IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SHINYANGA SUB REGISTRY

AT SHINYANGA

CIVIL APPEAL NO. 20240226100003743

(*Arising from Probate Appeal No.10 of 2022 Bariadi District Court, the same arising from Probate Cause No.53 of 2022 before Somanda Primary Court)*

LUCIA D/O LUDELENGEJA ....APPELLANT

VERSUS

JEREMIA S/O NSULWA (Administrator of the Estates

Of the Late Mayala Ngweso Bulugu) ....RESPONDENT

JUDGMENT

15th & 20th May 2024

F.H. MAHIMBALI, J.

The respondent herein successfully petitioned for letters of administration of the estates of the late Mayala Ngweso Bulugu before the trial Court. The appellant was unhappy with appointment of the respondent, she therefore unsuccessfully applied for revocation of the appointment before the trial Court. Being the case, she filed an appeal before the first appellate Court which after a full consideration partly

allowed the appeal but did not revoke the respondent's administration status. The appellant was aggrieved by the decision of the first appellate court, she then filed Pc. Civil Appeal No.55 of 2023 before this Court (Kawishe J), whereby this Court ruled that the first Appellate Court when determining appeal before it, did not consider the grounds of appeal tabled by the parties and chosen its own way hence the matter was remitted back for recomposing of a new judgement.

Glaring, after the recomposition of the judgement, the first appellate court dismissed the appeal and upheld the decision of the trial Court, such decision caused sadness to the appellant; she has once again approached this court armed with a total of four grounds of appeal coached in Kiswahili language;

1. Kwamba mahakama iliyosikiliza rufaa kwa mara ya kwanza ilikosea kisheria na kimantiki kwa kutupilia mbali sababu zote 5 za rufaa zilizokua mbele yangu ili hali zilikua na mantiki
2. Kwamba, Mahakama iliyosikiliza rufaa kwa mara ya kwanza ilikosea kisheria na kimantiki kutupilia mbali swala la mamlaka ya kisheria (Court JurisdcitIon) lililoibuliwa kuhusu mahali pa kufungulia shauri pale ambapo marehemu ana makazi na mali katika wilaya mbili tofauti.

3. Kwamba mahakama iliyosikiliza rufaa kwa mara ya kwanza ilikosea kisheria na kimantiki kwa kukubali kwamba msimamizi wa mirathi anauwezo wa kukaimisha mamlaka yake (sub delegate) kwa mtu mwingine na vilevile kutokuongelea kabisa uhalali wa power of attorney kutokusajiliwa.
4. Kwamba mahakama iliyosikiliza rufaa kwa mara ya kwanza ilikosea kisheria na kimantiki kukataa swala la Ushahidi wa ziada (additional evidence) taarifa za mwamala wa kibenki (bank statement ya Kabeta Mayala kujiridhisha kama pesa milioni 77 katika kipindi hicho zilikuwepo kwenye akaunti ambayo hata hivyo haikutajwa ili hali hoja hiyo ndiyo ilikua sababu kuu katika kutupilia mbali ya kutengua msimamizi wa mirathi katika mahakama ya mwanzo Somanda.

During the hearing of this appeal, the appellant had representation of Mr. Obwana the learned advocate while the respondent enjoyed legal service of Mr. Audax Constantine.

Arguing for the appeal Mr. Obwana, in respect to the first ground of appeal, submitted that the first appellate court erred in dismissing all the raised five grounds of appeal while they were relevant. The said grounds of appeal based on revocation of the administrator of the estate

at the trial court. At page 31 of the typed judgement at the first appellate court, the appellate magistrate while dismissing the 4th and 5th grounds of appeal, reasoned that there was no strong evidence to warrant the revocation of the letters of administration to the respondent. In his considered view the third ground of appeal had established how the respondent misused powers of the administrator in respect of the deceased's money in Bank accounts: 9,000,000/= was transferred to Kabeta Mayala and 77,000,000/= to Sendama Mayala. These people being not administrators of the deceased's estate, the first appellate court justified the said transaction in her judgment that was lawful because there was a consensus in the meeting. Mr. Obwana further fortified that it is true that the said minutes of six persons was admitted in court as exhibit. As per form no.1, the beneficiaries of the said estate are listed. It is also provided that the deceased had a total of three wives. In the said meeting, none of the wives attended the said meeting. There is no evidence in record whether the 21 others had consented these six to act on their behalf. In those circumstances, the meeting was unlawful as disregarded the presence of other heirs.

Mr. Obwana also submitted that on ground number four, the respondent had commenced distributing the said estate of the deceased,

without involving 3 other heirs. When commencing his duties, the administrator stated that the deceased had been owing from two persons: Mayenga Mayala - 42,000,000/=, Kabeta Mayala - 23,000,000. Thus, before he had collected the said money from the indebted, the respondent started abusing them by distributing them as follows: That out of 65,000,000/= to be collected, it was directed in the said meeting that the said money in the possession of Mr. Mayenga Mayayala be used to construct a house for his mother worth 42, 000, 000 , and that the remaining 23,000,000/= be used by Kibeta Mayala to construct a house for his mother as well. In his view that was not proper as per law, as distribution is only processed after all the properties are identified and listed into form no.5. That was not done, and thus it was improper as per law. He however stated that, the first appellate magistrate stated that the respondent could not abide by the process because he faced challenges. None of the challenges were stated at the trial court.

The letters appointing the administrator stated as to when he should file form no. 5 before the court of Law. The time frame expired in January 2024. The application for revocation was then filed in April. Thus, the trial magistrate erred in holding that the said person had been faced with some challenges. The first appellate court, further at page 25

made a very contradicting statements (see page 25 of the first appellate court). See also the case of **Mgeni Seif V. Mohamed Yahaya Hlfan**, Civil Application NO. 1 of 2009 CAT at DSM at page 14 (3rd paragraph). Therefore, Mr. Obwana was of the view that, in the absence of clear evidence that the respondent faced any challenge in his administration duties, the conclusion by the first appellate court is not maintainable. He banked his argument by refereeing this Court to the case of **Randle Mrema and Another Vs. Janeth William Kimaro & 2 others**, Misc. Civil Application No. 170 of 2022, HC at Arusha, at page 35. That amongst the factors to revoke the administrator is failure to discharge his duties timely and also failure to distribute the assets fairly. He also bolstered that the said meeting comprising of six members only was very discriminatory. In the case of **Sekunda Mbwambo V. Rose Ramadhan**i (2004) TLR 439 it emphasized the principle of non discriminatory in handling proceeds of administration. In the case **Beatrice Brighton Kamanga and Others V. Ziada Willam Kamanga**, Civil Revision No. 13 of 2020, HC at DSM, submission of form no. 5 at the trial court within four months, the statement of account of the deceased to be filed in court. Mr. Obwana blamed that the court without being moved, it suo motto extended four months. The conclusion at page 32 (2nd paragraph) of the trial court is not reflected

that there was any obstacle that prevented him from discharging his duties. The CAT in the case of **Martin Fredrick Rajabu V. Ilemela Municipal Council and Others**, Civil Appeal No. 197 of 2019, CAT at Mwanza at page 15, emphasized that parties are bound by their pleadings.

With the second ground of appeal, Mr. Obwana averred that was it right for the first appellate court to interpret that the judgement in the case of **Beatrice Brighton Kamanga and Others V. Ziada Willam Kamanga (supra)** was a mere obiter.

In respect to the third ground of appeal, Mr. Obwana submitted that the respondent being administrator of the estate had erred to subdelegate the duties conferred to him by Court as he could not do it by law. He bolstered his argument with reference to the case of **Winfrida Bigirwa V. Verdian Lutabeganwa,** Misc Civil Application No. 48 of 2021 at page 3. In page 14 of the typed judgment, the first appellate court acknowledges that there was delegation of some duties by the respondent as administrator. In his view Mr. Obwana contended that it was improper as per law. Secondly, the power of attorney dully admitted was not registered, therefore its validity and legality was questionable.

On the fourth ground of appeal, Mr. Obwana contended that there was an error by the first appellate court to refuse granting them with a chance of additional evidence to scrutinize the bank accounts of Kabeta Mayala and Mayenga Mayala.

He finally pressed for the appeal be allowed, the decision of the first appellate court be quashed and set aside. And thus, prayed that the appointment of Jeremia Msuya as administrator of the estate of the late Mayala Ngweso Bulugu, the bank accounts of **Kabeta Mayala** and **Mayenga Mayala** be investigated to establish the whereabout of the said money worth 76,000,000/=. He also prayed for appointment of another administrator who will discharge the said administration duties honestly. Meanwhile, the amount of money received by Kabeta mayala and Mayenga Mayala be ordered to be handed over to the administrator to be appointed.

On the side of the respondent Mr. Audax replied that the first ground of appeal, is a misconception. As per drafting, it appears the all five grounds of appeal were before the advocate himself and not first appellate court. As emphasized by himself that parties are bound their pleadings, equally at this stage now. As it stands, the said ground of appeal is a misconception. Furthermore, this ground of appeal

contravenes rule 4(1) of the Appeals originating from Primary Courts, (**GN 312 of 1964**) that a ground of appeal should be precise and concise and that it should be against the decision or order. Vague as it is, it denies them with an opportunity to marshal their defence well. As it stands, this ground of appeal is more fact than a ground of appeal. So, all that has been argued or submitted by the learned counsel is merely from the bar and not reflected from the court record. Thus, discouraging such a drafting of grounds of appeal. Mr. Audax prayed for this court to dismiss this ground of appeal for being vague.

This being the second appeal, it should mainly deal with what has been adjudged by the first appellate court. Most of the issues raised by the learned counsel in this appeal do not emanate from the issues dealt by the first appellate court. On the abuse of powers, there is no where reflected in the first appellate court's judgment. With the minutes of six persons, the same were dully admitted by the court as per law and without any objection. As there was no any cross examination on that fact, it cannot be challenged now as done. On the issue of failure to distribute the estate of the deceased, it was not raised at the first appellate court. Thus, it cannot form discussion in this court now as done. Furthermore, there is no evidence that there was distribution prior

to the collection, but rather it is hindered by the appellant herself, she being a junior wife. Studying the case material, it is clear that it is the appellant herself who is hindering the smooth process of the said administration of the estate. In his view, all this should have been raised after the said respondent had filed the inventory. Thus, the suit is almost premature.

Mr. Audax also submitted that on the issues of unfair distribution and inventory filing come after one has discharged his duties. Thus, all the authorities cited and referred, have been done so out of context. Mr. Audax prayed for them to be disregarded.

On the second ground of appeal, Mr. Audax alluded that the fact that the deceased had assets in Geita and Bariadi. Thus, had properties in both places. As per paragraph 1 of the Fifth Schedule of MCA, the Primary Court has jurisdiction over probate matter in which the district deceased had been residing. So, in this case, the probate could be filed at Geita District Primary Court or Bariadi District Court. This proposition is well stated in the case of **Beatrice Brighton Kamanga and Amanda Brighton Kamanga** (supra) at page 14.Thus, the issue of jurisdiction in this case does not arise. Therefore, Somanda Primary

Court was vested with such a power. That said, this ground of appeal be equally disregarded.

In the third ground of appeal, Mr. Audax stated that the administrator sub delegated some of his powers is not true. According to law, the duties of the administrator are stated under paragraph 5 of the Fifth Schedule. Going by record at the trial court, there is nowhere in the said evidence that establishes the respondent sub delegated his duties to any other person. What is clear, the administrator had employed a supervisor to oversee the mining activities at Geita. That is not sole administration duty but an employment to third party. That said, there being no evidence, Mr. Audax prayed for that ground of appeal be dismissed as well. With the power of attorney, the same cannot be challenged now as it was not countered at the trial.

In respect with the fourth ground of appeal, Mr. Audax contended that the same is also vague as well. He also submitted that what he knows, the appeal before Bariadi District Court was argued by way of written submission. Before the court had fixed the written submissions, there was no order issued that there should have been taking of additional evidence. thus, the basis of this ground of appeal is baseless. Equally therefore, this ground of appeal be dismissed with costs.

In rejoinder **Mr Obwana** reiterated his submission in chief. That the said ground of appeal appears being before a magistrate and not advocate as written, contended to be a mere slip of a pen. With the couching of the first ground of appeal that the ground of appeal was not precise pursuant to rule 4(1) of GN 312 of 1964, he disputed it. As the first ground of appeal was making reference to grounds 1, 2, 3, 4 and 5 of the first appellate court, he grouped them into one main ground of appeal. As regards to the admissibility of exhibits, that is a legal process. He could not resist its admissibility on factual issue but on legal issue. Nevertheless, he had ample time to argue against it on cross examination. On power of attorney, falls the same suit.

As regards to form no. 5, there is no evidence that there was any obstacle hindering smooth administration of the estate of the deceased. Instead, there is ample evidence that the respondent mismanaged the administration.

On ground three, Mr. Obwana while appreciating the duties of administrator, he however submitted that there is no known law that an administrator should sub delegate his duties/functions.

Having heard rival submission of both parties, and upon thorough digest of the lower courts' records, I have now to determine this appeal and the issue for consideration is whether this appeal is merited.

Mr. Obwana has complained that when filed appeal before the first appellate Court, their grounds of appeal were not considered and ended by being dismissed. The assertion which was opposed by Mr. Audax, contending that the ground is too vague and general, he however alluded that the grounds of appeals were considered and led for the delivered judgment.

I have gone through the all grounds before the first appellate court, in totality the grounds based on relief of revocation, lack of jurisdiction by the trial court, misuse of administration power on the side of the respondent and lastly discrimination in distributing deceased's estates.

Apparently, going through the findings of the first appellate court, I am of the formed view that the all grounds of appeal before the first appellate Court were tackled. The learned Magistrate reasoned and concluded that the complained grounds were not supported by evidence.

It should however be born in mind that the court decides what seems to be right and not according to the wishes of the parties. Any mistakes made by the Magistrate are subject for appeal that's why the appellant is here to ascertain those mistakes.

Notably, from page 19 to 33 of the first appellate Court's judgment dealt with the grounds of appeal before it and ruled thereto. I will not inject much efforts to discuss these grounds, because some grounds allegedly to be not dealt by the first appellate court had been repeatedly in this appeal, therefore I will have ample time to detail them and ascertain its truthfulness. Conclusively, the grounds of appeal before the first appellate Court were considered.

Responding to the second ground of appeal, Mr. Obwana has complained and wanted this Court to rule out as to whether the first appellate Court was right to interpret the case of **Beatrice Brighton Kamanga and Others V. Ziada Willam Kamanga (supra)** was a mere obiter.

What is being seen here is the question of jurisdiction. That, since the deceased had estates, some situated at Geita District and others Bariadi District, therefore which court had jurisdiction to try the probate

Matter. Mr. Obwana Contention is that the High Court has Jurisdiction but Mr. Audax was of the view that any primary Court from any district has jurisdiction.

Firmly I must begin by providing that filing of the suit is not a matter of choice it is principally dictated. However, in probate Matter the choice of law applicable in dealing with estates of particular deceased dictate the filing place of the same.

Sections 18 (1) (a) (i), of the MCA provides that the Primary Court shall have jurisdiction on matters where the law applicable is Islamic or Customary law. Also, section 19 (1) (c) (supra) provides for the powers of the primary court dealing with probate Matters. Generally speaking, in probate matter we do not look for the value and kind of properties ought to be administered rather the dictation of the law.

However, I am aware that the primary Court and the High Court enjoys original jurisdiction in probate where the matter involves customary and Islamic law. However, it is strictly advised that where there is complexicity in determining jurisdiction of the court then the matter may be filed to the High Court. **See Beatrice Brighton Kamanga (supra)**.

In a situation where the deceased assets are outside the jurisdiction of the primary court for instance outside the district then the matter be filed to the High Court.

At page 14 **in Beatrice Brighton Kamanga** (supra) the Court was keen that the primary court exercises jurisdiction in the area where the deceased had fixed place of abode before he died because this is the area of the whole district which the jurisdiction of primary Court covers in the district so established.

Similarly, the court proceeded that if the deceased had two or three fixed place of abode, then any of the primary court in the respective districts can hear the matter and therefore it will depend with the choice of the parties.

Rule 1 (1) of the fifth Schedule to Cap 11 which governs the territorial jurisdiction of the primary Courts in probate matters provides that;

> 1.-(l) " *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 "

Now, in the case at hand it is undisputed that the deceased had established place of abode within Geita District and Bariadi District, therefore looking the established principle in **Beatrice Brighton Kamanga** (supra) it is easier to conclude that any of the Primary Court from either Geita or Bariadi district had jurisdiction to try the matter as correctly argued by the first appellate court at page 19 of its judgement. Therefore, the first appellate court was correct in its interpretation. see also **Scolastica Benedict vs Martin Benedict (1993) TLR 1 at page 8 paragraph 2, Sato Luhendeka and Two Others vs. Sule Luhendeka, Pc. Probate Appeal No.2 of 2020 at page 5 &6.**

With regard to the third ground, Mr. Obwana had complained over the decision of the first appellate court for not revoking the respondent and was of the view that the administrator may only delegate his power to another person by donating power of attorney which in this is not dully registered.

The complaint here falls on delegation of power and unregistered power of attorney.

Glaring to the principles of ***Delegatus non potest delegare*** in relation with the role of the Court in appointing the administrator whether entail delegation of powers to the appointee.

The Principle of ***Delegatus non potest delegare*** provides that a delegatee can not delegate as correctly argued by Mr. Obwana when referring the case of **Winfrida Bigirwa V. Verdian Lutabeganwa (supra)** also in addition to that are the cases of: **Democratic Bar Association vs High Court of Judicature, (2000) AWC 2383 A, Utra Tech Cement Limited vs The Union of India and Ors, Civil Writ Petition No.9480/2019.**

Now, the issue is, a person appointed as administrator is solemnly delegated powers? In my considered view, in a probate matter a person appointed as administrator by the probate court, the appointing court does not delegate the powers to the person so appointed as it is not the court's duty to administer administration duties but rather confers full jurisdiction to the person so appointed to do the administration duties. If that is the case, the person delegated powers then could be a deceased who is not alive. I must therefore conclude that the argument by Mr. Obwana on delegation principle is misplaced. If I agree with Mr. Obwana that appointment of the administrator is delegation by the Court, then is

it possible that if the Court will not appoint administrator, then the Court will go and administer the deceased's estates by itself? The answer is in the negation. Therefore, even the issue of power of attorney is not applicable in that stance.

Meanwhile, the respondent had averred that at page 76 of the trial proceedings " *pia nina kielelezo kingine ambacho nilimteua mtu wa kunisaidia pale mgodini kwakuwa mimi ni mtumishi".*

I must make clear that being appointed as administrator does not mean that you are supposed to do everything without involving others. The law demands that the administrator should perform the core functions of administration. **See rule 5 of the fifth schedule of MCA** and the case of **Naushad Ahmed Siwji vs Akber Ahmed Siwji,** Misc. Civil Application No. 178 of 2022 and **Francisca Joseph Chuwa vs Mr. Kenedy joseph Chuwa,** Misc. Civil Application No.60 of 2019.

Since it is undisputed that the respondent is a public servant then requiring certain person to oversee a particular task does not entail that he has delegated his power of administration. Therefore, the first appellate Court was right in its finding. With me, as mining sector is a technical part, it was right for the administrator to employ a supervisor

to oversee the mining activities at Geita. That is not sole administration duty but an employment so to speak.

The other complaint is that the first appellate court erred when failed to honour that there was a need of production of additional evidence. Mr. Obwana complained that there was unknown transaction of money worth 77 million.

I have chewed and digested the complained argument, indeed I must first state that this is a new ground raised at this stage of which I think is not proper. The first appellate court was denied with the right to adjudicate it. It is the principle of law that the matter not raised at lower can not be attended at the higher court. See the cases of **Tanzania Investment Bank vs Meis Industries Company Ltd and Another**, Civil Application No. 126 of 2010 (unreported); and **Mosses Msaki vs Yesaya Ngeteu Matee** (1990) TLR 90, wherein it was stated that matters not raised at the trial or first appeal would not be entertained in the subsequent appeal.

However, in a tolerance way, I agree with Mr. Audax that when the parties addressing appeal before the first appellate court neither of the party prayed for additional evidence. There was no order for

additional evidence that the deny of which led to complaint engineered by Mr. Obwana.

The law dictates that in **Ismail Rashid Vs. Mariam Msati, Civil Appeal No. 75 of 2005 (CAT-unreported)** when quoted with approval the case of **S.T Paryani Vs. Choitram and Other (1963) EA 462,** set conditions to be met in taking additional evidence, in that case the Court said additional evidence could be justifiably obtained where the following conditions are fulfilled;

> " *1. It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; 2. The evidence must be such that, if given would probably have an important influence on the result of a case, although it need not be decisive; 3. The evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible…"*

In the case **of A.S Sajan Vs. Co-operative and Rural Development Bank (1991) T.L.R 44 at 46** as quoted in the case of **Idrisa R. Hayeshi Vs. Emmanuel Elinani Makundi,** Civil Application No. 113/08 of 2020 where the court held:

"Except on grounds of fraud or surprise the general rule is that an appellate Court will not admit fresh evidence, unless it was not available to the party seeking to use it at the trial, or that reasonable diligence would not have made it so available."

Next, there are laws that have to be complied with for a person to apply for additional evidence and not personal interest. It is clear that an appeal can only be taken against a decision made by the lower court and from the order or relief that the court was asked to be made in relation to the grounds of appeal. Mindful court is not your mother to grant even what not asked for. **See Elidhiaha Fadhili vs. The Executive Director Mbeya District Council,** Civil Appeal No. 24 of 2014, Court of Appeal of Tanzania at Mbeya (unreported).

Conclusively, as aforementioned that the appellant did not comply with the rules of inserting the requirement to the first appellate court to issue an order of production of additional evidence without being pleaded. It is clear therefore that since the matter was not tabled before the first appellate Court then it cannot be blamed and cannot be raised at this stage now.

Generally, I have grasped the intention of the appellant that the respondent being an administrator does not discharge his functions proportional i.e had failed to file Form no. 5 (fomu ya ordoha ya mali), there is complaint of misuse of estates of the deceased, discrimination of heirs in distributing probate proceeds, no valid meeting legally construed for appointment of the respondent. With all these grievances, the appellant prays for revocation of the respondent being administrator of the estates of the deceased.

I have gone through the complaint before the trial court and weighed it, but I have found that the same was not substantiated.

It has been provided that the deceased had three wives, in total he left 21 beneficiaries. See at page 4 and 5 of the trial court's judgement. The list of beneficiaries was aired by the respondent during the trial and confessed by his witnesses.

Looking at form No.1 which initiate the petition of letters of administration at the primary Court, the name of the appellant is listed to be among of heirs. Further apart from the appellant no other heir had complained the appointment of the respondent.

It is trite law that, the probate court may appoint any person with interest in administration of estates of the deceased.

> *" 2. 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);*

In the case of **Elias Madata Lameck vs Joseph Makoye Lameck,** Pc. Probate and Administration Appeal No.1 of 2019**, Nasubi Jacobo vs Rosemary Bega William,** Pc Probate Appeal No. 17 of 2021, the court well stated that clan minutes are necessary to simplify the administration process but is not a mandatory legal requirement. Any person with the interests in the estates of the deceased may apply to administer the estates of the deceased. However, the court may appoint any person in its own motion whom deems fit. What should be born in mind is that once a person is demised and left estates, administration of it is a must. See also Rule 3 of G.N 49/71 (Primary Courts (Administration of Estates) Rules.

Now, the complaint over clan minutes that were not authenticity and the appellant was not heard, in my formed view is unfounded.

On the issue of misappropriation of estates, glaring the trial court's records, what is seen here is lack of trust by the appellant. This is the court of law every thing alleged need to be proved. Speculation and mere feeling can not serve justice. That means therefore, reading the law and position as stated in **Seif Marare v. Mwadawa Salum [1985] TLR 253; and Sekunda Bwambo v. Rose Ramadhani [2004] TLR 439** administrator of the estate even if interested, is not

necessarily a beneficiary to the estate of the deceased and further not necessarily a heir or beneficiary of the estate must be an administrator. Furthermore, it is not necessarily that an administrator must come from the members of his household. The guiding test is: Is the applicant of the administration of the said estate able, willing and interested?

Therefore, both lower courts, were of the same considered view that ,the respondent was dully appointed as administrator as he had highest interests in the matter. By the way, he is not objected by any other children/ wives out of 21 beneficiaries save the appellant. As to this fact, the respondent is a proper person to administer as appointed. However, there is no any record that the respondent had any ill will against anyone of them. The argument that the respondent will do injustice is bankrupt of any merit. Let him be given chance. If there will be any misappropriation as complained, then the trial court can intervene. At this stage and since there is no proof on that rather mere speculation, then the argument is premature before the court.

The battles for appointment are most likely fuelled by a misconception. The office of an administrator has always been closely linked with position and duties of an administrator of an estate. It is purely a duty of trust, not personal gain. The Court of Appeal in the

case of **Naftary Petro vs Mary Protas (Civil Appeal 103 of 2018) [2019] TZCA 357 (30 October 2019)** while making reference to the case **Sekunda Bwambo v. Rose Ramadhani [2004] TLR 439** which is the decision of the High Court by Rutakangwa, J. (as he then was), extracted in **Sekunda Bwambo** (supra) at pp. 443-444 describing it as a classic exposition of qualifications of a fit person for appointment as an administrator as well as the duties and responsibilities of such a person, thus:

> "*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. He will do so with the sole aim of distributing the same to all those who were dependants of the deceased during his life-time. The administrator, in addition, has the duty of collecting all the debts due to the deceased and pay all the debts owed by the deceased. If the deceased left children behind, it is the responsibility of the administrator to ensure that they are properly taken care of and well brought up using the properties left behind by their deceased parent After the administrator has so faithfully administered and*

distributed the properties forming the estate he has a legal duty to file an inventory in the Court which made the appointment giving a proper account of the administration of the estate. This action is intended to help any one of the beneficiaries who feels aggrieved at the way the property was distributed and thus dissatisfied to lodge his/her complaints to the Court which would in turn investigate the same and decide the matter in accordance with the dictates of the law.

In view of all this, it is evident that the administrator is not supposed to collect and monopolize the deceased's properties and use them as his own and /or dissipate them as he wishes, but he has the unenviable heavy responsibility which he has to discharge on behalf of the deceased. The administrator might come from amongst the beneficiaries of the estate, but he has to be very careful and impartial in the way he distributes the estate."

Though each case must be decided by its own facts; I fully associate myself to the findings of the Court of Appeal to the position of the administrators in the estate of the deceased. It is an endless war

between relatives. People must surely know the extent of their interests in the properties left by the deceased. I once said and repeat it today, that the duty of administration of the deceased's estate is solely based on trust and for the benefits of the heirs. And by heirs, it mainly covers those who during the life time of the deceased, they solely depended on him for their livelihood. Unfortunately, it has now become a tendency and definitely like a fashion that the deceased's estate is like a saccoss or M-Mkoba entity or any existing company that upon the demise of the deceased, those survivors (members of the deceased's clan) each claims a share from it. Definitely no. The deceased's estate must and foremost be the beneficiary of those who were dependent to him/her during the lifetime. Therefore, in the current world leaving, a spouse though is a eligible for inheritance may not necessarily be an heir if he/she was not a dependent to the deceased at the time of his demise. Likewise, to a grown up issues, they don't inherit merely because they were born by the deceased but because they were dependants to the deceased at the time of his demise.

The above notwithstanding, I agree with Mr. Obwana that, failure to file inventory within the prescribed time amounts to failure of discharging the administration function as correctly cited by Mr. Obwana

in the cases of **Seif Mgeni (supra), Randle Mrema (supra) and the case of Beatrice Brighton Kamanga (supra).** But in the case at hand, the cases referred are not applicable as the scenario is different on the stance that; firstly at the trial Court, it was informed that when the respondent was appointed as administrator, he faced with obstacles from the appellant including defending cases at all the time and thus he has not settled and to perform the duties entrusted to him. Secondly, in my observation, the trial court erred and misdirected the respondent that he should file the inventory within one month from the date of appointment without excluding the time spent in prosecuting cases. See page 7 of the trial Court judgement. "*alete orodha ya mali ndani ya mwezi* "

What is the way forward now, in the circumstances where the deceased left three wives, and in total left 21 beneficiaries and only the appellant had no trust with the respondent. To counter this question, I am of the formed view that, the appellant had to build trust to the appellant and give much cooperation to make the exercise of administration smoothly, as I have detailed herein above. Conflicts and lack of trust will save nothing other than putting into unnecessary wrangle. Mindful, administration status is not for life, if the respondent

will fail to administer the same within the prescribed time, then the appellant is at liberty to apply for revocation of the appointment of the respondent. I so hold because even the appellant herself is not ready to administer the estates of the deceased rather is praying for an appointment of different person other than the respondent. Therefore, the important to note is that the estates of the deceased must be administered. Let the respondent while is watched by the eyes of the law and beneficiaries do it in the interest of the all beneficiaries without discriminating them.

In addition, as I am penning down, I wish to reiterate what the Court of Appeal emphasized in times more than once as argued by Mr. Audax that the grounds of appeal must substantially be precise and conform to the legal points or principle of law in violation (see the case of **Yakobo Magoiga Gichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017 and Naftary Petro vs Mary Protas (Civil Appeal 103 of 2018) [2019] TZCA 357 (30 October 2019) (unreported).** In the current matter, what are said to be grounds of appeal are actually more explanations of grievances than grounds of appeal as suggested.

All this said and done, I agree with Mr. Audax that this appeal is devoid of any merit. The same is dismissed. The trial court rightly

applied its discretion, and I have not seen any fault when arriving at such a decision. Equally, the first appellate court had rightly not interfered with that discretionary power of the trial court.

That said, the appellant's appeal is devoid of any merit and is accordingly dismissed. It being a probate matter involving family members, parties shall bear their own costs.

DATED at SHINYANGA this 20th day of May 2024.

F.H. MAHIMBALI

JUDGE