

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

PROBATE APPEAL NO 6592 OF 2024

(Arising from Probate Appeal No 2 of 2023 of Kiteto District Court and Originating from Probate Cause No 10 of 2023 of Kibaya Primary Court)

ZUBEDA BAKARI KALANGA..... APPELLANT

VERSUS

MOHAMED ABDALA MBEGA.....RESPONDENT

JUDGMENT

21st May and 27th June, 2024

MIRINDO, J.:

The late Hamisi Saidi Jamvi left a will without appointing an executor and her junior wife, Zawadi Bakari Kalanga, objected in vain before Kibaya Primary Court to the grant of letters of administration to Mohamed Abdala Mbega. In her objection before Kibaya Primary Court, the objector, Zawadi Bakari Kalanga, contended that there was no proper clan meeting proposing Mohamed Abdala Mbega to apply for the administration of the deceased's estate. She also challenged the deceased's competency to make the will.

When these objections were overruled, the objector appealed to Kiteto District Court on various on six grounds ranging from the legality of the clan

meeting, the validity of the deceased's death certificate to the legality of the testator's will. The appellate District Court, without giving reasons in rejecting these complaints, affirmed the decision of the Primary Court.

Zubeda Bakari Kalanga, further appealed to the High Court on three grounds of appeal. In her first ground of appeal, she complained that as the administrator had renounced his role, the appellate District Court erred in retaining him as the administrator. In relation to the other two grounds of appeal, she outlined several issues which could not be determined at this appellate court without receiving additional evidence. The first ground of appeal is, nevertheless, sufficient to dispose of this appeal.

Throughout the proceedings in Kibaya Primary Court, Kiteto District Court and on appeal to this Court, Mohamed Abdala Mbega, the respondent in this appeal, appeared to have reluctantly assumed his role as the administrator of the estate of the late Hamisi Saidi Jamvi. He informed the Primary Court; he was not the one proposed by the clan meeting to administer the estate. He assumed this role after his uncle who was proposed to administer the estate declined to do so. He implicitly stated so before the District Court. The two Magistrates' Courts did not consider this to be a serious point given the legal status of the clan meeting in the administration of the deceased estate.

It was the appellant's claim before this Court that it was not right to appoint the respondent as an administrator once the respondent withdrew

himself as administrator of the deceased estate, it was not right to appoint him despite his renunciation.

In support of the appellant's claim, the respondent stated he indicated before the Primary Court his intention, during the objection proceedings, to withdraw his nomination to administer the deceased's estate but he was still appointed as such by the Primary Court. The respondent added that before he could administer the estate, Zubeda Bakari Kalanga appealed to the District Court. He wrote to the District Court his intention to withdraw from the administration of the estate but the District Court rejected his renunciation and upheld his appointment.

Given that the respondent, Mohamed Abdala Mbega, still renounces his role as the administrator of the estate and different issues raised by the appellant, Zubeda Bakari Kalanga that calls for additional evidence, it is in the interest of justice to quash the proceedings before Kibaya Primary Court and its ruling and orders as well as the decision on the resultant appeal to Kiteto District Court.

I allow the appeal with an order that any interested party may lodge a fresh petition before a court of competent jurisdiction. If necessary, fresh issues raised on this appeal and on appeal to the District Court may then be dealt with once an administrator is appointed. Each party to bear its own costs.

DATED at BABATI this 26th day of June, 2024



F.M. MIRINDO

JUDGE

COURT: Judgment delivered in chambers this 27th day of June, 2024 in the presence of both parties. B/C: William Makori (RMA) present.

Right of appeal explained.

F.M. MIRINDO

JUDGE