

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**PC CIVIL APPEAL NO 14 OF 2021**

(C/F Arusha District Court, Probate Appeal No. 17 of 2020, Originating from Arusha Urban Primary Court, Probate Cause No. 88 of 2019)

**KIPARA MEDIRI.....APPELLANT**

**VERSUS**

**LAISON MEDIRI.....RESPONDENT**

**JUDGMENT**

30/08/2022 & 24/11/2022

**MWASEBA, J.**

Being aggrieved by the decision of the District Court which dismissed his appeal for want of merit, the appellant, **Kipara Mediri** is now before this court challenging the impugned judgment armed with four grounds as follows:

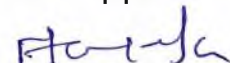
1. That, the first appellate court erred in law and fact when it held that the minutes of family meeting containing all signatures of the late Mediri Family members including the appellant were not mandatory in

*Kipara Mediri*

supporting the appointment of respondent as administrator of the late Mzee Mediri estate.

2. The first appellate court erred in law and fact when it held that the appellant objection against the respondent to be appointed as administrator was premature and without basis.
3. The first appellate court erred in law and fact when it held that the respondent was properly appointed administrator of the late Mediri in the absence of approval from the majority of family members and wishes from the deceased himself.
4. That, the lower court erred in law and fact when it held that non issuance of 90 days of citation to the general public before appointing the respondent as administrator was not fatal in probate proceedings.

Briefly, the records of this matter reveal that, the respondent filed a Probate Cause at Arusha Urban Primary Court seeking to be appointed as an administrator of the estate of the late Mediri Lenasira who died intestate in 1996 leaving behind 46 children and ten wives. Thereafter, the court issued a 14 day notice which was ordered to be placed on the Court's advertisement board, at the village office and at places where it could be easy for persons with interest to see the notice. After the expiration of 14 days without any objection the trial court heard the petitioner and his witnesses and proceeded to appoint him as



administrator of the estate of the late Mediri. Soon after he was appointed, the appellant unsuccessfully filed an objection that some of the children and wives of the deceased were not part of the clan meeting that appointed the respondent as administrator and "*Mrithi wa Boma la Mediri.*" Thereafter, he unsuccessfully appealed to the District Court then to this court based on the grounds advanced above.

In this appeal, Mr John N. Mseu learned counsel represented the appellant, whereas Mr Simon E. Mbwambo, also learned counsel appeared for the Respondent. The appeal was argued by way of written submission and both parties adhered to the schedules.

Supporting the appeal, Mr Mseu decided to abandon the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal and argued on the 4<sup>th</sup> ground only which is all about non issuance of citation to the public before appointing the respondent.

It was Mr Mseu's submission that the interested persons were not informed regarding the application and appointment of the respondent as an administrator of the late Mediri estate, the act which promoted chaos to the whole family. He supported his argument with the provisions of **Rule 3 and 5(2) of the Primary Courts (Administration of Estates) Rules** G.N 49/1971 and the case of

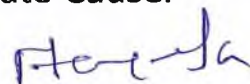
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**Elias Madata Lameck Joseph Makoye Lameck**, PC Probate and Administration Appeal No. 1 Of 2019 (HC-Unreported).

Opposing the appeal, Mr Mbwambo submitted that **Rule 5 (1)** of GN 49 of 1971 provides no requirement for a notice to be advertised within 90 days before the appointment of the administrator. He submitted further that the appellant is just wasting the time of the administrator to administer the properties as he had never been denied any shares as the beneficiary of the deceased's estate. It was his further submission that the cited case of **Elias Madata Lameck vs Joseph Makoye** (supra) by the appellant supports the assertion that, no need for all persons with interest to be served with a notice to attend the hearing but the court needs to satisfy itself that the notice was properly served to the interested persons. Therefore, he prayed for the appeal to be dismissed for want of merit.

Having gone through the rival submissions of both parties, this court will now determine the merit of the appeal.

Basing on the 4<sup>th</sup> ground of appeal raised by the appellant the main issue for determination is whether the law provides time limit for advertising a notice prior to the hearing of a Probate Cause.

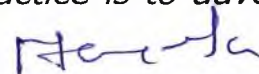


**Item 2(a) of the 5<sup>th</sup> Schedule of the Magistrate's Courts Act (Cap 11 RE 2002) and Rule 5(2) of the Primary Courts (Administration of Estate) Rules**, provides duties of the Primary Court to appoint an administrator and procedures thereof including issuance of notice to the interested parties. **Rule 5 (2)** of G.N 49 of 1971 provides that:

*"(2) Where the court intends to proceed of its own motion under paragraph 2(a) or 2(b) of the Fifth Schedule to the Act, or receives an application under subrule (1) or rule 3, the court Shall issue a notice in the appropriate Form to all persons (other than the applicant) known or alleged to be the near relatives of the deceased persons or to have been named in his will as Executors, requiring their appearance in the court on such date and time as maybe specified in the notice."*

However, the cited provision does not provide the duration required to issue the said notice. As it was held in **Hadija Said Matika vs Awesa Said Matika**, Pc. Civil Appeal No. 2 of 2016 (HC-Unreported) that:

*"The court will react by issuing a citation in Form No. II. The citation must be published in any local News Paper and further be affixed at the court premises and other key buildings in the locality (see rule 5 of GN 49 of 1971). The aim is to ensure that information is circulated to all interested parties particularly the heirs, debtors and creditors. The usual practice is to advertise for*



*three (3) months but that period can be reduced by the court on special reasons to be recorded. The emphasis here is that where it is advertised for a shorter period, the reasons must be recorded. It is not therefore for the court to act on pressures of parties who come to court at an eleventh hour and seek quick appointments. Quick appointments are dangerous and are the source of many complaints and misdeeds. **The court must act judiciously and ensure that the information circulate to all interested people. To accomplish that aim, in my view, the citation must stand for at least four (4) weeks.** The court must stand firm on this aspect to avoid future complaints and protect its respect."* (Emphasis is mine).

As it was held in a persuasive case cited above, the aim of a citation is to ensure that information is circulated to all interested persons. In our appeal, having gone through the records this court noted that, on 10/06/2019 the court ordered that:

*"Mwombaji amefika Mahakamani kufungua shauri hili la mirathi, hivyo Mahakama Itajaza fomu ya mirathi No. II (Matangazo ya Mirathi) ili mwombaji akayabandike kwenye mbao za Matangazo, mahakamani, ofisi za kata anayoishi, ofisi za Kijiji na kwingineko.*

*Shauri hadi tarehe 24/06/2019 kwa ajii ya kutajwa'*

Taking into account the day when the order of citation was issued on 10/06/2019 to the date it was scheduled for mention on 24/06/2019,

*Aweya*


and then hearing on 25/06/2019, there is a total of 15 days. It is the firm view of this court that those 15 days were reasonable for the citation to be published to notify those who would be interested in the estate of the late Mediri.

Thus, after receiving the proof of notice of citation the court was correct to proceed with the hearing and appoint the respondent as administrator of the estate of the late Mediri. The appellant has no legal basis to justify 90 days citation.

In the circumstances, therefore, this court finds the 4<sup>th</sup> ground of appeal with no merit. So, the appeal is hereby dismissed with no order as to costs taking into consideration the nature of the appeal which arises from a Probate Cause.

Ordered accordingly.

**DATED** at **ARUSHA** this 24<sup>th</sup> day of November 2022

  
**N.R. MWASEBA**  
**JUDGE**  
**24/11/2022**

