetings are considered important and are highly

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encouraged to reduce disputes and ensure the smooth administration of probate and estate matters. This principle has been well emphasized in various case, such as **Hadija Said Matika vs Awesa Said Matika**, Pc Civil Appeal No. 2 of 2016, High Court of Tanzania at Mtwara, Mlacha J. (Unreported).

There are circumstances where the family do not wish to sit and nominate a person to petition for letters of administration or refuses to cooperate with widow and children so that they can petition before the court for grant. Therefore, the law allows any interested person to petition before the court and follow the laid procedures to institute the matter to the appointment of the administrator.

Thus, in the absence of minutes of clan/family meeting, in order to assure those who are interested in the estate of the deceased about the petition they will be informed through issuance of the general citation as provided under rule 5(2) of Primary Courts (Administration of Estates) Rules G. N. 49/1971. This was well elaborated in the case of **Elias Madata Lameck vs Joseph Makoye Lameck** (PC Probate and Administration Appeal 1 of 2019) High Court at Musoma [2020] TZHC 654 the Kahyoza J. held that;

A notice or citation under rule 5(2) of the Rules informs interested persons that a particular person has applied to

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administer the deceased's estate and affords them an opportunity to object to his appointment if they so wish. Such a notice if served properly to all interested parties serves the same purpose as a clan or family meeting. The purpose of the deceased's clan or family meeting is to appoint a person to be the administrator and the purpose of the notice under Rule 5(2) of the Rules is to ensure a person is not appointed clandestinely to administer the deceased's estate. Transparency is a key to the process of appointing the administrator to avoid scrupulous administrator to mismanage the deceased's estate.

Once the court is satisfied that all procedures and requirements have been complied with in petitioning for letters of administration, it may proceed to grant the letters in accordance with the law. This ensures that the administration of the deceased's estate is conducted properly and legally, safeguarding the interests of all parties involved.

Regarding the allegation of forgery in the minutes of the clan or family meeting submitted in support of the petition for grant of letters, it does not invalidate the procedures for instituting the petition, nor does it affect the proceedings and decision of the trial court. This is

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because the presence of such minutes is not a legal requirement. For these reasons, I find that the ground of appeal is devoid of merit.

In the event, the appeal has no merit and it bound to be dismissed without an order for costs.

It is so ordered.

Dated at Dar es Salaam this 24th day of May, 2024.




G. N. BARTHY

JUDGE

Delivered in the presence of Appellant in person, RMA. Ms. Bernadina and in the absence of the Respondent.

Sgd: G. N. Barthy,

Judge

24/5/2024