

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**PC CIVIL APPEAL NO. 4 OF 2020**

**(Originating from Probate Case No. 238/2016 in the Primary  
Court of Arusha Urban and Civil Revision No. 8/2019 in the  
District Court of Arusha)**

**BETTY ISACK MASSALA ..... APPELLANT**

**VERSUS**

**PETER MARTIN ..... RESPONDENT**

**JUDGMENT**

7/12/2020 & 5/3/2021

**ROBERT, J:-**

The Appellant, Betty Isack Masala, filed this appeal against the Ruling of the District Court of Arusha upholding the decision of Arusha Urban Primary Court which revoked the Appellant's status as the Administratrix of Estate of her late husband. Dissatisfied with the decision of the courts below, the Appellant preferred this appeal.

Briefly, the Appellant and one Dinna Massala were appointed by Arusha Primary Court on 27<sup>th</sup> February, 2016 as Administratrices of Estate of the Late Isack Loi Massala, the Appellant's erstwhile husband. The Appellant's appointment was revoked as a result of the application filed to Arusha Urban Primary Court on 22/11/2017 by her co-administrator alleging that they had failed to administer and give account of the estate of the deceased to the court, she also prayed for another person to be appointed as Administrator of the Estate. The Court considered her application and revoked their appointment as ~~co-administratrices of estate without hearing the Appellant herein.~~ As a consequence, the court appointed the deceased's younger brother, Peter Masala, the Respondent herein, as the Administrator of Estate. Aggrieved, the Appellant filed an appeal to the District Court of Arusha where the court upheld the decision of Arusha Urban primary court. Still aggrieved, she preferred the present appeal armed with two grounds: -

- 1. That the District Court of Arusha at Arusha erred in law and in fact when it failed to address the matter according to the issue before it.*
- 2. That the District Court of Arusha at Arusha erred in law and in fact when it failed to evaluate evidence before it hence reached to unfair decision.*

When the appeal came up for hearing, the Appellant was under the services of Ms. Edna Mndeme, learned Counsel whereas the Respondent was under the services of Ms. Upendo J. Msuya, learned counsel. The Court

ordered the appeal to be argued by way of written submissions as prayed for by the parties.

Submitting in support of the appeal and with respect to the first ground, the Appellant's counsel submitted that, the Appellant was never given the right to be heard at the trial court before her revocation. The complaint was only read over and then the court gave the ruling without hearing. She referred the court to page 19 of the trial court proceedings where it is indicated that that the application was only read over to the Appellant herein ~~and then the ruling was delivered without hearing the parties. She argued that this was the gist for revision which the court failed to address completely.~~

She maintained that, the issue of misuse of property was already discussed by the trial court on 18/7/2017 as indicated at page 17 of the proceedings of the trial court, and the court held that, there was no evidence to prove such allegation hence these were baseless allegations. She stated that the Appellant's co-administratrix was the one who caused conflicts as she didn't want the children of the deceased to inherit because they were already employed.

She submitted that the right to be heard is a question of natural justice and in Tanzania it is a constitutional right under Article 16 (6) (a) of **the**

**Constitutional of the United Republic of Tanzania, 1977** (as amended from time to time). To buttress her argument, she referred the court to the case of **Ababas Sheerally and Another vs Abdul S. H. M Fazalboy**, Civil Application No. 33 of 2000 (Unreported) which explain the importance of giving a party a right to be heard.

Coming to the second ground, she argued that, although there was evidence that summons was not collected by the Applicant in the primary court and served to the Appellant and although it was clear that the Appellant was never heard or summoned for hearing the court failed to revise the proceedings of the primary court.

She prayed for the appeal to be allowed with costs.

In reply to the first ground, the Respondent's counsel stated that, the ground raised by the counsel for the Appellant do not bear enough weight to nullify the proceedings of the trial court. He argued that, the Appellant absconded from utilizing her right to be heard as she signed the summons without appearing before the trial court. It was also discovered by the District Court of Arusha that, the Appellant failed to file inventory as her late husband had some children out of wedlock which is contrary to section 5 and 11 of the 5<sup>th</sup> Schedule of the magistrate Court Act, Cap. 11 R.E 2002. She failed to collect and distribute properties to heirs as required by the law, and the trial court decided to revoke her appointment. He referred the court

to the same decision made in the case of **Mniko and Others** (Probate and Administration Cause No. 48 of 1996 (2006) TZ HC 37; (13 November 2006).

Responding to the second ground of appeal, the Respondent stated that, this ground conform to the first ground as the Appellant was summoned but she absconded to appear. Therefore, there is nothing at all that hold enough water to pre-empt the well-founded decision of the lower court. He therefore prayed for the court to dismiss the appeal with costs.

In a brief rejoinder, the Appellant's counsel reiterated that, the proceedings of the trial court indicates that the Appellant was never given the right to be heard. She prayed for the appeal to be allowed with costs.

Having considered the rival submissions advanced by both parties, it appears to this court that the question for determination is whether the Appellant was given the right to be heard by the trial court before the revocation of her appointment as Administratrix of Estate.

The right of a party to be heard before an adverse action is taken against such a party is so basic that a decision taken in violation of such a right is considered to be a breach of natural justice. See **Ababas Sheerally and Another vs Abdul S. H. M Fazalboy**, Civil Application No. 33 of 2000 (Unreported).

In the case of **Mbeya - Rukwa Auto Parts & Transport Limited v. Jestina Mwakyoma**, Civil Appeal No. 45 of 2000 (unreported), when considering the principle of natural justice, the court had this to say: -

"In this country natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard amongst the attributes of equality before the law."

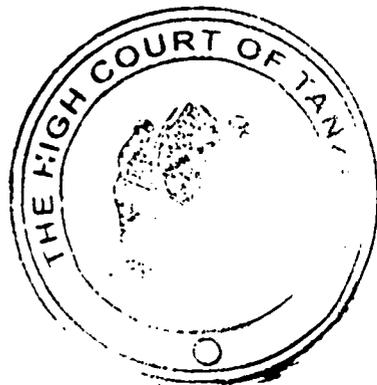
In the instant case, the main point raised by the Appellant is that she was never accorded the right to be heard before her appointment as Administrator of Estate was revoked by the trial court. I have gone through the proceedings of the trial court and the records reveal that, on 18/9/2017 when the court ruled out and revoked the appointment of the Appellant and her co-administratrix, the Appellant was present in court, however the court informed her of the complaint brought by her co-administratrix but she was not given the right to be heard as to why she failed to perform her duty as an administratrix of the estate of her erstwhile husband instead the court relied on the complaint letter lodged by her co-administratrix to reach its decision. I am satisfied in the circumstances of this case that the denial of the Appellant's right to be heard vitiated the whole proceedings and decision reached by the trial court even if the same decision would have been reached had she been given the right to be heard.

Given the circumstances, the decision reached by the trial court to revoke the appointment of the Appellant and her co-administratrix without

according both parties the right to be heard was a nullity. I therefore, nullify and set aside all the proceedings of Arusha Urban Primary Court with respect to the revocation of administratrices of estate as well the proceedings and Ruling of the District Court of Arusha as they stem from a nullity. I remit the record to the trial Tribunal with a direction to rehear the matter before a different Magistrate.

In the event, this appeal has merit and I allow it with no order as to cost.

It is ordered.



  
K.N. ROBERT  
JUDGE  
5/3/2021

