THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
PC PROBATE APPEAL NO.05 OF 2019
(Originating from District Court of Mbeya at Mbeya, Probate Appeal No. 08/2018, originating from Mbalizi Primary Court, Probate and Admin. Cause No. 08/2017

REHEMA MWAKYOMA.....APPELLANT

VERSUS

TENI MWAKAJILA.....RESPONDENT

JUDGMENT

23rd & 30th November, 2021

KARAYEMAHA, J

Rehema Mwakyoma, the appellant herein, is challenging the decision of the District court of Mbeya at Mbeya (herein the 1st appellate Court) in Probate and Administration Appeal No. 08 of 2018 which upheld the decision of Mbalizi Primary Court (herein the trial Court) in Probate cause No. 08 of 2017. Essentially, the trial court dismissed the application lodged by the appellant whereby she prayed to appointed to administer her late mother's estate. Her application was dismissed on the reason that no any family member supported her. Aggrieved, she appealed to the 1st appellate court. She again lost. Undoubted, she has come to this court for a second bite.

The brief facts to this appeal as can be gleaned from the records are that; Rusia Ten Mwakajila died interstate on 30th December 1993. She was survived four children namely; Tusekile Musa, Sijali Musa, Jamila Musa and Rehema Antony Mwakyoma (the Appellant) who at the demise of the deceased was sixteen years. When the appellant was confident that she had attained the age to stand in court and seek to be appointed administrix of her late mother's estate, she knocked on the trial court's door. The evidence adduced in the trial court demonstrated that no any family member supported the appellant. They all informed the trial court that the clan meeting purported to have been held in the Ward Executive Officer's (WEO) office to propose her as an administrix was illegal because only the appellant and Jamila Mussa attended while others such as Sijali Mussa, Tusekile Mussa and their Grandfather did not attend. It was on the basis of that evidence the trial court desisted from appointing her. However, to see the deceased's estate is administered in a manner that satisfied all family members, the trial court ordered them to re-convene the clan meeting and propose another administrator. Similarly, the 2nd appellate found that the appeal was devoid of merits and upheld the trial court's decision. In addition it found that Probate cause No. 08 of 2017 was time barred. The present appeal, the appellant seeks to impugn the

findings of the lower courts. Her petition of appeal contains three grounds, namely:

1. *That, the Honourable Resident Magistrate erred in law and fact to hold that the probate and Administration case in the Primary Court of Mbeya at Mbalizi was (sic) commenced out of time.*
2. *That, the Honourable Resident Magistrate erred in law and facts to hold that the appellant is not supported by the family members (relatives) of the deceased Mother while the same attended family meeting which appointed the appellant to be the Administrix.*
3. *That, the lower courts erred in fact by rejecting to confirm the appellant to be the Administrix of the estate of the deceased mother while the appellant is the only peon (sic) who knows the estate of the deceased mother.*

Owing to these grounds of appeal the Appellant prayed for this court to allow the appeal and be confirmed and declared the Administrix of the Estate of her Late Mother.

This is the second appeal. It is now a settled principle that the court rarely interfere with concurrent findings of facts of the lower court as per the case of ***Nurdin Mohamed @ Mkula v Republic***, Criminal Appeal No. 112 of 2013, Court of Appeal Iringa and ***Matem Leison & Another v Republic (1998)*** T.L.R 102 where it was held thus:

"Appellate Court may in rare circumstances interfere with trial court findings of facts, it may do so in the instance where the trial courts had omitted to consider or had misconstrued some material evidence or had acted on a wrong principle or had erred in its approach to evaluate evidence."

When the appeal came up for hearing, the Appellant appeared in person and unrepresented whereas the respondent enjoyed the legal services of Ms. Gatuna, learned Counsel.

The appellant submitted generally that the matter started in primary court, and when she appealed to the District Court she was not confirmed as administrix of the deceased's estate. She further submitted that in 2006 they appointed their grandfather to be the Administrator of the deceased estate. Nevertheless, the family revoked letters of administration because he started to sell the deceased's properties.

Lastly she urged this court to consider her grounds and re-affirm her as Adminitrix as their Grandfather sold their properties.

Ms. Gatuna commenced her reply submission by stating that the appellant did not discuss the 1st ground completely. Of relevance is her argument that the District Court did not error to hold that the matter was time barred as the law requires the probate cases to be filed within three years (3) as per probate rules. To support her argument, she cited the case of ***Masanja Luponya v Elias Lubinza Mashili***, PC. Probate Appeal No. 01 of 2020 at page 08.

With regard to ground two, the learned counsel for the Respondent dismissed it on the ground that no any relative proposed her to be administrix of the deceased's estate. She further argued that all witnesses in the trial court did not support the appellant to be appointed to be administrix and all testified that the deceased left no any property. She submitted that the house listed belongs to their grandfather and that the appellant witnessed the selling of the same house intimating that the house real belongs to her grandfather.

With regard to the 3rd ground, the learned counsel Ms. Gatuna submitted that it is a new ground that was not raised in the 1st appellate court hence cannot be discussed at this stage. In this, she cited the case of ***Njile Samwel @ John v Republic***, Criminal Appeal No. 31 of 2018 at page 05. Having submitted as such she prayed this appeal be dismissed with cost.

Rejoining, the appellant submitted that on 17/07/2016 the meeting was held in the WEO's office where some deceased children including Jamila Musa and Rehema Mwakyoma were present and others were phoned and explained what was going on.

She also submitted that she could not file a probate case after her mother's demise because she was in Standard 4 aged 14 and was under the care of her grandfather and they trusted him to care them. She

rejoined adding that the two courts below erred for not appointing her as administrix because there is evidence showing that she knows the properties and the place they were.

Wounding, she argued that the meeting held in WEO's office was legal because her young sisters are afraid because all properties were sold. In the circumstances she prayed to be the administrix of the deceased's estate.

I have considered grounds of appeal, the rival submissions by parties and the evidence available on record; the point calling for determination is whether this appeal has merit.

The first ground of appeal is that the District Court erred to hold that the Probate Cause No. 08/2017 was time bared. I am aware that there are two schools of thoughts on this aspect. One school of thought supports the position that although no specific period of time is laid down, there should be no unwarranted delay in bringing such proceedings and that there shall be statement explaining in support of the petition as in the cases of ***Ramadhan Saidi Abas Kambuga & Others v Mbaraka Abasi Kambuga***, Probate and Administration Appeal No. 01 of 2015 High Court of Tanzania at Sumbawanga, in Probate and Administration cause No. 03 of 2019 before the High Court of Tanzania at Musoma, in the matter of estate of the late Noela Songo Nyekajilu in which ***Majura Songo***

Nyekajiru was the petitioner and ***Masanja Luponya v Elias Lubinza Mashiri***, PC. Probate Appeal No. 01 of 2020 High Court of Tanzania at Shinyanga.

The other school of thought is that which supports the position that there is no time limit for petitioning for letters of administration and that it would not be in the interest of justice to have such a provision as per cases of ***Majuto Juma Nshahuzi v Issa Juma Nshahuzi***, PC. Civil Appeal No. 09 of 2014, High Court of Tanzania at Tabora and ***Hezron Mwakingwe v Elly Mwakyoma***, Probate Appeal No. 03 of 2020, High Court of Tanzania at Mbeya.

While rejoining, the appellant submitted that she did not file a probate cause because she was aged 14 on the date of her mother`s demise and was under the care of her grandfather. The counsel for the respondent based her argument on the thought that creates time limit and she referred this court to the case of ***Masanja Luponya*** (supra). Inspired by these decisions it is my view that administration of the deceased's estate revolves around the right to inherit. Most people prefer involving the law in the process and the court becomes the appointing machinery. I do not know any law coercing parties to petition for administration of estate. But when they resort to, they are bound by the laws and regulations. Our laws have not made any provision limiting time within which the

deceased's family/clan should file a probate cause in court. The rationally in my view is simple. If petitioners are limited by time, how will interest and rights of inheritors be protected? Whereas it is desirable that probate causes are filed promptly to avoid any waste or misuse of the deceased's estate or disputes that might arose, it is convenient in my view to let the family concerned settle themselves and approach the court. Even if they are unreasonably late if, in my view, no complaints that the petitioner is trying to grab some properties from others which were either distributed prior the demise of the owner or after but the division was out of family mutual agreement and the petition misused his potion, the court has a duty to admit the petition and appoint the administrator. The rest is to be left to the family or clan members. It is this line of thinking which gives me impetus to hold that the 1st appellate court to wrongly held that the petition was time barred.

Fixing time limit in circumstances of this case where children were young and care of their grandfather will cause infringement of their right to inherit if the deceased (their mother) left behind any estate. Being persuaded by the decisions in cases of ***Majuto Juma Nshahuzi*** (supra) and ***Hezron Mwakingwe*** (supra), and in the circumstances of this case, I am of the view that it was not proper for the 1st appellate Court to conclude that this matter was time barred.

On the 2nd complaint that the 1st appellate court erred in finding that the appellant was not supported by family members to be appointed as Administrix of the deceased estate. Giving the evidence adduced at the trial court a deserving scrutiny, I find nothing substantial to fault the trial court's decision. This is because this fact is apparent on the record. I have exhaustively read and combed the trial court's proceedings. I am satisfied that PW1 Jamila Musa, PW2 Sijari Musa and PW3 Tusekile Musa all demonstrated their disagreement to have the appellant appointed as Admnistrix of the estate of the deceased and that they do not know if the deceased had any property because when their mother died they were little kids. As rightly submitted by the counsel for the respondent, even the trial court judgment at page 2-9 reveals that all witnesses refused to have the applicant appointed Administrix and also testified that the deceased left no any property behind. In the circumstances, I find the 2nd ground lacking in merit and it is dismissed.

In respect of the 3rd ground of appeal which complained that the lower court erred in fact by rejecting to confirm the appellant to be the Administrix of the estate of the deceased, in her submission in chief, the appellant lamented that the District Court did not confirm her as an Administrix of the deceased estate while she was supposed to be, however the counsel for the respondent submitted that this was a new ground

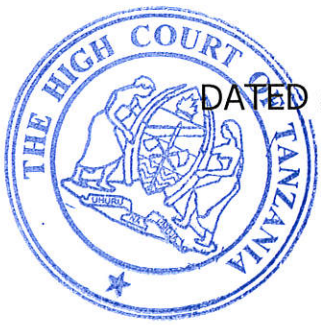
which was not raised in the 1st appellate court, with due respect I differ with the learned counsel`s contention. This complaint is the 2nd ground of appeal in the petition of appeal filed in the 1st appellate court. The appellant prayed thereat to be confirmed in order to administer the deceased's estate. Similarly, the District Court discussed it in its judgment at page 3 second paragraph where 1st, 2nd and 3rd grounds were discussed together. The court among other things stated that:

> *"The lower court turned down her application because neither of the called witness supported her."*

In as much as family members did not support the appellant, the trial court could not in abyss appoint her. Logically, if the trial court disagreed with her, the 1st appellate court had nothing to confirm. In that case this ground also lacks merit.

In the circumstances I find no reason to interfere with the concurrent findings of lower courts. The appeal is hereby dismissed. No orders as to costs.

It is so ordered.



DATED at **MBEYA** this **30th November, 2021**

J. M. KARAYEMAHA
JUDGE