

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**PROBATE AND ADMINISTRATION APPEAL No. 01 of 2017**

*(Arising from Probate Rev. No. 1 of 2016, Bariadi District Court)*

**KIDANHA GATA.....APPELLANT**

*(Administrator of the deceased  
Mbusi Sitta's Estates)*

VERSUS

**MASANJA KIDANHA.....RESPONDENT**

**JUDGMENT**

*03/3/2020 & 27/3/2020*

G. J. MDEMU, J.:

This is an appeal from the decision of the District Court of Bariadi exercising its revision jurisdiction in probate and administration Revision No. 1 of 2016. In this revision, the District Court of Bariadi revised two decisions, that is, probate and administration Cause No. 21 of 2015 and No. 2 of 2015 arising from Somanda and Bunamhala Primary courts respectively. In exercise of such revision power, the court's decision in probate cause No. 02/2015 of Bunamhala Primary court that appointed the Appellant Kidanha Gatta to be administrator of estate got quashed thereby blessing the decision in probate cause No. 21/2015 that appointed the Respondent Masanja Kidanha an administrator of the estate of the late Kidanha Sita. This was on 12<sup>th</sup> of October, 2016.

The history towards this probate cause is rather fascinating, complex and confusing. It can be traced in 2014 in probate cause No. 17 of 2014 between Masanja Kidanha and the deceased Kidanha Sita. The record is missing. However, according to probate Revision No. 5/2014 which revised that decision, the Respondent was

appointed to administer the estate of Kidanha Sitta who died way back in 1987. On 21/5/2014, in Revision No. 5/2014, the District court of Bariadi nullified the proceedings and decision of Primary Court of Somanda in probate cause No. 17 of 2014 and ordered a retrial.

Knowing not if was in compliance with courts' decision on retrial, the Respondent filed probate cause No. 21 of 2015 in Somanda Primary Court for the appointment as an administrator of the estate of Kidanha Sita. He was appointed on 27/7/2015. In a more perplexing way, the Appellant also filed a probate cause No. 2/2015 in the Primary Court of Bunamhala for the appointment as an administrator of the estate of the late Mbusi Sita. He was appointed on 21/12/2015.

In the two probate causes, that is No. 2/2015 (Bunhamala Primary) Court and 21 of 2015, (Somanda Primary Court) by the Appellant and the Respondent respectively, there are two deceased persons whose estates are in question. The Appellant was appointed to administer the estate of Mbusi Sitta whereas the Respondent was appointed to administer the estate of one Kidanha Sitta.

What is not clear however is whether there are two different estates or the rival is over one estate of the two deceased persons. According to the record and more so in probate cause No. 17/2014 and No. 21 of 2015 both of Somanda Primary Court, the Respondent, among others, was appointed to administer the estate of Kidanha Sitta which was a plot of land measuring 55 acres. The record in probate cause No. 02/2015 indicates that, the deceased Mbusi Sitta left land measuring 124.31 acres. This is what the Appellant claim to administer in his appointment. Here is where the problem lies. It will be resolved later. However, as stated above, the District Court of Bariadi (Mrio, SRM) quashed probate cause No. 02/2015 meaning that, the Respondent became victorious in his appointment as an

administrator in probate cause No. 21 of 2015. The Appellant was not happy, hence this appeal on the following grounds of appeal:

1. *That, the District Magistrate erred in law and in fact to quash the decision and proceedings of Bunamhala Primary Court without perusing attentively the background of the case.*
2. *That, the District Magistrate erred in law and in fact for trusting the wrong information averred by the Respondent that he was appointed by Somanda Primary Court to be an Administrator of deceased Kidanha Sitta while is not true, that is why the clan people objected him and then the District Court of Bariadi in 2014 through the Hon. A. H. Mwilapwa – SDRM nullified the appointment of the Respondent one Masanja Kidanha and ordered that the case should be heard denovo by another Magistrate different from the former. Find annexures marked P1, attached thereto.*
3. *That, the District Magistrate erred in law and in fact for disregarding the Appellant's witnesses together with his written documents which qualifying him that he is the right Administrator of the deceased Mbusi Sitta's Estates. That is why he end –up to the wrong decision. Please find annexures "P2" and P3 attached hereto proved the same. Bunamhala Primary Court was the court to appoint the right administrator.*
4. *That, the District Magistrate erred in law and in fact for ignoring the evidence adduced by the Appellant together with his witnesses that, the Respondent was not nominated by genuine clan meeting due to the facts that Masanja Kidanha is not trustful and faithful because has sold some acres of the clan land to outside people like Limbu Idama, Kisimba Lyuli, Manosu Kilingi and the Respondent nominated himself instead of being nominated by the clan meeting and misusing the clan land.*

This appeal came for hearing on the 3<sup>rd</sup> of March, 2020. Both the Appellant and the Respondent appeared in person. In his quest to support the appeal, the Appellant, along with his request to have his grounds of appeal adopted in his submission, submitted also that, he did not appear at the hearing of the revision thus unfair hearing. He stated also to be an administrator of the estate of Mbusi Sitta Mangalu and not Kidanha Sita. There are two different estates. He could not therefore observe any contradictions in administration of such estates. With that brief submission, he urged me to allow his appeal.

The Respondent, his was also so brief. Along with banking on the reply to the memorandum of appeal, He added that, he is living in the estate of the deceased which the appointment to administer was made and that, the estate to be administered by the Appellant are at Kanagi Mwamugesha. It was his further submission that, the Appellant, after he has divided the estate to the beneficiaries, he filed another probate cause praying to be appointed an administrator of the estate of which he, the Respondent, is also an administrator. He concluded that, he lodged a complaint that lead to the revisional proceedings hence the quashing of Bunamhala probate cause filed by the Appellant. To him, he duly divided the estate to beneficiaries, the reason why the Appellant has nothing to administer. He thought, under the premises, the appeal has no merit and be dismissed forthwith.

The Appellant rejoined briefly that, on 12/9/2015, a family meeting got convened in which on 22/12/2015, the court appointed him to administer the estate. As to distribution of the estate to beneficiaries, the Appellant stated that, the exercised had been frustrated by the ongoing disputes over the estate. This was all from the parties.

I have carefully taken into account submissions of the Appellant and the Respondent and also duly considered the records in both courts below. It is not

disputed that, both the Appellant and the Respondent got appointed as administrator of estates of deceased persons and that each was appointed to administer the estate of a different deceased person. The Appellant was appointed to administer the estate of the late Mbusi Sitta whereas the Respondent his was of the late Kidanha Sitta.

What however is at dispute is whether the estate leading to appointment of two administrators is one and the same. In this, it means that, there is a dispute over ownership of the estate between the late Kidanha Sitta and Mbusi Sitta. Going this far, will be determining ownership which is not the pervue of this appeal.

According to the records, the late Mbusi Sitta passed away in the year 1950. The clan or family meeting held on 12/09/2015 to nominate the Appellant for appointment as an administrator of the estate. On his part, the Respondent has indicated by way of evidence that, the late Kidanha Sitta died in 1987. At the trial Primary Court, the evidence of SM1 Masanja Kidanha at page 3 of the proceedings reads as hereunder:-

*“Mimi nimeteuliwa na wanandugu kuwa msimamizi wa mirathi ya marehemu baba yangu mzazi na mali ninayoismamia ni ya baba yangu alifariki mwaka 1987 na ameacha mashamba yenye ukubwa wa hekari 55.....”*

With this, complaint of the Appellant in the first ground of appeal that the learned magistrate on revision did not consider the background of the probate case is unfounded because; **one**, that had the Appellant being trust worth, he could have filed objection proceedings at Somanda Primary Court where the Respondents case on appointment of administrator of estate was pending for determination.

**Two**, according to the record, Mbusi Sitta died way back in 1950. There was no justification as to why the Appellant did not file a probate case in all those good years only to wait the action taken by the Respondent in 2015 hence, this probate cause.

**Three**, much as this is not a land dispute, it is clear from the record that, at the demise of the late Kidanha Sitta in 1987, the 55 acres of land were in their possession, legally or not, but this entitles the Respondent to administer such an estate. In case the Appellant is of the opinion that the land doesn't belong to them, as he appears to mean so, legal action may be taken, but not through this probate proceedings.

It is equally on record that, in civil case No. 60/1998, Kisanga Mbusi (not the Appellant) filed a land dispute in the Primary Court of Bunhamala against the Respondent claiming ownership of 55 acres of land which the Respondent was in possession. This also is evident that, the late Kidanha Sitta was in that land to his demise in 1987.

**Four**, as the Appellant was not a party to civil case No. 60/1998, nor the said Mbusi Sitta (deceased), it may not be possible, and also on logic, to administer the estate for there is no proof that the late Mbusi Sitta had such an estate (55 acres of land).

With regard to the second ground of appeal that the learned magistrate on revision trusted wrong facts to the appointment of the Respondent to be administrator of the estate, I think this is a farfetched thinking. According to probate cause No. 21 of 2015, (Somanda Primary court), the Respondent was appointed on facts placed before it. Since the Appellant believed his case to be genuine, he could have filed an objection proceedings at Somanda Primary Court instead of filing a

fresh probate case at Bunamhala Primary Court. In my considered view, this is what prompted the learned magistrate on revision to have the following findings:-

*“...He moved this court to make revision on it. On revision No. 02/2015, I made a ruling that there was nothing to revise at the probate No. 21/2015. Became aware of the Revision, Masanja Gatta decided to ran to another court to file a case on probate where he requested to be appointed to administer the estate of Kidanha Sitta. For reasons known to himself, he changed the name of Kidanha Sitta to be Mbusi Sitta.”*

With regard to the nullification of probate cause No. 17/2014, my view is that, the filing of probate cause No. 21/2015 by the Respondent was in compliance with the order of the court in probate Revision No. 4/2014 that nullified probate cause No. 17/2014. This is founded on the ground that, the Respondent filed a probate cause in the same court that entertained the nullified one. The case was therefore tried *denovo* by another magistrate. There was thus no harm to nullify those proceedings by the Magistrate who revised those proceedings.

In the 3<sup>rd</sup> ground of appeal, it is true that the Appellant got appointed to administer the estate of the late Mbusi Sitta, same as the Respondent got an appointment to administer the estate of the late Kidanha Sitta. The Appellant in his evidence at page 5 of proceedings in probate cause No. 2/2015 stated that, the estate of Mbusi Sitta is a land measuring 124.31 acres. There is no evidence if the 55 acres is within and part of 124.31 acres. Even if it is, much as to the demise of the Respondent's father the same was occupied by him, that alone qualifies the Respondent and not the Appellant to be incharge of the estate.

As demonstrated above, it is not correct therefore to allege, as the Appellant did, that Bunhamala Primary Court was the right forum to appoint the Appellant. As

stated, there was no reason for the Appellant to file another probate suit in Bunhamala Primary Court while he was aware that there is another probate cause at somanda Primary Court filed by the Respondent.

In ground 4, the Appellant Complaint is that the Respondent is not trusted for the appointment due to maladministration of the estate. If that is the case, the Appellant could have filed objection proceedings at Somanda Primary Court instead of the preference of a new probate cause filed. This was a proper procedure and more so, he was aware of the pending probate cause instituted by the Respondent. As observed by Ms. Mrio, SRM, the Appellant had a hidden mission.

Hiving considered all the grounds of appeal, I do not find any merit. In consequence thereof, this appeal is dismissed with costs. I order accordingly.

  
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**Gerson J. Mdemu**  
**JUDGE**  
**27/3/2020**

**DATED at SHINYANGA** this 27<sup>th</sup> day of March, 2020.



  
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**Gerson J. Mdemu**  
**JUDGE**  
**27/3/2020**