

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

PC PROBATE APPEAL NO. 69 OF 2022
*(Arising from District Court of Misungwi at Misungwi in Probate Appeal No. 02
of 2022)*

BERNARD SERIKALI----- APPELLANTS

VERSUS

VALERIUS THOMAS MUNEGENA----- RESPONDENT

JUDGMENT

Last Order: 29.09.2022
Judgement Date:05.10.2022

R. B. MASSAM, J.

Before this court, the appellant has preferred this appeal which is now a second appeal from the decision of Misungwi District Court in Probate Appeal No. 02 of 2022. The background of this matter goes that, the respondent applied for letters of administration of the late Munegena Nkundugwa Ibula, his grandfather who died in 1996. The appellant who is the son of the elder brother of the deceased objected to the respondent appointment with a reason that the administrator was not nominated by the clan meeting. The trial primary court conducted the trial and at the end it decided in favor of the respondent and consequently, appoint the



respondent as the administrator of the estate of the late Munegena Nkundugwa Ibula. Dissatisfied, the appellant appealed to Misungwi District Court in probate appeal No. 02 of 2022 which was determined. At the end the District Court of Misungwi upheld the decision of the trial court and confirmed the respondent as the administrator of the estate of the deceased Munegena Nkundugwa Ibula.

Still aggrieved, the appellant has now appealed to this court with one grounds of appeal as follows;

1. That the learned appellate Resident Magistrate erred in confirming the appointment of the respondent as the administrator of the estate of Munegena Nkundugwa Ibula

In line with the ground of appeal, the appellant also prays for the following prayers before this court.

- i. That the judgment appealed against be quashed and set aside.
- ii. That the appellant be declared to be the lawful administrator of the Estate of the late Munegena Nkundugwa Ibula.
- iii. The respondent be condemned to pay the costs of this appeal.

By the order of this court, this appeal was argued by the way of written submissions whereas the appellant filed his submissions on



22.09.2022, the respondent filed on 26.09.2022 and the appellant filed his rejoinder on 29.09.2022 both parties complied by the court order dated 20.09.2022. the appellant afforded the service of Mr. A. K. Nasmire learned counsel while the respondent had a service of Adam Robert learned advocate.

Arguing the ground of appeal, Mr. Nasmire learned advocate in his submissions avers that, the trial magistrate decision lacks validity in appointing the respondent as the administrator of the Estate of the Late Munegena Nkundugwa Ibula. Talking the decision, he insisted the appointment is questioned in three aspects to include: the legitimacy of the clan meeting that proposed the appellant to be the administrator of the estate, the availability of more competent candidates for same and the intent of the appointee to partake in an administrator's duties.

On the aspect of clan meeting resolution, he cited the decision of this court in **Hyasinth Kokwijuka Felix Kanmugisha vs Deusdedith Kamugisha**, Probate Appeal No. 04 of 2018-(HC) Bukoba Registry-unreported at page 12 of its judgment, where it was held that when a court deals with an appointment based on minutes of a clan, it is important to know if the interested persons in the estates were involved. Referring to pages 08 and 09 of the Judgment, he claims that the learned appellate



magistrate indicates that two different clan meetings were held but proceeded to approve the minutes of the clan meeting that was used to institute the proceedings before him whilst knowing well that a good number of beneficiaries and interested parties in the deceased estate did not participate in the meeting whose minutes were attached before him and had no involvement at all.

On the other aspect, he claims that there was available of more befitting candidate for the appointment. He submitted that, he agrees that an administrator of a particular estate may be appointed in the absence of minutes of a clan meeting. Referring to section 2 (a) of the 5th Schedule to the Magistrates Courts Act, Cap 11 RE: 2009 where anyone may be appointed to be an administrator. In line he cited the case of **Sekunda Mbwambo vs Rose Ramadhani** (2004) TLR 439 he went on that, the court can exercise the power to appoint another fit person in the absence of a widow, parent, and child of the decease or any close relative.

He went on that, the proceedings and the judgment of the appellate court show that other beneficiaries were available and have a closer interest in the estate of the late Munegena Nkundugwa Ibula compared to the Respondent.



Referring to page 04 of the judgment rendered by the learned appellate magistrate he avers that the Respondent seeks to be appointed as the administrator of the estate of his late grandfather one Nkundugwa Malangahe Ibula to deal with how the estate has been sold. He claims it to be contrary to the holding of the landmark case of **Sekunda Mbwambo Vs. Rose Ramadhani** [2004] TLR 439 and also in **Faraji Miraji Seif Vs. Abraham Christian Tarimo** PC Civil Appeal No. 155 of 2020-(HC) Dar es Salaam Registry.

He also claims that the respondent's appointment as the administrator of the estate of the late Nkundungwa Malangahe Ngelela was a result of proceedings and judgment that were quashed by the High Court in Probate Appeal No. 14 of 2021 a copy whereof is appended hereto and marked as Annexure A.

From the foregoing, we form a legitimate view that the learned appellate magistrate erred confirming the appointment of the Respondent as the administrator of the estate of the Late Munegena Nkundugwa Ibula. He also refers to the case of **Peles Moshi Masoud vs Yusta Kinunda Lukanga** PC Probate Appeal No. 04 of 2020 and the case of **Julieth Shedrack Daudi vs Abel Laurent Lukimbi** PC Probate Appeal No. 01 of 2020. He submitted that ground of appeal is meritorious and



the appointment of the Respondent contravenes set principles of probate law. At this juncture he prays that the appeal be allowed and the subsequent decision complained of be quashed and set aside.

Replying to the appellant submissions, Mr. Adam Robert learned counsel submitted that the respondent was duly appointed an administrator by the trial court and the appellant therefore intentionally or accidentally is misleading this Honourable Court. He also put this court to alert that the records are clear as to the procedure used to appoint the administrator of the Estate of the late Munengena Nkundugwa Ibula while at a trial the appellant applied for the estate of the late Nkundugwa Malaghahe Ngelela.

Submitting on the clan meeting resolution and availability of other befitting candidates, he avers that the counsel for the Appellant appreciated the fact that an Administrator may be appointed at the absence of a clan meeting. As per section 2 (a) of the fifth schedule to the Magistrates' courts Act [Cap 11 R.E 2019; where anyone may be appointed to be an Administrator. he also appreciates the Appellant's counsel cited case of **Sekunda Mbwambo vs. Rose Ramadhan** (supra) that the court can appoint any person who is eligible to do the administration task.



He went on that the respondent applied for administration to administer the estate of the deceased from being misappropriated given the lament that the appellant's group had misappropriated or sold the estate of the deceased Munegena Nkundugwa Ibula before seeking administration of the same. He insisted that the trial court was right to appoint the respondent as an administrator. He went on that, based on the circumstance of the matter, the close person with interest who applied was the respondent and is also a heir to the estate through his father.

Replying to the issue that the administrator had ill motive in dealing with the estate of the deceased, he avers that the issue is prematurely raised for the appointed administrator is yet to start his administrative duties and therefore complaining of his administration is a mere speculation. Referring to the cited case of **Kenedy Bakebula vs Edwin Kajumulo** (supra) he insisted that the same is distinguishable. He therefore prays this appeal to be dismissed with costs.

Re-joining, Mr. Nasimire reiterates his submissions in chief and added that, the appeal is not misleading for it has acknowledged the appointment of the respondent but seek this court to revoke his appointment and in alternative the appellant to be appointed.



He insisted that, the reasons as stated was that the respondent was not confirmed by beneficiaries during the clan meeting though there was a meeting conducted by grandchildren of the deceased. He referred to the cited case of **Hyasintha Kokwijuka Felix Kanmugisha vs Deusdedith Kamugisha** (supra) insisting that the clan meeting minutes used to institute the probate case which is subject to this appeal fall short of the requirement stated in the above case.

On the issue of availability of more befitting candidates to the appointment, he added that the estate was dealt with customarily and all the heirs were given their respective shares including the respondent father. Citing the case of **Keimedy Bakebula vs Edwin Kajumulo** Probate Appeal No. 09 of 2017 HC Bukoba, he insisted that the estate was distributed customarily.

on the issue of capability of the respondent to partake in administrators' activity, he added that, the character of the respondent is controversial as he was able to procure administration over a quashed judgment in High Court Probate appeal no. 14 of 2021. From the said, he prays this court to allow the appeal.



From what has been submitted by the parties, I now stand a point of determination of this appeal and the issue is **whether this appeal has merit.**

The appeal before me has one ground of appeal where the appellant claimed that the first appellate court erred confirming the appointment of the respondent as the administrator of the estate of the late Munegena Nkundugwa Ibula. In determination therefore, I will be embarking to the modes of submissions adopted by the appellant and the respondent learned counsel, where the point for determination was put on three aspects to wit; the legitimacy of the clan meeting that proposed the appellant to be the administrator of the estate, the availability of more competent candidates for same and the intent of the appointee to partake in an administrator's duties.

On the first aspect, the appellant claims that when a court deals with an appointment based on minutes of a clan, it is important to know if the interested persons in the estates were involved. He claimed that a good number of beneficiaries and interested parties in the deceased estate did not participate in the meeting. The claim was opposed by the respondent learned counsel insisting that clan meeting is not a mandatory requirement in institution of probate case.



I agree with the respondent learned counsel that no section of law that provides for mandatory requirement of clan meeting but as stated in the case of **Elias Madata Lameck vs Joseph Makoye Lameck**, Pc Probate And Administration Appeal No. 1 Of 2019 that it is important and it is encouraged that a clan or a family of the deceased meets and appoints a person to be the administrator and when the deceased's family does not meet and nominate a person to be the administrator of the estate of a person, any interested person shall comply with the requirement of law. The requirement of the law is provided for under rule 3 of the Primary Courts (Administration of Estates) Rules GN. 49/1971 which states that: -

"An application for the appointment of administrator under paragraph 2(a) or 2(b) of the fifth schedule to the Act shall be made in Form no. 1".

(see also **Oliver Bernard Vs Kornel Bernard**, Pc Civil Appeal No. 6 Of 2020,)

In the trial court records, it is shown that the respondent who was the applicant at the trial court complied with the requirement of the law by filing form No. 1 and on top of that, he also attached a clan meeting. What was required of the appellant was to object according to the law which he did. Among of what was discussed before the trial court specifically on page 22 of the trial court and reflected on page 8 of the



judgment was that it was not possible for parties to seat for there were two rival groups. It is my findings therefore; the respondent was properly appointed as an administrator before the trial court and the 1st appellate court did not find a reason to fault his appointment. Based on what I discussed above, this aspect has no legal impact for the fronted ground of appeal.

On the other aspect that, there were the available and more competent candidates petition of letters of administration. From the records, it was the respondent who petitioned and the appellant who objected to the grant of administration means, though the appellant learned counsel claims that there were other able persons, competent and with interest more than the respondent, no one bothered to make its application. What was required for the petitioner is to show interest with the deceased estate and going to the two candidates, as stated on the trial court proceedings, the petitioner is the grandson of the deceased whose father was the beneficiary who is closer to the deceased compared to the respondent who is the brother of his father. In that regard I also find this aspect not confirming the ground of appeal raised.

On the third aspect on the capability of the respondent to partake in the administration of the estate of the deceased, this should not detain



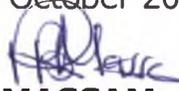
me much for the duty of the administrator is indicated and determining the ability of the administrator to administer the estate while he did not even started the administration does save no purpose and it became a mere speculation. the issue whether the administrator performed his duty of administration is measured during the time he performed his duties and not before as claimed. In the fine this aspect also ended in negative.

After the discussion above, I find no reason to fault the findings of the two lower courts below and I proceed to confirm the lower courts orders. In fine, this appeal is dismissed and taking to the nature of matter, I give no order as to costs.

It is so ordered.

Dated at Mwanza this 5th day of October 2022.




R.B. MASSAM
JUDGE
05/10/2022

COURT: Judgment delivered on 05th day of October 2022 in the presence of parties learned advocates.


R.B. MASSAM
JUDGE
05/10/2022