

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CIVIL REVISION CASE NO. 3 OF 2018

(Revision arising from Probate and Administration No. 17 of 2013 of
Chikundi Primary Court at Masasi)

MAPENGO HAMISI MCHEU.....APPLICANT

VERSUS

HAMISI BAKARI MCHEU.....DECEASED

8 & 24 June, 2020

RULING

DYANSOBERA, J.:

This ruling is on revisional proceedings initiated at the instance of the applicant one Mohamed Hamis Mcheu vide his undated letter to the Hon. Judge in charge entitled MAOMBI YA KUFANYA MAPITIO YA KESI YA MIRATHI NA. 17 OF 2013 YA MAREHEMU HAMISI BAKARI MCHEU ILIYOPO

MAHAKAMA YA MWANZO CHIKUNDI which was received by this Registry on 14th December, 2018.

A brief history of the matter is that Hamis Bakari Mcheu died on 26th June, 2013 at Ndanda Hospital. He was survived by the following; Sophia Mohamed Kasambi (a widow who has been living with the deceased since 1996), Mohamed Hamis Mcheu, Hadija Hamis Mcheu, Mcheu Hamis Mcheu, Mwanabibi Hamis Mcheu, Awesa Hamis Mcheu, Mapengo Hamis Mcheu, Ahmad Hamis Mcheu, Jalia Hamis Mcheu, Amina Hamis Mcheu, Salima Hamis Mcheu, Salum Hamis Mcheu, Ibrahim Hamis Mcheu, Omari Hamis Mcheu, Latifa Hamis Mcheu, Rehema Hamis Mcheu, Fatima Hamis Mcheu, Farida Hamis Mcheu and Afida Hamis Mcheu. Some issues shared the same father but had different mothers.

On 17th October, 2013 Mapengo Hamis Mcheu, the sixth born child of the deceased was granted by the Primary Court at Chikundi letters of administration of the estate of the late Hamis Bakari Mcheu vide Probate and Administration Cause No. 17 of 2013. However, on 5th July, 2016 Mcheu Hamis Mcheu, Salum Hamis Mcheu, Mwanabibi Hamis Mcheu, Farida Hamis Mcheu, Sofia Momaed Mcheu complained before the Primary Court against the administrator Mapengo Hamis Mcheu. After hearing the complaints by the above heirs and heiresses, the Primary Court revoked

the appointment of Mapengo Hamis Mcheu, ordering him to surrender the letter of appointment. Peter Siyaya, the Nangoo Village Executive Officer was appointed in the stead. It would seem the deceased's properties were sold but the process of selling the property displeased some beneficiaries, the present complainant, inclusive, hence this complaint.

On 30th April, 2019 when I summoned the complainant so that I heard his grievances, it transpired that, through his complaints, the attendance of the following was important: Mapengo Hamis Mcheu, the Regional Manager, D & G Auction Mart Limited and Court Broker of P. Box 1204, Mtwara and Peter Siyaya who is the Nangoo Village Executive Officer and administrator of the deceased's estate. I directed the DR. to secure their attendance. My directions were not effective and seeing that the matter was delaying, an order that the matter be heard was made and the hearing of the complaint was set for 8th June, 2020.

On the scheduled date, i.e. 8.6.2020, Mohamed Hamis Mcheu attended and appeared before me. His complaint, according to what he addressed the court on 30th April, 2019 and on 8th June, 2020 was to the following effect and I quote:-

My Lord, I am the six child out of eighteen. On 25.4.2018 I was appointed by the family to be administrator of the late Hamis Bakari

Mcheu, my father. I went to Chikundi Primary Court and was appointed. I started making a follow up of deceased's estate. On 9.4.2014 I heard that the Magistrate had handed a house to the deceased's wife without my knowledge.

I complained to the District Court where I was asked to go and ask him why he had decided so. He chased me. On 28.8.2014 I was given a document to handover Mwanabibi Mcheu. Handing over to her a house, TV and subwoofer on account that my father owed her. I told the Magistrate that the family would meet and discuss how to pay the debt. I was put under restraint on the allegation that I had disobeyed a court's order and was consequently ordered to be put in custody. I was forced to pay 400,000/= and I was bailed out.

On 15.7.2017 I was called in court, I was told to hand over shs. 3,041,000/=. I had collected and was told that I was no longer administrator. A magistrate appointed Nangoo village Executive Officer we showed him all deceased's estates.

In 2018 June, the VEO resigned from administration. Two weeks after the property was sold by auction. There was Mcheu H. Mcheu, my brother, and the auctioneering coy who alleged to have been authorized by a primary court magistrate to sell the property. They

sold a house at 10 million another at 17 million and 13 acre farm sold at 6 million and a cashewnut farm sold at 3 million.

We went to the Magistrate who said that he could not change his decisions. We went to claim money from the magistrate who said that no money was taken to him.

On 25.10.2018 he told us that we had to convene family meeting and write minutes to claim our money. The administrator had cause to administer the estate before the auctioning.

We then come to claim our property and not money. That is all”.

Further, that:

"My Lord, I was appointed as administrator, the deceased estate. I was appointed by family members. There were arguments between me and magistrate on the widow Sofia Mohamed. She was given a house. Our late father had 3 houses. He was a teacher of a Primary School. She complained to the magistrate that she did not like that house. The magistrate wrote a letter handing over another house where our father was living. I was not involved in the exercise. After the matter was taken to the VEO, I collected a copy of the letter and took it to the District Magistrate at Masasi. The magistrate decided to nullify my administration and appointed Peter Siyaya, the VEO

Nangoo. He came to the family and claimed to have been appointed as administrator. We told him that we did not recognize him. He left my brother Hamis Mcheu Hamis. He posted an announcement to sell our properties: 3 houses situated at Nanganga, a shamba at Nanganga B, a shamba at Lukuledi, another shamba at Mpang towards Masasi. He said that he was authorized by a magistrate. An auction was conducted. No bidder was successful. I then heard a house was bought at 10,000,000/=. The auction was adjourned. A cupboard was sold. Our brother was taken to the police station. The auction was not conducted. I then heard the house was sold at 17 million. The shamba at Nanganga B (cashewnuts) was sold at 3 million. The other shamba was sold at 6 million; making a total of 36 million. The sale was conducted between July and August, 2018. I made a follow up of proceeds of sale. The magistrate said that he had no knowledge of the sold items.

Peter Siyaya showed us the letter relinquishing the administration. The broker admitted to have sold the property that said there was 14 million only. We were after our property.

The argument arose as there was no solution. I brought this matter to this court. Unfortunately, one day it was scheduled on Saturday.

We went back to Nanganga village government and complained. The leadership decided to hand the houses over to us and we are using them. That was in September, 2019.

The farm at Mpang is yet to be handed over to us. We are still claiming back the farm.

As to the house sold at 17 million the buyer is intending to get it back and seeks the family to give vacant possession.

As an administrator I was not involved in the whole transaction.

Having taken into consideration the whole complaint and record of the Primary Court in Probate and Administration Cause No. 17 of 2013, I am made to understand that the complaint revolve around the administration of the deceased's estate and the subsequent disposal of the deceased's property. However, since it is not clear as to who is the real complainant between Mapendo Hamis Mcheu and Mohamed Hamis Mcheu, and in view of the fact that the matter should be resolved in a judicial manner and not administratively, after hearing the complaint by Mohamed Hamis Mcheu and on the records availed to me, I make the following order.

Invoking the provisions of section 30 (1) (b) (iii) of the Magistrates' Courts Act [Cap 11 R.E 2019] on general powers of the High Court on

supervision of all subordinate courts, I direct the District Court of Masasi to call for and inspect the records of the proceedings in Probate and Administration Cause No. 17 of 2013 of Chikundi Primary Court, examine the records and Registers thereof in order to satisfy itself to the correctness, legality and propriety of the decision as to the regularity of any proceedings therein and, **IF APPROPRIATE**, revise the proceedings in that primary court in accordance with the law.

Order accordingly.



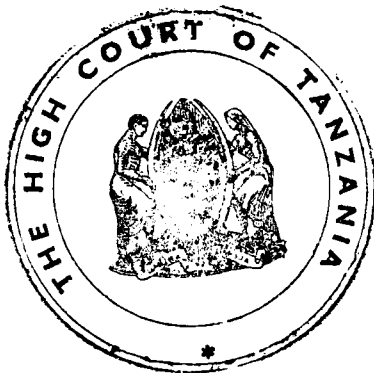
Handwritten signature of W.P. Dyansobera in black ink.

W.P. Dyansobera

JUDGE

24.6.2020

This revisional order is given under my hand and the seal of this Court on this 24th day of June, 2020 in the presence of Mapengo Hamis Mcheu.



Handwritten signature of W.P. Dyansobera in black ink.

W.P. Dyansobera

JUDGE