

TANZANIA / JUDGMENT

Emmanuel Mugesha Mandoo v

COURT
TANZLII

DECIDED
29 November 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI (PC) CIVIL APPEAL NO. 20472 OF 2024 (Originating from Dongobesh
Primary Court in the Probate and Administration Cause No. 2 of 2024 and Probate Appeal No.
11343 of 2024 at Mbulu District Court) EMANUEL MUGESHA
MANDOO.....APPELLANT VERSUS ISRAEL AXWESO YAHEDA (as an
Administrator of estate of the Late Mugesha Mandoo
Samay).....RESPONDENT

JUDGMENT

9th October and 29th November 2024 MIRINDO J.: Emanuel Mugesha Mandoo objected to the appointment of Israel Axwesso Yaheda to administer the estate of the late Mugesha Mandoo Samay. Mugesha Mandoo Samay of Gidhim Village in Mbulu District within Manyara Region passed away in 1989. In early 2024, Israel Axwesso Yaheda applied before Dongobesh Primary Court be appointed as an administrator of the estate of Mugesha Mandoo Samay. When he became aware of the application, Emanuel Mugesha Mandoo opposed it for four reasons. First, it is long since the deceased died. Secondly, at the time of death the deceased had distributed the estate to his two wives. Thirdly, there was no need for 1 administration of the estate because while those properties were under his control and the application was simply a scheme to disturb him and remove him from there. Fourthly, Israel Axwesso Yaheda was not yet born at the time of the deceased's death. Conversely, Israel Axwesso Yaheda asserted that he was appointed by a clan meeting to apply for the administration of the estate of his deceased grandfather, Mugesha Mandoo Samay. He mentioned that the estate had never been administered and Emanuel Mugesha Mandoo was at one time left to oversee the estate but has since been squandering and wasting the estate. The Dongobesh Primary Court overruled the objections and determined the application, and appointed Israel Axwesso Yaheda to administer the estate. Emanuel Mugesha Mandoo went to Mbulu District Court and raised four grounds of appeal to no avail. Assisted by learned Counsel, Mr. Basil Boay, the appellant, Emanuel Mugesha Mandoo is before the High Court with three grounds of appeal. Israel Axwesso Yaheda had the services of Mr. Imran Juma, learned Counsel. The complaint in the first ground of appeal is that the appointment of Israel Axwesso Yaheda as an administrator was wrong because he was neither a beneficiary nor a close relative of the deceased. This complaint is closely related with the complaint in the third ground of appeal where the District Court is criticized for introducing new facts to the case. Mr. Boay

argued that the appellant is the only son of the deceased, a fact overlooked by two lower courts in appointing the respondent. Arguing this ground in the District Court as a third ground of appeal, Mr. Boay asserted that the appellant is 2 “Emmanuel Mugesha Mandoo” and the deceased is “Mugesha Mandoo.” He added that the respondent’s relationship with the deceased was not established at all. The learned advocate criticised the appointment of the respondent at the expense of other children given that the deceased left “three” wives, and argued that the best way was to apply proportionality by having administrators from each of the deceased wives. In response Mr. Juma reiterated that the respondent established his blood relationship with the deceased as his grandson and pointed out that the appellant was not the deceased’s child as claimed. He was simply raised at the deceased’s home. This an intriguing point. According to the clan meeting of 17 December 2023, the late Mugesha Mandoo Samay had two wives and one child, Yaheda Mugesha; all of whom are now dead. Initially, the estate was to be administered by Axwesso Yaheda Mugesha but on account of old age, the meeting proposed Israel Axwesso Yaheda, the respondent to apply for administration of the estate. But who is Axwesso Yaheda Mugesha? The answer to this question is in the testimony of Nicodemus Yaheda Mugesha during the hearing of the objection. He identified himself in Kiswahili as follows: ...Sisi ni familia ya Yaeda Mugesha, Mzee Axwesso (Su2) ndio mkubwa katika familia yetu ndiye alisimamia mali za marehemu..... This portion of evidence points to the fact that Axwesso Yaheda Mugesha, aged 75 years, and Nicodemus Yaheda Mugesha, aged 51 years, are the sons of Yaheda Mugesha and therefore the grandsons of the late Mugesha Mandoo Samay. The 3 respondent, Israel Axwesso Yaheda, is the son of Axwesso Yaheda Mugesha and the great grandson of the late Mugesha Mandoo Samay. But who is Emanuel Mugesha Mandoo? Axwesso Yaheda Mugesha recognized him as an evangelist who came to their family and his father took care of him, and was not one of their blood relations. Contrary to Mr. Boay’s submissions in this Court and in the District Court, Emanuel Mugesha Mandoo never portrayed himself at the trial court as the biological son of the late Mugesha Mandoo Samay. He principally introduced himself as a person whom the deceased left under the care of her junior wife. During the cross-examination in Kiswahili, he became more forthright: Marehemu alinichukua nikiwa mdogo ili ni msaidie kazi za pale nyumbani. Hivyo si mtoto wa marehemu. Mimi sijui wazazi wangu walipo ndio maana nasema mimi ni mtoto wa Mugesha. He made similar remarks on being examined by the trial court. In addition, the respondent recognised the appellant as “Emmanueli Baltazary Ombay” from Mto wa Mbu and not one of their clan members. That description was to some extent offered by Nicodemus Yaheda. From this description, I disagree with Mr. Boay’s complaint in the third ground of appeal that the District Court introduced a new fact and erred in referring the appellant as “Emmanueli Baltazary Ombay” instead of “Emanuel Mugesha Mandoo.” There is ample evidence showing that Emanuel Mugesha Mandoo is not a blood relation of the late Mugesha Mandoo Samay although he became their family member as admitted by both parties. 4 Pursuant to Paragraph 2(b) of the Fifth Schedule to the Magistrates’ Courts Act [Cap. 11 R.E. 2019], a primary court is enjoined to grant administration of the estate upon “an application by any person interested in the administration of the estate.” It is contended in the second ground of appeal that appellate Mbulu District Court through improper evaluation of evidence arrived at a decision not maintainable in law. Mr. Boay pointed out that thirty-five years have passed since the death of Mugesha Mandoo

Samay and there is no property for distribution as all the properties passed to the deceased's children and his "three" wives. Mr. Juma did not specifically address this. Part of this complaint was raised before Mbulu District Court as one of limitation of actions. Primary Courts have a different legal framework from that under Probate and Administration of Estates Act and which do not specifically provide for limitation of actions. They are governed by the Magistrate Courts' Act and Primary Courts (Administration of Estates) Rules, GN No 49 of 1971. In a 1995 case of *Mwaka Musa vs Simon Obeid Simchimba* (Civil Appeal 45 of

1994) [1995] TZCA 56, the Court of Appeal held that there is no "strict" limitation of time in probate and administration of estates given that section 31 (1) of the Probate and Administration of Estates Act allows the petition to provide a statement of delay whenever the petition is filed after expiration of three years from the death of the deceased. 5 For sometime there had been conflicting decisions of the High Court on the limitation of actions in administration of deceased estates before Primary Court. Although this Court in *Kassim Yusuf Kambamgwa v Mrisho Omari*, Civil Appeal 69 of 1997, noted the harshness of introducing short limitation periods in cases of this nature and concluded it was for the legislature to decide, in *Songo Nyekaji v Majura Songo Nyekaji* (Probate and Administration Cause 3 of 2019) [2020] TZHC 662, Kahyoza J adopted the legal position enunciated in *Mwaka Musa* and extended it to primary courts. This conflict of opinion must now be considered to have ended as a result of the more recent decision of the Court of Appeal in *Miraji Salimu Nyangasa v Ramadhani Omary Sewando* (As Administrator of Estate of the Late Hussein Omary Sewando) (Civil Appeal No. 686 of 2023) [2024] TZCA 895 adopting the reasoning in *Mwaka Musa* to primary courts and concluding that "where the statement [of delay] is found to have no sound reasons, the court, in its discretion, can decline to entertain the petition." In the instant case the application was accompanied by a statement of delay which both lower courts consider to be sufficient. It was not contested before this Court and I have no reason to differ with the two lower courts. Returning to the second part of the argument that essentially forms part of the second ground of appeal that since long time has passed there is no property left for distribution and that the proceedings would open up land disputes and disturb family peace. 6 One of the duties of the administrator of the estate under Paragraph 5 of the Fifth Schedule to the Magistrates' Courts Act is to collect the properties of the properties and the debts of the estate. A conclusion that there is nothing in the estate remaining for distribution cannot be made at this juncture. Doing so would be putting the cart before the horse. It follows that the decisions of the lower courts are affirmed and the appeal stands dismissed with costs. DATED at BABATI this 29th day of November 2024. F.M. MIRINDO JUDGE COURT: Judgment delivered in chambers this 29th day of November 2024 in the presence of the appellant in person and in the presence of the respondent in person and his counsel, Mr. Imran Juma. B/C: Ms. Anna Mathayo presents (RMA). Right of appeal explained. F.M. MIRINDO JUDGE 7

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/322706/source_file/810ab6cfa55265e6/Emmanuel_Mugesha_Mandoo_v_Israel_Axweso_Yaeda.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/emanuel-mugesha-mandoo-v-israel-axweso-yaheda-appointmentofadministrator-tanzlii-2024--6a3ea5243b1caa9129819f68>

Prepared on 13 October 2026 · Esheria