

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

PC. PROBATE APPEAL NO. 02 OF 2023

*(Arising from Probate Revision No. 02 of 2023 in the District Court of Tabora,
Originating from Probate and Administration Cause No. 128 of 2006 in Tabora Urban
Primary Court)*

JUMA DISMAS HAULE APPELLANT

VERSUS

1. TAMARA JOEL MSUYA 1ST RESPONDENT

2. MATINDE JOEL MSUYA 2ND RESPONDENT

JUDGMENT

Date of Last Order: 05/12/2023

Date of Judgment: 06/03/2024

KADILU, J.

In 2006, Tabora Urban Primary Court, via Administration Cause No. 128 of 2006, appointed the appellant the administrator of the estate of the late Nyamizi Juma @ Sizya. The said Nyamizi died on 03/06/2001 and left a house located at Bachu, Gongoni Street within Tabora Municipality. She also left five heirs namely, Abraham Joseph Kiandika, Juma Dismas Haule, Tamara Joel Msuya, Matinde Joel Msuya, and Salum Juma Sizya. The respondents informed this court that Abraham is suffering from mental illness whereas Salum who was the co-administrator passed away in 2009, leaving the appellant the sole administrator.

The respondents allege that for about fifteen (15) years, the appellant failed to discharge his administration duties. They complained further that the appellant was misappropriating the deceased's estate. Based on these assertions, in December 2022, the respondents wrote a complaint letter to the Resident Magistrate in Charge of Tabora District

Court concerning the appellant's conduct in respect of the deceased's estate. Invoking the revisional power conferred to the District Court under Section 22 of the Magistrates' Court Act, the Magistrate directed Tabora Urban Primary Court to revoke the appointment of the appellant for failure to discharge his duties within the prescribed time.

On 09/06/2023, Tabora Urban Primary Court revoked the appointment of the appellant and appointed the 1st respondent the administratrix of the estate of the late Nyamizi. The order annoyed the appellant. He filed the present appeal containing the following grounds:

- 1. That, the District Court erred in law for failing to hold that the administration of the estate of the late Nyamizi was conclusively finalized and the administrators filed forms No. V and VI promptly.*
- 2. That, the District Court erred in law and fact by holding that the administration of estate has become inoperative by operation of the law.*

On the strengths of the above grounds, the appellant prayed for this court to allow the appeal with costs. When the appeal was called on for hearing, the appellant appeared in person, without legal representation whereas the respondents were represented by Mr. Saikon Justin, the learned Counsel.

Arguing in support of the grounds of appeal, the appellant submitted that, he completed his duties and closed the Probate Cause No. 128 of 2006 properly by filing forms V and VI. He argued that the District Court erred by revoking his administration because even if he did not file the forms as required by the law, the court should have directed him on what to do instead of revoking his appointment as the administrator of the

estate. The appellant explained that the District Court entertained the matter unjustifiably and decided it to his detriment. As can be deduced from his submission, the appellant laments that his appointment was revoked by the District Court.

Concerning the second ground of appeal, the appellant stated that it resembles the first ground and his submission on that ground would be the same. Replying to the appellant's submission, Mr. Saikon submitted that the District Court did not revoke the appellant's appointment rather, the revocation was made by Tabora Urban Primary which is the court that appointed him. The learned Advocate explained that the appellant did not file forms V and VI as he alleges. According to Mr. Saikon, forms V and VI were filed by the first respondent although she was not the administratrix. He submitted in addition that probate is usually closed by the court's order, not the forms.

Mr. Saikon cited the case of ***Joseph Shumbusho v Mary Grace Tigerwa & Others***, Civil Appeal No. 183 of 2016, Court of Appeal of Tanzania at Dar es Salaam in which the procedures for closing probate matters were discussed. He concluded that the appellant never closed the probate according to law. The learned Advocate invited me to read the case of ***Gabriel Joseph (administrator of the Estate of the Late Joseph Chacha Muhohi) v Ambrose Gwasi Mukohi and 2 Others***, PC. Probate Appeal No. 5 of 2020, High Court of Tanzania at Musoma in which the court stated that there is no way the administrator worthy of his name would bring to an end the administration of the estate without filing Form V.

I have carefully examined the records of the two courts below and considered brief submissions by both parties. I have also considered the grounds for appeal. The issue for determination is whether the appellant discharged his administration duties fully and closed the probate properly.

It is undisputed that the roles of the primary court in administration cases are to appoint the administrator, to hear objections to the appointment (if any), to receive the report of the administrator, and to hear objections to the report (if any). It is common knowledge that the court may revoke the appointment of the administrator on a successful objection based on good cause. The functions and powers of the administrator of estate are stipulated under rule 5 to the 5th schedule to the Magistrates' Courts Act which provides as follows:

"An administrator appointed by a primary court, 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 the administration, and shall, thereafter, distribute the estate of the deceased to the persons or for the purposes entitled to it, and, in carrying out his duties, shall give effect to the directions of the primary court."

This provision has been interpreted in various cases of this court. In ***Naftal Joseph Kalalu v Angela Mashirima***, PC. Civil Appeal No. 145 of 2001, High Court of Tanzania at Dar es Salaam, it was stated that:

"... the administrator must make a collection of the deceased's property and distribute it to the heirs ..."

Thus, the administrator has the power to collect the assets and debts of the deceased and distribute the balance to the legal heirs. He

must file a report to court containing what he did. Filing the report is mandatory and none filing has some legal consequences. If a person appointed as the administrator of the estate fails to discharge the administration duties, the appointing court is empowered to revoke and annul his appointment. Section 49 (1) of the Probate and Administration of Estates Act [Cap. 352 R.E. 2019] provides for the grounds for revocation of one's appointment. It provides that the grant of probate and letters of administration may be revoked or annulled for any of the following reasons:

(a) N/A

(b) N/A

(c) N/A

(d) N/A

(e) that the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or has exhibited under that Part an inventory or account which is untrue in a material respect.

In the book titled, **Probate and Administration of Estate Law in Tanzania**, 1st Edition, 2013, Alphonse M.A Urio & Janeth Furaha A. Urio, elaborate on page 87 that, revocation of probate or letters of administration occurs when a court annuls a grant of probate or letter of administration it previously made upon sufficient grounds being adduced.

In the instant case, the appellant was appointed in the year 2006, but up to the year 2022 when the respondents complained to the District Court, the appellant had not yet distributed the estate to the heirs and

filed an inventory to the court. The appellant was granted four months from the date of his appointment to file an inventory and final report so that the court could close the matter. The four months expired on 04/01/2007. In the absence of forms V and VI filed in the appointing court, it cannot be said that the appellant closed the probate properly. More so because the heirs have complained that they never received their shares of the estate and that the appellant has been appropriating the estate for his benefit.

For a probate matter to be closed, the inventory and final statements of accounts (if any) have to be filed to the court as per Section 107 (1) of the Probate and Administration of Estates Act. The court shall then order the beneficiaries to inspect and confirm the inventory and final statement of accounts. The inventory may be challenged by any interested party who is dissatisfied with its contents. If not contested, the court then shall cause the beneficiaries to sign and mark the probate case closed. In ***Mwajina Abdul Maguno v Mwanahawa Maguno***, Civil Appeal No. 74 of 2004, High Court of Tanzania at Dar es Salaam, the court stated as follows:

"...Filing the inventory with the Kinondoni Primary Court which appointed her to administer the deceased's estate was one of her duties which she failed to do. ... I agree with Mr. Mniwasa for the appellant's submission that a failure by the administrator to show how much property has been collected and how the collected property has been distributed to the entitled heirs is a serious breach of the administrator's duties which may render his or her appointment to be annulled."

From the records, the appellant is uncertain if he had closed the matter or not and he argued that even if he did not do so, that could not be sufficient ground to annul his appointment. With due respect, since there is no record indicating that the appellant filed forms V and VI and the same were not examined by beneficiaries or the court had ever ordered the closing of the probate, this court cannot rule that administration of the estate of the late Nyamizi was conclusively finalized by the appellant. Therefore, I find that the District Court's Magistrate was justified in ordering Tabora Urban Primary Court to revoke the appointment of the appellant on the ground that he failed to discharge the duties of his office for 15 years.

The record reveals that the appellant's appointment was revoked on 15/02/2023 and the 1st respondent was appointed the administratrix. She was directed by the primary court to complete the administration duties and file the report on 15/06/2023. In the case of ***Beatrice Brighton Kamahga and Amanda Brighton Kamanga v Ziada William Kamanga***, Civil Revision No. 13 of 2020 High Court of Tanzania at Dar es Salaam, it was held that there is no lifetime administrator. This means that the administration duties should not only come to an end but also should be concluded timely. The order of Tabora Urban Primary Court in Probate Cause No 128 of 2006 which was issued on 15/06/2023 ceased the appellant's power as the administrator of the estate of the late Nyamizi and discharged him from administration obligations.

To that effect, I hold that the appellant's appointment was legally revoked and to protect the interests of the heirs, it is just to keep the

decisions of the two lower courts intact. Consequently, this appeal is dismissed. Given the nature of the case, I make no order to costs.

It is so decided.


KADILU, M.J.
JUDGE
06/03/2024

The right of appeal is explained for any party aggrieved by this decision.




KADILU, M.J.
JUDGE
06/03/2024

Judgment is delivered this 6th Day of March 2024, in the presence of Mr. Mgaya Mtaki Advocate holding brief for Mr. Justine Saikon Advocate for the Respondent.




P. MAZENGO
DEPUTY REGISTRAR
06/03/2024