

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 89 OF 2024

(Arising from the decision of District Court of Temeke, One Stop Judicial Centre at Temeke in Application Case No. 246 of 2022)

SAKINA HUSSEIN SINDA

(1st Administratrix of the Late SINDA HUSSEIN SINDA).....APPELLANT

VERSUS

NURU OMARY SINDA

(2nd Administratrix of the late Sinda Hussein Sinda).....1ST RESPONDENT

NAKI HUSSEIN SINDA.....2ND RESPONDENT

NEEMA HUSSEIN SINDA.....3RD RESPONDENT

AZIZI HUSSEIN SINDA.....4TH RESPONDENT

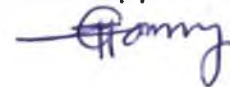
SAID HUSSEIN SINDA.....5TH RESPONDENT

RULING

10th May & 18th June, 2023

BARTHY, J.:

The appellant, being aggrieved by the ruling of the Kinondoni District Court, filed her memorandum of appeal to this court, advancing a total of five grounds of appeal against all five respondents. The appellant is



seeking this court to quash and set aside the decision of the district court by reversing, quashing, and setting aside the inventory and account of the estate filed and admitted by the said court. She also prays for any other reliefs this court may deem just to grant.

Before the matter was set for the hearing of this appeal, the respondents' counsel raised a preliminary objection, stating that this appeal is incompetent and bad in law as the decision or ruling on objection proceedings are not appealable.

The matter was set for hearing of the preliminary objection raised, where at the hearing the appellant appeared in person and the respondents enjoyed the services of Mr. Fulgence Johnstone the learned advocate. The hearing was by way of oral submissions.

Mr. Johnstone on his submission he stated that the respondents' preliminary objection is grounded on the assertion that decision of the district court is arising from objection proceedings which is not subject to appeal. He stated this case originated from objection proceedings related to the estate accounts filed in the Kinondoni District Court, specifically involving a house at Temboni that was determined not to be part of the deceased's estate. The district court ruled out the house should be



removed from the deceased's estate, which led the appellant to file this appeal.

He cited Order XXI, Rules 57 and 62 of the Civil Procedure Code, Cap 33 R.E. 2019 (CPC), which outline that the appropriate remedy for a dissatisfied party in objection proceedings to institute a civil case. He further referenced sections 8(a) and (b) of the Probate and Administration of Estates Act (PAEA), which permits the use of the CPC in contentious matters.

According to these provisions, the decision from objection proceedings should not be appealed. He stated this stance is supported by case law, including **World Oil (T) Ltd vs. Mrs. Zubeda Ahmed Lakha and 6 others**, Civil Application No. 110/11 of 2023, and **Ramah Bakari Mageuza vs. Tumaini E Mnyone**, Land Revision No. 45 of 2022, which emphasize that the remedy in objection proceedings is not to appeal but to file a fresh civil suit. He therefore argued that the appeal is not properly and should be dismissed.

The appellant on her submission she contended that the application No. 246 of 2022 before the district court, does not stem from objection proceedings established under Order XXI, Rule 57 of the CPC, which deals



with claims or objections to the attachment of property in the execution of a decree. She argued that the subject application did not involve any order of execution or attachment. Thus, the application does not qualify as objection proceedings, and Rule 62 of Order XXI of the CPC, which pertains to claims against such orders, is not applicable and relevant to this matter.

To this contention the appellant cited the case of **Kangaulu Musa vs. Mpungati Mchodo**, Civil Case No. 8 of 1983, where it was held that for objection proceedings, there must be an order of the court related to the execution of a decree. Since the matter before the lower court did not involve execution, the appellant asserted that filing an appeal was proper. Consequently, the appellant prays for the appeal to be heard on its merits.

In their rejoinder, Mr. Johnstone maintained that the appeal emanates from objection proceedings and is thus subject to the provisions of Order XXI, Rule 62 of the CPC. He argued that in probate matters, the filing of the estate inventory marks the commencement of execution. Therefore, objection proceedings in probate matters are subject to the same rules as other civil matters.

He further rejoined that the appellant should have filed a fresh suit if she believed that the house did not form part of the deceased's estate.



Accordingly, Mr. Johnstone urged the court to uphold the preliminary objection and dismiss the appeal.

Upon swotting the submissions from both parties, it is clear that the primary issue is whether the application before the district court constituted objection proceedings under Order XXI, Rule 57 and 62 of the CPC. To this assertion Mr. Johnstone contends that the nature of probate matters inherently involves the execution of the accounts of estate, bringing it within the scope of objection proceedings like that in ordinary civil cases. On the other hand, the appellant argued that the application did not involve execution or attachment of property, which are the typical scenarios addressed by Rule 57.

In addressing the issue with regard to the preliminary objection raised, the provision of Order XXI, Rule 57 of the CPC, is hereby quoted for easy reference stating as follows;

*Where any claim is preferred to, or **any objection is made to the attachment of, any property attached in execution of a decree** on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as*



regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit: Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed. [Emphasis is supplied].

Regarding the provision of Order XXI, Rule 57 of the CPC, it pertains to any objections made to the attachment in the execution of a decree. The execution of a decree is the process by which a court enforces or gives effect to its judgment or order.

This process ensures that the successful party in a lawsuit receives the relief or benefit awarded to them by the court. The execution of a decree involves various steps and legal procedures to ensure the decree holder receives what has been pronounced in the decision of the court from the judgment debtor.

In probate matters, once a person is granted probate letters or letters of administration, they are vested with the duties outlined under section 108(1) of PAEA. In discharging these duties, they are not obligated to file an application for execution. For clarity, the relevant provision is reproduced below;

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The executor or administrator shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of administration, and distribute the estate to the persons or for the purposes entitled to the same or to trustees for such persons or for the purposes entitled to the same or to trustees for such persons or purposes or in accordance with the provisions of this Act, as the case may be.

This means that the administrator/administratrix can carry out their responsibilities without needing to seek additional court approval for execution. This is due to the fact that no decree is issued by the court for execution of the grant, as there is no decree holder or judgment debtor.

After the administrator has fulfilled the duty of collecting the assets and debts owed to the deceased, paying off the creditors, and covering the costs of administration, he is then required to file an inventory and accounts of the deceased's estate.

This ensures transparency and accountability in the management of the estate. The inventory should detail all assets and liabilities, while the

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accounts should provide a comprehensive record of all transactions made by the administrator and how the residue will be distributed to the heirs/beneficiaries of the estate.

The procedure for filing an inventory and accounts of estate is provided under Section 107(1) of PAEA, read together with Rule 106 and 107 of the Probate Rules, which prescribe the forms to be used for filing the inventory. These forms differ from those prescribed for the execution of a decree under the CPC.

Furthermore, under Section 107(5) of PAEA, any beneficiary or interested person with a stake in the deceased's estate is entitled to inspect the inventory and accounts of the deceased's estate. This process allows beneficiaries and interested parties to review the management of the estate and raise any concerns or objections with the court if necessary.

It should be noted that there are circumstances where the provisions of the CPC may be applied to probate matters, as stated by Mr. Johnstone. However, this application is subject to the provisions of the Probate Rules as outlined under Section 8(b) of PAEA, which states;



Subject to any Probate Rules in that behalf, the jurisdiction of the court or a district court under this Act may be exercised in chambers—

(a) N/A

(b) in contentious cases to the same extent as jurisdiction may be exercised in chambers in a suit conducted in accordance with Civil Procedure Code or any enactment replacing the same or any rules of court.

This means that while the CPC can be referenced in contentious probate cases, it must be done in accordance with the rules and procedures established by the PAEA, ensuring that the probate process remains consistent with the legal framework designed for estate administration.

In relation to this matter, the objection was raised upon the presentation of the account of the estate, which is not the same as an objection raised during execution proceedings. In that regard, the court finds no merit in the preliminary objection that probate matters are subject to the execution process under the CPC once the estate inventory and accounts are filed, as this does not align with the procedural requirements




outlined in the CPC. Therefore, the decision of the district court, arising from what constitutes objection proceedings from the inventory filed on the deceased's estate, is not subject to filing a fresh suit under Order XXI, Rule 62 of the CPC.

Given the above analysis, the preliminary objection raised by the respondents is without a merit. Considering the relationship of the parties, the preliminary objection is dismissed with no order as to costs.

It is so ordered.

Dated at Dar es salaam this 18th June, 2024.


G. N. BARTHY
JUDGE

Delivered in the presence of Ms. Faudhia Lema learned advocate for the appellant, 1st respondent, Mr. Fulgence Johnstone learned advocate for the respondents, RMA. Ms. Bernadina and in the absence of the 2nd, 3rd, 4th and 5th respondents.

SGD: G.N. BARTHY

JUDGE