

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TEMEKE SUB-REGISTRY
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE

PC CIVIL APPEAL NO. 41 OF 2023

(Arising from the Judgement and decree of District Court of Temeke (One stop Judicial Centre) at Temeke, in consolidated Probate Appeal No. 26 & 27 of 2023)

ABDULLATIF MOHAMED HAMIS *(As administrator of the estate of the late Mohamed Khamis Abdallah)*..... **APPELLANT**

VERSUS

FATMA MOHAMED *(As administratrix of the estate of the late Mohamed Khamis Abdallah)* **RESPONDENT**

JUDGMENT

19th January & 8th March, 2024

BARTHY, J.:

This is an appeal from the findings of the District Court of Temeke (One stop Judicial centre) in consolidated Probate Appeal No. 26 & 27. The Appellant was aggrieved by the decision of the first appellate court, hence this appeal, on the grounds that:

- 1. The learned trial appellate magistrate erred in law and in fact by upholding the judgement of the trial court, by holding that 'the respondent was appointed by the court' without filing Form No. 1, without a case being heard for her appointment by appointing court, without judgement*

being delivered appointing her as administratrix and without form No. 4 being issued by the magistrate who appointed her.

- 2. The learned trial appellate magistrate erred in law and in fact by upholding the judgement of the trial court, by holding that "there was no chance for the respondent to obey the court orders due to pending litigation" in the circumstances the respondent was the one appealing (instituting appeal) and is insisting that there is nothing to distribute to the appellant.*
- 3. The learned trial appellate magistrate erred in law and in fact by upholding the judgement of the trial court by holding that "there were so many cases that prevented the respondent to file inventory" in the circumstance that in the year 2006 there was no any pending case and that she was ordered many times to file inventory but resisted.*

The background of this case unfolds with Fatma Mohamed, the appellant herein, being appointed as the administratrix of the estate of the late Mohamed Khamis Abdallah. Subsequently, the appellant filed an

application for the revocation of the appointment of administratrix via Mirathi No. 81/2006.

In the said application, the primary court (the trial court), also deemed it appropriate to appoint the respondent as a co-administrator of the estates of the late Mohamed Khamis Abdallah. Dissatisfied with the decision rendered by the primary court, both parties opted to pursue appeals. These appeals (Probate Appeal No. 26/2023 and 27/2023) were filed before the district court of Temeke (One Stop Judicial Centre) in Temeke (the first appellate court).

Upon consolidation of the appeals, a judgment was delivered which now serves as the cornerstone of the subsequent legal proceedings in this case.

At the hearing, the appellant appeared in person while the respondent was represented by Ms. Yusta Kibuga. Following prayer by the appellant, which was granted by this court, the appeal was heard by way of written submission. Both sides timely filed their submission.

Submitting in support of the appeal, the appellant disputed the holding of the first appellate court, arguing that the respondent's appointment by the court was articulated without considering the records of the primary court. The appellant argued that the first

appellate court failed to adhere to the procedures stipulated in the case of **Beatrice Brighton Kamanga and Amanda Brighton Kamanga v. Ziada William Kamanga**, Civil Revision No. 13 of 2020.

Furthermore, he argued that the respondent did not present a duly filled Form No. 1, and the one that is in the court file lacks the signature of the respondent. He went on stating that the primary court did not convene on the date fixed in the citation for the appointment, which was June 16, 2006, as there are no proceedings recorded for that day.

Additionally, we claimed the respondent had failed to appear to give evidence under oath, and the court never issued any judgment, ruling, or order to appoint the respondent. Moreover, Form No. 4 was said to have not been issued by the court; rather, it was said it was obtained through fraud, collusion, and corruption. To support of his argument, he cited the case of **Yusup Selemani Kimaro v. Administrator General**, Civil Appeal No. 266 of 2020.

On the second ground of appeal the appellant said, the respondent has always told the court under oath even in appeal no. 38 of 2023 which is pending in this court that she has nothing to give the appellant and at the same she has failed to observe court orders due to pending

litigation. The respondent has been clearly disobeying the court's orders and no consequences against her.

Addressing the third ground of appeal, the appellant submitted that the respondent was appointed on June 13, 2006. Throughout the entirety of 2006, the respondent failed to file an inventory, and there were no pending cases. Despite court orders issued in 2015, 2018, 2020, 2022, and 2023 mandating the filing of the inventory, the respondent has yet to comply with these orders.

In her reply submission, Ms. Kibuga vehemently rebutted the arguments supporting the grounds of appeal. Responding to the first ground, she contended that the respondent was duly appointed by the primary court as the administratrix of the estate.

She emphasized that the records of the trial court clearly indicate that the respondent filed Form No. 1 and was issued an order of citation, which was complied with before the hearing took place. The respondent was subsequently issued a letter of administration (Form No. 4), and later filed Forms V and VI. She dismissed the argument that the case was not heard on August 16, 2006, as baseless.

Addressing the second ground of appeal, Ms. Kibuga argued that the first appellate court correctly held that the respondent failed to

execute due to pending matters in court, specifically citing Civil Appeal No. 363 of 2021 and Civil Appeal No. 518 of 2023, which are still unresolved.

Regarding the third ground of appeal, Ms. Kibuga stated that the respondent was appointed on June 13, 2006. The respondent proceeded to sell the deceased's house on 27th December 2006, and distributed the proceeds to all known beneficiaries at the time. However, the appellant's mother filed probate No. 89 of 2007, resulting in multiple suits until 2020 when the respondent was finally able to file an inventory.

In his rejoinder submission, the appellant reiterated his arguments that the respondent was never appointed in accordance with the requirements of the law. Consequently, he firmly contested the appellate court's assertion that the respondent was duly appointed. He thus urged this court to invalidate the holding under section 29(c) of the Magistrate Court Act, Cap 11 R.E. 2022.

Furthermore, the appellant disputed the assertion that multiple pending suits in court prevented the respondent from executing the order of the high court, as the respondent consistently maintained that she had nothing to distribute to the appellant.

He also rejected the argument that the respondent filed the inventory in 2020 after the case file had been returned to the primary court. He cited Civil Case No. 8 of 2008 in the Ilala district court and Civil Appeal No. 31 of 2009 before the High Court as evidence. He emphasized that orders issued by the primary court in 2015, 2016, and 2018 were clear proof that the file remained in the primary court. Regarding the sale agreement, the appellant was adamant that there was no evidence of the sale of land as per section 2 of the Land Act [Cap 113 R.E. 2019]. He therefore prayed for the appeal to be allowed

Having heard the contending arguments regarding the grounds of this appeal, I must state from the outset that it is a cardinal principle of law that a second appellate court should be reluctant to interfere with a finding of fact by a trial court, especially where a first appellate court has concurred with such a finding of fact. This principle was lucidly stated by the Court of Appeal of Tanzania in the case **of Neli Manase Foya v. Damian Mlinga**, Civil Appeal No. 25 Of 2002.

To address the first ground, the appellant argued that the respondent was appointed by the trial court without following proper procedures. Specifically, the appellant pointed out that Form No. 1 was not filed when lodging the petition, and the appointment of the

respondent was made without any hearing by the trial court, nor was there a judgment delivered to appoint the respondent as the administratrix of the deceased estate. Additionally, the trial court did not issue Form No. 4 to the respondent.

The respondent disputed this ground, stating that the court followed all the procedures in accordance with the law in the appointment of the respondent.

Upon going over the proceedings before the Primary Court of Kariakoo, my observation regarding this ground is that the respondent was issued with Form No. 1, which was then duly filed and received by the court upon payment. Subsequently, the respondent was issued with Form No. II for publication of the citation, which was published in the Uhuru Newspaper on 9th June 2006.

Since no caveat has been lodged, the court proceeded to appoint the applicant as the administratrix of the estates of the deceased, issuing Form No. IV on 13th June 2006.

Based on the records, the procedures were followed in the probate case, and the court appointed the respondent as the administratrix of the deceased estate. The allegation that the matter was not heard and no judgment for appointment was issued lacks basis, particularly

considering the absence of a caveat. Therefore, I rule that the complain of fraud and corruption on this ground are baseless and this ground of appeal holds no merit.

Regarding the second ground of appeal, the appellant challenges the first appellate court for upholding the trial court's finding that the respondent failed to comply with court orders to file an inventory and account of the estate. The appellant rebuts the respondent's assertion that she was prevented from doing so due to ongoing litigations. Ms. Kibuga insists that timely lodging of the inventory and estate account was unfeasible due to the transfer of the case file amidst pending matters in other courts.

Examining this ground, it is observed from the records that in Probate No. 48/2020, Judge Mlacha, in page 13, directed the administratrix to include the petitioner as a beneficiary and allocate him a share of the property equal to that received by other heirs. The crucial question arises: Whether the pending appeals in superior courts impede the respondent's fulfillment of her duties as the estate's administratrix.

This court notes that even in decisions of superior courts, the respondent was instructed to allocate the appellant his rightful share, despite her initial reluctance based on claims of insufficient assets.

Moreover, while acknowledging that the pendency of an appeal or a notice of appeal does not automatically halt legal proceedings, as established in the case of **Ahmad Abdallah Kinyokwe v. Zulfa Salumu Makuka (Administratrix of the estate of the late Saluma Makuka) and two others;**

It was held that the pendency of an Appeal or notice of intention to appeal does not automatically operate as a stay of execution..."

However, it is noteworthy that the appellant is also a co-administrator of the deceased estate appointed under Mirathi No. 81/2006 following a revocation application before the trial court. Consequently, he shares the same responsibilities as the respondent. Yet, he has not provided any explanation regarding his efforts in administering the estate since his appointment as co-administrator.

It is unjustifiable for the appellant to blame the respondent for inaction while he occupies a similar position to address the concerns he raises. The facts and circumstances in the case of **Beatrice Brighton Kamanga and Amanda Brighton Kamanga v. Ziada William Kamanga,** cited by the appellant is distinguishable with the present

matter as the parties are co-administrator of the deceased estate. Therefore, this ground of appeal lacks merit.

Turning to the third ground of appeal, the appellant discontent is on the decision of the first appellate court holding that various ongoing cases prevented the respondent from filing the inventory. However, the respondent concedes in their submission that the appointment occurred on June 13, 2006, and states that the house was sold on December 27, 2006, with distribution made to all beneficiaries known to the respondent at that time. Maintaining her argument that the presence of multiple suits was the reason that failed the respondent to discharge her duties until the original file was returned to the primary court in 2020.

It is undisputed that the law mandates administrators or executors to present an inventory containing a comprehensive estimate of property in possession, debts owed by any individuals, and credits within four months of appointment, as required under rule 10 of G.N No 49 of 1971. The respondent claims that there were no remaining assets to distribute to the appellant.

The law under the provision of rule 10 of the Fifth Schedule, on the Powers of Powers of Primary Court in Administration Case of the Courts Magistrates' Act Cap 11 R.E. 2019 it provides;

An administrator who distributes the assets in discharge of the such lawful claims as he knows of and, after not less than three months after the death of the deceased, distributes the remaining assets among the persons or for purposes entitled thereto, and who gives effect or complies with the directions of the court (if any), shall not be liable for those assets to any person of whose claim had no notice at the time of such distribution:

Provided that, nothing in this paragraph shall prejudice the right of any creditor to assets at the time of such distribution. [Emphasis is supplied].

Without a doubt, it was incumbent upon the respondent to file the inventory and accounts and seek approval from the beneficiaries before the court, as mandated by law. Given that this essential procedure was left incomplete, the appellant is entitled to receive their share from the estate of the deceased, as has been consistently ruled by this court in prior cases.

Furthermore, similar to the second ground of appeal, it is noted that as a co-administrator, the appellant shares the same duty to

execute court orders and present the inventory and accounts of the estate. He cannot blame the co-administrator for failing to fulfill duties while now holding the same position. Consequently, this ground of appeal lacks merit and is dismissed accordingly.

Therefore, building upon the preceding discussion, the appeal is partially allowed to the extent of acknowledging only the appellant's entitlement to their share from the deceased's estate; other grounds lack merit. Given the nature of this matter, I give no orders regarding costs.


It is so ordered.



Dated at Dar es Salaam this 8th of March, 2024.


G. N. BARTHY
JUDGE

The right to appeal has been fully explained.


G. N. BARTHY
JUDGE

Delivered in the presence of the appellant in person and Ms. Yusta Kibuga Learned Advocate appearing for the respondent.