

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB – REGISTRY OF MANYARA
AT BABATI**

CIVIL APPEAL NO 6826 OF 2024

(Arising from Civil Appeal No 1 of 2024 in the District Court of Babati and Originating from Probate and Administration Cause No 4 of 2023 of Bashnet Primary Court)

THERESIA PETRO APPELLANT

VERSUS

1. PAULO GISHINDA DURU.....
2. PAULO PASKALI PIUSI.....
3. AKO BASSO DURU..... } **RESPONDENTS**

JUDGMENT

22nd May and 27th June, 2024

MIRINDO, J.:

The Bashnet Primary Court in Babati District appointed Theresia Paulo as the administrator of the estate of the late Pius Basso Duru after dismissing the objection lodged by three respondents, namely, Paulo Gishinda Duru, Paulo Paskali Pius and Ako Basso Duru. The respondents challenged the findings of the Primary Court by an appeal to Babati District Court. The appeal before the District Court was argued by way of written submission. On the contrary, the appellate District Court raised critical procedural shortcomings in the proceedings before the Primary Court that never formed part of the appeal and nullified those proceedings.

Theresia Paulo has appealed to this Court and has filed three grounds of complaint. This second appeal was equally argued by way of written submissions. The first ground of appeal and which I think is sufficient to dispose of this appeal is that the District Court erred in raising issues in the course of composing judgment and determining them without according the parties opportunity to be heard.

Both parties concede that the District Court took this course of action. The respondents contend that the only issue raised was that of not paying filing fees and which was a fundamental error that the appellate District Court was entitled to decide without hearing the parties. The appellant's contention is that the appellate District Court determined the appeal without giving directives and left the administration of the deceased estate in limbo. The appellant refuted the claim of failure to pay filing fees and pointed out that this issue was neither raised and determined by the appellate District Court nor dealt with by the Primary Court.

It is at once clear that the appellate District Court outlined different procedural errors committed by the appellant and the Primary Court in connection with the institution and conducting cases of administration of deceased's estate. It was from these procedural errors that it quashed the proceedings, set aside the judgment and orders of the Primary Court. There was

no issue of the appellant's failure to pay filing fees as contended by the respondents.

The action undertaken by the appellate District Court of not affording parties the right to be heard has frequently been frowned upon and in **Deo Shirima and Two Others v Scandinavian Express Services Ltd**, Civil Application No 34 of 2008, the Court of Appeal highlighted that:

...It is an established law that any judicial order made in violation of any two cardinal rules of natural justice is void from the beginning and must always be quashed, even if it is made in good faith.

The facts of this appeal fall within this well-established principle of law and the decision of the Babati District Court cannot be allowed to stand. It is hereby set aside.

This appeal is allowed with a direction that the case is remanded to the Babati District Court for composition of the judgment on the basis of the written submissions. Should the District Court find it necessary to raise an additional issue, it is at liberty to do so provided that it re-summons parties for hearing on the additional issue.

In the circumstances of this appeal, it is ordered that the appeal be dealt with by a different magistrate of competent jurisdiction in Babati District Court

within thirty days from the date of the delivery of this judgment. Each party to bear its own costs.

DATED at BABATI this 24th day of June, 2024



F.M. MIRINDO

JUDGE

COURT: Judgment delivered in chambers this 27th day of June, 2024 in the presence of the appellant, the second and third respondents, and in the absence of the third respondent. B/C: William Makori (RMA) present.

Right of appeal is explained.

F.M. MIRINDO

JUDGE

27/6/2024