

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND CASE NO. 9 OF 2023

**RASHID SALUM MGWALE** (*suing as personal representative of the estate of the late Salim Akilindogo Mgwale* ..... **PLAINTIFF**

**VERSUS**

**NEEMA HASSAN MGWALE** ..... **1<sup>ST</sup> DEFENDANT**  
**LULU HASSAN MGWALE** ..... **2<sup>ND</sup> DEFENDANT**  
**MAGRETH KUNDAELI MUSHI** ..... **3<sup>RD</sup> DEFENDANT**

**RULING**

Date of last Order: 15/12/2023

Date of Judgment: 09 /02/2024

**BEFORE: G. P. MALATA, J**

The plaintiff filed the present suit against the defendants praying for:

- a. Declaration that the property with registration land No.094KLM/19736 located at Nyange Kilombero, Morogoro

comprising 15.76 acres. Unregistered land 10 acres located at Lyahira, Kilosa, Morogoro, Unregistered land with 9 acres located at Mzombezi/Lumango, Kilosa, Morogoro, the house on plot number 3 located at Ruaha C Kilosa, Morogoro, the House with 16 rooms located at Ruaha, Kilosa, Morogoro. The house is located at Ruaha B Kilosa, Morogoro, The House located at Ruaha B near Usoko Guest House with 6 rooms. Plot located at Ruaha B Kilosa Morogoro, Tanzania, and Farm Equipment that is Tractor with Trailer with Registration No. T 306 ADF Tractor Ford 4000 and Harrow are the properties of the plaintiff through his status as a legal representative of the late **Salum Akilindogo Mgwale**,

- b. That, the declaration that, the defendants are the trespasser to the dispute land,
- c. That, the defendants should not disturb the plaintiff and be ordered to wait for the plaintiff to distribution the estate of the late **Salum Akilindogo Mgwale**,
- d. The declaration that, the 1<sup>st</sup> defendant had no power to distribute the estate of the deceased without being the administrator of the estate **Salum Akilindogo Mgwale** who was the owner of the dispute properties,

- e. That, the defendants should not temper to transfer the ownership of the plaintiff's properties,
- f. An order that defendants pay general damages to the tune of **TZS. 500,000,000**, Five hundred million shilling for inconveniences cause to the plaintiff and other heirs,
- g. Interest at Court's at rate on paragraph (f) from the date of judgement to the date of payment in full,
- h. Costs be provided for,
- i. Any other relief or order as the court may deem just to grant.

Upon the plaint being served to the defendants, on 17<sup>th</sup> July, 2023 they filed a joint written statement of defence raising a preliminary objection to the effect that;

1. The honourable court has no jurisdiction to try the suit
2. The plaintiff has no locus standi to institute the suit.

Additionally, the court suo motto raised two jurisdictional issues;

1. Whether the Makanze Primary Court had jurisdiction to appoint the plaintiff, administrator of the estate of the late **Salum Akilindogo Mgwale**, who lived, owned properties and passed away at Ruaha Village within the Jurisdiction of Ruaha KII Primary Court,

2. Whether the appointment of Hassan Salum Mgwale as administrator of the late **Salum Akilindogo Mgwale**, by Ruaha KII Primary Court was proper and whether it has been revoked.

The plaintiff's enjoyed the legal service of Mr. Kasaizi A. Kasaizi learned counsel while the defendants were represented by Mr. Nehemiah George Nkoko learned counsel.

Submitting in support of the first preliminary objection, Mr. Nehemiah George Nkoko stated that, the Ruaha KII Primary appointed Hassan Salum Mgwale, the administrator of the estate of late **Salum Akilindogo Mgwale** on 25/05/2009, NLM1 refers. That the said deceased lived, owned properties and passed away at Ruaha Village within the Ruaha KII Primary Court. As per Form No. IV of the Ruaha KII Primary Court annexure NLM1, the late **Salum Akilindogo Mgwale** passed away on 22/02/2009. Annexure GA2 a letter from Mr. Conrady M. Luwanda, the Village Executive Officer for Ruaha Village dated 02/03/2020 attached to the plaint depict.

On 21/09/2020 Mr. Rashid Salum Mgwale, the plaintiff successful applied and appointed to be administrator of the estate of the late **Salum Akilindogo Mgwale** by Masanze Primary Court. The Masanze Primary Court issued Form No. IV appointing the plaintiff, the administrator of the

late **Salum Akilindogo Mgwale** who passed away on 22/02/2009.

Annexure **GA1**.

As such he submitted that, since the late **Salum Akilindogo Mgwale** lived, acquired the properties at Ruaha Village and passed away while at Ruaha Village within the Jurisdiction of Ruaha KII Primary Court, then the Masanze Primary Court had no jurisdiction to appoint the plaintiff administrator of the estate of late **Salum Akilindogo Mgwale** who lived outside the territorial and geographical jurisdiction of Masanze Primary Court.

Additionally, the letter of administration issued by the Ruaha KII Primary Court to Hassan Salum Mgwale on 25/05/2009 to administer the estate of **Salum Akilindogo Mgwale** had never been revoked, thus the subsequent letter of administration issued to the plaintiff is invalid and illegal.

He submitted that, the court with jurisdiction for that matter was Ruaha KII Primary court where Ruaha Village is situated and the deceased lived in that village for all of his life. He referred this court to the decision in the case of **Amie Sadick Sanga vs Lucian Samson Sanga**, PC Civil Appeal No.82 of 2021 where Hon. E.I. Laltaika, J was faced with similar situation and held that such court had no jurisdiction.

Arguing the second ground of preliminary objection, Mr. Nehemiah submitted that, since the appointment of the plaintiff as administrator of estate of the late **Salum Akilindogo Mgwale** was done by the court with no jurisdiction then, the plaintiff as well has no locus standi to institute the suit.

In the final submission he submitted that the issues raised by the court is well reflected in the submission of preliminary objection. Further he submitted that, there could be no letter of administration issued to two different administrators by different court in respect of administration of the estate of one deceased, **Salum Akilindogo Mgwale**. The latter must be invalid, he thus prayed the court to dismiss the suit for want of locus standi and jurisdiction.

In reply thereof, Mr. Kasaizi A. Kasaizi learned counsel for the plaintiff submitted that, the court has jurisdiction to entertain the matter and that the defendants have failed to demonstrate how this court lacks jurisdiction to entertain the matter.

He submitted that; the 1<sup>st</sup> defendant was appointed administratrix of the late **Hassan Salum Mgwale** in the exercise of the administration function she included the properties not belonged to the said deceased but the late **Salum Akilindogo Mgwale**. The probate administered by

the 1<sup>st</sup> defendant was closed on 26/05/2023 in Probate and Administration cause no.1 of 2021. As the probate was closed by the court and 1<sup>st</sup> defendant had distributed even the estate not belonged to **Hassan Salum Mgwale** but **Salum Akilindogo Mgwale**, the plaintiff as administrator of the estate of the late **Salum Akilindogo Mgwale** had no other available remedy but to institute a case against 1<sup>st</sup> defendant and others defendants at their personal capacity. He referred this court to numerous court decision providing guidance on the same. The Case of **Andrew C. Mfuko vs. George Mfuko** Civil appeal no.320 of 2021, **Saada Rashid Vs Abdallah Rashid**, PC Civil Appeal No.12/2020

As to the second preliminary objection, he submitted that, the plaintiff has locus standi as the letter of administration issued on 21/09/2020 by Masanze Primary court has not been revoked to date.

As to whether the Masanze Primary Court had jurisdiction to appoint the plaintiff not within its jurisdiction but Ruaha KII Primary Court, he submitted that, in terms of section 3 (1) of the Magistrate's Courts Act, Cap 11 R.E.2019. He also referred this court to the case of **Amie Sadick Sanga Vs Lucian Samson Sanga**, PC Civil Appeal No.82 of 2021.

He thus prayed for the court to dismiss the preliminary objection for want of merits with costs.

By way of rejoinder, Mr Nehemiah submitted nothing different from what he submitted in the submission in chief.

Having heard the submission for and against, this court noted that; *one*, it is undisputed that, the late **Salum Akilindogo Mgwale**, lived, owned properties and passed away on 22/02/2009 at Ruaha Village, *two*, that Ruaha Village is within territorial and geographical jurisdiction of Ruaha KII Primary Court, *three*, the plaint confirms that the late **Salum Akilindogo Mgwale**, lived, owned properties and passed away on 22/02/2009 at Ruaha Village, *four*, that Hassan Salum Mgwale, successful applied and appointed administrator of the estate of late **Salum Akilindogo Mgwale** on 25/05/2009 by Ruaha KII Primary Court, *five*, that On 21/09/2020 Rashid Salum Mgwale, the plaintiff herein successful applied and appointed administrator of the estate of the late **Salum Akilindogo Mgwale** by Masanze Primary Court being eleven (11) months from the date of demise, *six*, that from 21/09/2020 there were two appointed administrators by different Primary Courts in respect of the same estate of the late **Salum Akilindogo Mgwale** and all administrators being blood relative of the said deceased, *seven*, the appointment of Hassan Salum Mgwale as administrator by Ruaha KII Primary Court effected on 25/05/2009 had never been revoked to date



for any reason, **eight**, that to date there are two existing administrators of the estate of the late **Salum Akilindogo Mgwale** appointed by two different Primary Courts, **nine**, that Hassan Salum Mgwale passed away before finalising distribution of the estate of the late **Salum Akilindogo Mgwale, ten**, Neema Hassan Mgwale the 1<sup>st</sup> defendant was appointed administratrix of the estate of the late Hassan Salum Mgwale in 2021, **eleven**, that there is allegation that in the cause of administration, the 1<sup>st</sup> defendant included the estate of the **Salum Akilindogo Mgwale** in the estate of the late Hassan Salum Mgwale and distrusted it to the heirs, **twelve**, that as per title of the plaint, the plaintiff is suing as a personal legal representative of the estate of late **Salum Akilindogo Mgwale**.

As earlier stated, this court has gathered that the key issue is centred on the two pertinent legal issues.

1. whether the Masanze Primary Court had jurisdiction to appoint the plaintiff, administrator of the estate of the late **Salum Akilindogo Mgwale**, who lived, owned properties and passed away at Ruaha Village within the jurisdiction of Ruaha KII Primary Court,
2. whether the appointment of Hassan Salum Mgwale as administrator of the late **Salum Akilindogo Mgwale** by Ruaha

KII Primary Court was revoked before the later appointment of the plaintiff by Masanze Primary Court in respect of the same estate of the late **Salum Akilindogo Mgwale**.

The points raised herein above arising from the preliminary objection and submission by the parties touches jurisdiction and locus standi of the appointing court and plaintiff herein respectively. As such, the court find it plausible to deal with it at the earliest possible opportunity.

To start with issue no.1 herein above, it is clear that both Masanze and Ruaha KII Primary Courts are Primary courts established within the Kilosa District. The establishment and jurisdiction of the primary is governed by among others section 3 of the Magistrate's Courts Act. Section 3 of the said Act provides that;

*(1) There are hereby established in every district primary courts which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the respective districts in which they are established.*

*(2) The designation of a primary court shall be the primary court of the district in which it is established*

This court has gone through the Act and noted that from its enactment section 3 of the Magistrate's Courts Act has never been amended to date.

Meaning that, the context contained in section 3 of the Act from its inception has remained intact for more than forty years notwithstanding the outstanding changes and establishment of many primary courts in every district almost in every ward. It provides status as if we still have one established primary court within the respective district which is different story.

Considering the mushrooming and devolution by establishing judicial service stations closer to the people, that is to say in every ward, thus attaining timely and quality justice for all, it cannot be correct to state that, all the established primary courts within the district has territorial and geographical jurisdiction in the whole district.

Within Kilosa District which is the district at issue, there are fourteen (14) established Primary Courts, namely, Mikumi, Magole, Msowero, Kidodi, Ruaha, Malolo, Mamboya, Kisanga, Kilosa, Kimamba, Rudewa, Kidete, Ulaya and Masanze. In my view therefore, the intention of the Judiciary of Tanzania establishing such courts and placing all infrastructures and employees therein was; **one**, to place and enable the people at the respective places to have judicial services closer to them, **two**, to have primary court with territorial and geographical jurisdiction within the areas of that jurisdiction not the whole of the district for obvious reason that other places within same district has other primary court station, **three**,

limit people from one area with primary court to institute cases in other jurisdiction, **four**, to hinder for confusion among the Resident Magistrate sitting at Primary courts to have territorial and geographical jurisdiction, in other words fighting for jurisdiction, **five**, to eliminate idleness of some of the primary court stations as the litigants will be opting to file cases uncontrolled which act may lead to have nots to suffer from haves who will be filing cases where have nots will not be able to attend and defend their cases, **six**, to ensure that all primary court stations are in use and the public funds are properly spend for the benefits of public.

This court has looked into what the Civil Procedure Code, Cap.33 R.E.2019 and gathered that, Section 14 of the CPC provide that,

*"Subject to the pecuniary or other limitations prescribed by any law, suits-*

*(a) for the recovery of immovable property with or without rent or profits;*

*(b) for the partition of immovable property;*

*(c) for foreclosure, sale or redemption in the case of a mortgage of or a charge upon immovable property;*

*(d) for the determination of any other right to, or interest in, immovable property;*

*(e) for compensation for a wrong to immovable property; or*

*(f) for the recovery of movable property actually under distraint or attachment,*

***shall be instituted in the court within the local limits of whose jurisdiction the property is situate:***

*Provided that, a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, **be instituted either in the court within the local limits of whose jurisdiction the property is situate or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business or personally works for gain...***"

Also, section 15 of the CPC provides that,

*"Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situated within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate if, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such court."*

This is a replica to the fact that, we have the High Court of Tanzania but with sub registries in the all the country. Currently we have more than

eighteen sub registries of the High Court. The rationale behind is similar that if there is sub registry of the High court within it, then all dispute arising therefrom must be filed in said registry. It is improper for a person having dispute at Morogoro where there is sub registry of the High Court to institute case in another sub registry.

Undeniably, this court confirms and rule that, following the establishment of many courts within districts, alike Kilosa District with a total of 14 primary courts, each primary court has jurisdiction within its territorial and geographical jurisdiction of the Ward or Division for which it was established and not for the entire district. In this case the Masanze Primary court has jurisdiction within the Ward or a division respectively.

Finally, going by guidance under the **FIFTH SCHEDULE** of the Magistrate's Court Act, which deals with jurisdiction of Primary courts on probate and Administration matters, paragraph 1 to the schedule provides that;

*(1) 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:***

*Provided that, nothing in this paragraph shall derogate from the jurisdiction of a primary court in any proceedings transferred to such court under Part V of this Act.*

*(2) A primary court shall not appoint an administrator of a deceased's estate-*

*(a) in respect of an estate to which the provisions of the Probate and Administration of Estates Act are applicable or of which a grant of administration has been made under that Act, or of which the administration is undertaken by the Administrator-General under the Administrator-General (Powers and Functions) Act; or*

In the event therefore, I am of the settled mind that, guided with the above legal position particularly in Probate and Administration of deceased's estate, it clear that; **one**, the court with jurisdiction is the primary court within which the deceased had, fixed domicile, lived therein, owned properties. The deceased might have passed away while at hospital in another region but what matter is what is stated herein above.

In the present case, it is confirmed by the plaint and its attachment including items 5 and 6 of plaintiff's attachment referred to as **annexture GA2** that, the late **Salum Akilindogo Mgwale**, lived, owned properties and passed away at Ruaha Village within Ruaha KII Primary court. Therefore, the court with territorial and geographical jurisdiction for probate and administration of deceased's estate including appointment of administrators is Ruaha KII Primary Court.

Primary Court Magistrate should bear in mind that failure to do so might lead to unnecessary conflict of territorial and geographical jurisdiction. Further, the customers should as well be educated on the matter and adhere accordingly. Should a litigant file case outside such parameters then such case should be transferred to the appropriate primary court with territorial and geographical jurisdiction.

In view thereof, this court concludes on the first point that, the Masanze Primary court had no jurisdiction to appoint **Rashid Salum Mgwale**, the plaintiff herein to be administrator of the deceased estate of one **Salum Akilindogo Mgwale**.

As to the second issue, this court noted that; **first**, that the late Salum Akilindogo Mgwale passed away on 22/02/2009, **second**, Hassan Salum Mgwale was appointed administrator of the late on late Salum Akilindogo Mgwale by Ruaha KII Primary court on 25/05/2009, **third**, on 21/09/2020



the plaintiff herein was appointed administrator of estate of the late Salum Akilindogo Mgwale by Masanze Primary Court, **fourth**, the appointment of Hassan Salum Mgwale of the late Salum Akilindogo Mgwale by Ruaha KII Primary court had never been revoked for any reason to date.

The parties have through advocates submitted for and against. Having considered submission, this court was guided by paragraph **1(2) (a) to the fifth Schedule** of the Magistrate's Court Act. The paragraph provides that;

*(2) A primary court shall not appoint an administrator of a deceased's estate-*

*(a) in respect of an estate to which the provisions of the Probate and Administration of Estates Act are applicable or of which a grant of administration has been made under that Act, or of which the administration is undertaken by the Administrator-General under the Administrator-General (Powers and Functions) Act; or*

Further, paragraph 2 of the same **fifth schedule** provides that

*"A primary court upon which jurisdiction in the administration of deceased's estates has been conferred may-*

*(a) either of its own motion or an application by any person interested in the administration of the estate appoint one or more*

*persons interested in the estate of the deceased to the administrator or administrators, thereof, and, in selecting any such administrator, shall, unless for any reason it considers in expedient so to do, have regard to any wishes which may have been expressed by the deceased;*

*(b) either of its own motion or on application by any person interested in the administration of the estate, where it considers that it is desirable so to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under sub-paragraph (a);*

***(c) revoke any appointment of an administrator for a good and sufficient cause and require the surrender of any document evidencing his appointment"***

In the event, I am of the settled mind that the subsequent appointment of the plaintiff as administrator of estate of the late Salum Akilindogo Mgwale by Masanze Primary Court made on 21/09/2020 is invalid and *void ab initio*.

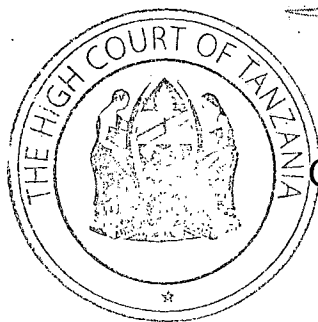
Furthermore, it was improper for two different persons to apply and be appointed and given letter of administration for estate of the late Salum Akilindogo Mgwale.

Having said all what I wanted to say, I hereby side with the position presented by Mr. Nehemiah Nkoko learned counsel for the defendants while in disagreeing with Mr. Kasaizi A. Kasaizi learned counsel for the plaintiff for the afore stated reasons for the decision.

In the upshot and considering the nature of the issues involved, I hereby dismiss the suit with costs.

**IT IS SO ORDERED.**

**Dated at MOROGORO** this 09<sup>th</sup> February 2024.



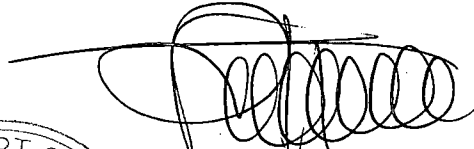
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**G. P. MALATA**

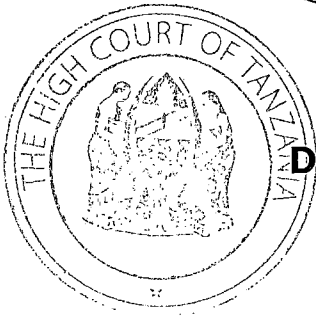
**JUDGE**

09/02/2024

**RULING** delivered at **MOROGORO** in chambers this 09<sup>th</sup> February 2024 in the presence of the plaintiff, Salum Rashid Mgwale, first defendant who appeared through virtual Conference from IJC Temeke and in absence of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.



**S. P. KIHAWA**



**DEPUTY REGISTRAR**

**09/02/2024**