

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL REVISION NO. 07 OF 2021

(Arising from Civil Appeal No. 10 of 2021 in the District Court of Mbulu at Mbulu, Originating from Probate Cause No. 10 of 2021 at Endagikot Primary Court)

OMBAY SIAY.....APPLICANT

VERSUS

YOHANA AXWESO.....RESPONDENT

RULING

08/10/2021 & 21/01/2022

GWAE, J

In the Endagikot Primary Court (“the trial court”), a Probate and Administration Cause was filed by one Faustini Bukshi for grant of letters of Administration of the estate of the Late Hassan Ombay Siay (deceased).

Before commencement of hearing of the cause, a caveat was entered by the respondent herein claiming to be one of the deceased person’s wives. In the caveat the respondent alleged to be the legal wife on the ground that, she contracted a Christian marriage with the deceased and more so she was the one who took care of the deceased to his death. She further alleged that

she was not involved in the family meeting and that the deceased before his demise had left a will.

The petition being encountered by a caveat, the trial court had to dispose first the objection, however the respondent was reported to be sick and therefore she was represented by her daughter one Aplonia Siay Ombay through the Power of Attorney. After hearing the parties, the trial came into conclusion that the petitioner was not eligible person to be granted letters of administration of the estate of the deceased on the reason that, he was neither familiar with the deceased's family nor was he familiar with the deceased's property, as to the validity of the will it was the finding of the trial court that, the will was invalid. Consequently, the trial court appointed the deceased's children namely; Ombay Siay and Aplonia Siay Ombay to be the administrator and administratrix respectively of the deceased person's estate.

Aggrieved by the trial court's decision, the respondent herein filed her appeal to the District Court of Mbulu (appellate court) challenging the appointment of the administrators and its order whose effect was that, the will was invalid. The appeal was heard, however in the course of composing the judgment the appellate magistrate discovered a new issue of jurisdiction

and therefore parties were called upon to address the court as to whether the trial court had jurisdiction to entertain the matter as the deceased prophesized Christianity.

After the parties had addressed the court, it was the findings of the appellate court magistrate that, the trial court had no jurisdiction to entertain the matter pursuant to the provisions of section 18 (1) (a) (i) of the Magistrates Courts Act Chapter 11, Revised Edition, 2019. Therefore, the proceedings and judgment of the trial court were consequently quashed and the appointment of the administrators was set aside.

It should be noted that in the appellate court, the respondent herein filed her appeal against one Faustin Bukshi and the appointed administrators by the trial court were not vividly joined in the said appeal. Essentially, this is the basis of the sought revision by one of the said administrators so appointed by the trial court.

The revision before this court has been preferred under the provision of section 31 (2) and 32 (2) of the Magistrate's Courts Act (supra) seeking an order that this court to call upon the records of the appellate court in Civil Appeal No. 10 of 2021 so as to satisfy itself as to the legality, correctness

and propriety of the proceedings and judgment thereof. The application is further supported by a sworn affidavit of the applicant where reasons for this revision are stated to be; firstly, that, the respondent filed an appeal against Faustin Bukshi who was not appointed an administrator and without joining the appointed administrators, secondly, that, at the hearing of the appeal the appellant was represented by the administratrix one Aplonia Siay Ombay without court leave to do so, thirdly, that, the appeal was heard in the absence of the applicant who is one of the administrators and therefore he was denied fundamental right to be heard, that and fourthly, the issue of religion/Christianity raised by the 1st appellate court was not an issue at the trial court.

The respondent on the other hand strongly opposed the application by filing her counter affidavit where she maintained that all parties were accorded with the right to be heard she further supported the decision of the appellate court which quashed the decision of the trial court.

At the hearing of this matter, the applicant was represented by the learned counsel, Mr. Alexander Williams Shillah while the respondent throughout the hearing was reported to be sick by one Apolonia. With the

leave of the court the application was disposed of by way of written submission.

Having considered the submissions by both parties this court finds that the main issue for determination is whether there was a proper appeal before the appellate District Court. In his submission, Mr. Shillah submitted that the appeal before the appellate court was improper for want of proper parties, according to him the appeal ought to have joined the administrators however the respondent herein appealed against a party who was not appointed as administrator by the Primary Court hence the applicant herein was denied his right to be heard. On the other hand, the respondent maintained that all parties were afforded with the right to be heard by calling witnesses to support their case.

This court has sensibly gone through the entire proceedings of both the trial court and those of the appellate court, it is evidently clear that the applicant herein together with one Aplonia Siay Ombay were appointed by the trial court as administrators, following the rejection of the Probate and Administration Cause by one Faustini Bukshi. However, the records of the District Court are such that, the respondent herein being aggrieved by the appointment of the administrators filed her appeal to the District Court but

the same was filed against Faustini Bukshi who, who as per the trial court's proceedings was not appointed as an administrator.

From the outset, it is with no doubt that, the appeal before the 1st appellate court was filed against an improper party. It is the cardinal principle that, a suit or application or petition be filed or against a proper party and or necessary so that its decree or order may be effective. I am guided the judicial jurisprudence in the of **Ally Ahmada Bauda (Administrator of the late Amina Hussein Senyange vs. Raza Hussein Ladha Damji and two others (supra)** where it was held;


"Locus standi is a common law principle which requires that a person bringing a matter to court should be able show that his right or interest has been infringed".

Basing on the judicial precedents including the above cited decision of the highest court of the land, it is my understanding that the applicant ought to have joined the applicant and that other administrator, Aplonia Siay Ombay as well as the said Faustin Bukshi who initiated the Administration Cause since any order that was to be issued by the appellate District Court would have, in one way or other, affected the administrators therefore the appointed administrators by the trial court were necessary parties, they ought to have been joined in the said appeal.

In the event the appellate District Court's judgment and proceedings are hereby quashed and set aside for being founded from an improper party. Considering the relationship of the parties herein, this court finds it to be just and fair to refrain from giving an order as to costs as I hereby do.

It is so ordered.




M. R. GWAE
JUDGE
21/01/2022