

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MOROGORO SUB REGISTRY)
AT MOROGORO PC PROBATE APPEAL NO.463 OF 2024 {^Originating from the Decision of Probate
Appeal No. 05 of 2023 Kiiombero District Court at Ifakara and originating from Ifakara Primary
Court in Probate Cause No.10 of 2017) IBRAHIM KASSAM ALLY.... APPELLANT VERSUS ADAM
KASSAM ALLY REPONDENT Date of Last Order; 04th June, 2024 Date of Judgement: 14th June, 2024

JUDGEMENT

MAGOIGA, J This appeal has checkered history dating back to 1980 when KASSAM ALLY KASSAM died interstate leaving behind two wives, ten children from the two wives, two houses (occupied by each wife separately), 10 acres of land and motor vehicle but his probate and administration process emerged in court in 2016. The appellant, IBRAHIM KASSAM ALLY aggrieved by the decision of the Kiiombero District Court at Ifakara (first appellate court) in Probate and Administration Appeal No.05 of 2023 which set aside his appointment and restored the respondent's appointment, formerly appointed in the Probate Cause IMo.10 of 2017 at Ifakara Primary Court, as the administrator of one iate Kassam Aiiy Kassam has preferred the present appeal armed with 10 grounds of appeal, namely: -

1. That the Honorable trial magistrate erred in law and fact in entertaining the appeal that was filed out without leave of the court as per order of the Hon JUDGE P. J. NGWEMBE as he was dated 4/2/2023.
2. That the Honorable trial magistrate erred in law and fact in not assessing that the respondent did not distribute the property to the legal heirs.
3. That the Honorable trial magistrate erred in law and fact in not considering the fact that the respondent did not file an Inventory and account of estate of the late Kassam Ally since his appointment 2017 as up to the to the revocation of his administration.
4. That the Honourable trial Magistrate erred in law and fact in not considering the fact that revocation was done with sufficient reasons as he did not discharge his duties as administrator

5. That the Honorable trial magistrate erred in law and fact in not considering the fact that all the property of the deceased including two^{^^^} houses which are in dispute were owned by the deceased and were not divided to two wives rather all children including the wives are entitled as legal heirs
6. That the Honorable trial magistrate erred in law and fact in not considering the fact that the file in probate cause No. 10 was not closed and some of the assets included in form No VI were not existing.
7. That the Honorable trial magistrate erred in law and fact in not considering that the respondent was misusing the property of the deceased since 2017 and was collecting rent from the rented premise without sharing with all heirs of the deceased.
8. That the Honorable trial magistrate erred in law and fact in not considering the fact that the evidence adduced by Jakobo Kassam Ally was fabricated and was not in the record of the primary court and was not critically analysed and assessed for the interest of the respondent.
9. That the Honorable trial magistrate erred in law and fact in relying in the proceedings of the trial court that which was illegally fabricated and omitted purposefully to serve the respondent which was not in existence as per proceeding of primary magistrate Kuita who has revoked the respondent as an administrator.
10. That the Honorable trial magistrate erred in law and fact in not considering the fact that accounts of estates in probate cause no 10 of 2017 were filed out of time and not in compliance with form No. V and form No. VI as per primary court rules. On the basis and strength of the above grounds of appeal, the appellant prayed for orders that the appeal be allowed, quashed and set aside the judgment and decree of the first appellate court and have him restored as administrator of estate of his father late Kassam Ally Kassam. In this appeal, the events unfolded as follows: In 2016, vide Probate Cause No. 7 of 2016 before Ifakara Urban Primary Court, the respondent, unsuccessfully petitioned for a letter of administration of the late Kassam Ally Kassam for being time barred. Aggrieved with the Primary court decision, the respondent appealed to District court of Kllombero at Ifakara which quashed the Primary court proceedings and decision and advised the respondent to lodge a fresh application before primary court after extension of time. The record is not clear whether extension was applied and granted. However, the record shows, the respondent successfully opened Probate and Administration Cause No 10 of 2017. The same was granted and the respondent was duly appointed to administer the estate of late Kassam Ally Kassam and was given six months to accomplish the job. On 07/12/2020, the appellant knocked the doors of Ifakara Urban Primary Court applying for revocation of the respondent for two reasons: one, that the respondent has failed to administer the estate within the time given and close the administration, and two, for unsatisfactory distribution done. The appellant successfully convinced the trial court which revoked respondent's appointment, and instead thereof, appointed the appellant as administrator of estate of late Kassam Ally

Kassam in 2021. Aggrieved with the decision of the Ifakara Urban Primary Court, but due to illness and failure to get the judgement In time, the respondent unsuccessfully applied for extension of time to appeal before Ifakara district court. Still daunted, the respondent successfully appealed to this court against the Ifakara district which appeal was allowed and was given 20 days to lodge his appeal. The respondent lodged appeal No. 5 of 2023 which ended up in his favour, the genesis of this appeal, hence, this judgement after hearing parties on merits. When this appeal was called on for hearing, the appellant was represented by Mr. Mkirya Daudi, learned advocate; whereas the Respondent was represented by Josephine Mbeni, learned advocate. Invited to argue the appeal, Mr. Daudi for the appellant requested to withdraw grounds number 8 and 9, and upon being probed by the court regarding the first ground of appeal on extension granted by this court, Mr. Daudi dropped the fifth ground of appeal as well. Arguing second ground of appeal, Mr. Daudi told the court that ever since the respondent was appointed in 2017, the properties of the late KASSAM ALLY KASSAM haven't been distributed to date, prompting the appellant to petition before trial court to revoke the respondent's appointment due to failure to fulfill his administrative duties granted to him to be accomplished within 6 months. According to Mr. Daudi, the six months given to administer the estate ended 19th day of April, 2018. Therefore, by his revocation in 2021 is evident that the respondent utterly failed to administer the estate. The learned advocate cited the cases of Beatrice Briton Kamanga Vs. Amanda Brighton Kamanga, Civil Revision No.13 of 2020(HC)DSM at Tanzania and PC Probate Appeal No. 5 of 2020, Gabriel Joseph (Administrator of estate of Chacha Mkohi) Vs. Ambrose Gwasi Mkohi and 2 others, HC(Musoma) which decisions were clear that after period given to administer estate has elapsed or expired anything done thereafter is null and void unless extension is sought and granted. Mr. Daudi went on arguing strongly that had the respondent done his duties, the first appellate court could not restore him but rather discharged him because there is nothing more to distribute. Arguing the 3, 4, 6, and 10 grounds of appeal collectively Mr. Daudi highlighted the requirement to file accounts and inventory as mandated by law, citing Rule 10 of the Primary Court (Administration of Estate) Rules, GN 49 of 1971. The learned advocate pointed out that, despite being granted a 6-month period (extended from the usual 4-month deadline), the respondent neither complied nor sought an extension. Contesting the justification of his reinstatement, the argument is that the actions taken by the administrator in fulfilling core duties were inadequate, serving as ample grounds for revocation of his administration. In support of his argument, the learned advocate for the appellant cited the case of Beatrice Briton Kamanga and Amanda Briton Kamanga Vs. Ziada William Kamanga, Civil Revision No.13 of 2020 HC(DSM)(unreported at Tanzania) which was clear that after the period given has expired anything done thereafter is null and void unless extension is sought and granted. No extension sought and granted in this appeal, insisted Mr. Daudi. On the foregoing, Mr. Daudi prayed this court to find merits in this appeal and allow it with costs. In response, Ms. Mbeni contested the merit of all grounds of appeal argued, by maintaining that the respondent filed an inventory in 2020, but no action was taken. Despite being instructed by the court to submit another inventory, which was done, subsequent court orders on

5.02.2021 and 08.02.2021 were scheduled but other beneficiaries did not attend but filed an objection to the distribution of the estate. According to Ms. Mbena, the argument that no administration has not been done is not true. Nevertheless, the learned advocate for the respondent conceded that the proper way for what the respondent has done was to discharge him and not to re-appoint him again. Responding to the 3,4,6 and 10 ground of appeal together, Ms. Mbena argued in reply that the argument that no inventory was filed is misconceived because by the trial court ordering a new inventory amounted to extension and the respondent did comply with the court directives, as such Rule 10 was complied with contrary to what was argued by the learned advocate for the appellant. On the foregoing, Ms. Mbena urged this court to find this appeal without any useful merits and proceed to dismiss it with costs and proceed to substitute his appointment with the order to discharge him. In rejoinder, Mr. Daudi argued that there was no order to close the probate, and the court erred in re-appointing the respondent. Additionally, despite court dates being set for 05.02.2021 and 08.05.2021, no progress was made, and the case file remains open. The learned advocate for the appellant reiterated their request for appeal to be allowed. Having read the record of appeal from both lower courts and heard both parties' arguments regarding this appeal, I noted that this appeal hinges on two issues namely: firstly, whether the respondent fulfilled his duties before revocation, and secondly, whether the first appellate court's decision to reinstate the respondent was justified. In addressing the above issues, I will be guided by the case of Hadija Saidi Matika and Aweza Said Matika, PC Civil Appeal No.2 of 2016 High Court Mtwara (Unreported), which expressly pointed out that the administrator's duties are: collection of deceased assets, identification of heirs, debt settlement, asset distribution, and filing of inventory and accounts (Form V and Form VI). I hasten to say, in my respective and considered opinion, that the above duties are to be done in a prescribed time and are not an open exercise unless the prescribed time is extended. More so, the duty of the trial court or appointing court is not discharged in probate matters until the file is closed. A dutiful court or magistrate is to set a specific date for orders regarding the filing of inventory and retains the powers to recall or summon the administrator to explain why after elapse of prescribed time no inventory has not been filed. If the above procedures are observed by the court and any appointed administrator, I believe no probate will last for years unclosed. 10 Now back to the first Issue "whether the respondent fulfilled his duties before revocation". However, before answering this Issue, I have observed from the court record that, ever since the death of late Kassam Ally Kassam in 1980, deceased was survived with two wives and ten children (five from each wife), two houses, ten acres of land and one motor vehicle Bedford. Customarily, his younger brother Juma Kassam Ally directed each wife to stay where they were staying with the properties before the demise of the late Kassam Ally Kassam. That arrangement made the family of late Kassam Ally Kassam to stay peacefully for over 37 years until 2016 when this formal process started for the administration of the estate. However, the process started and there is ample evidence on record a lot of water has gone under the bridge for the is ample and undisputed facts that, the motor vehicle was sold and proceeds distributed to all lawful heirs, one of the houses was sold by the younger wife way back in 1992 and some acres of land. Now back to the first

Issue, the trial court gave the administrator six months to distribute the estate, which were to end up In April 2018. This court has as well noted final statement of account which was filed In court though with no date In form No.VI. With respect to the appellant and his advocate. It cannot be said firmly that the administrator had not done his duties. Upon 11 filing of Form VI, what remained was the duty of the trial court to convene a date for all parties to come and upon satisfaction of the distribution, the court proceed to close the file. This last process marks the end of the probate. Unfortunately, the trial court did not do his/her job. The record Is also clear that on 20/01/2021, the trial court ordered again another final statements of accounts to be filed. This order of the trial court which was not appealed to by the appellant, serves as extension of time within which administrator was to file the accounts. The administrator complied with the order and the allegations that he failed to do his duties are unfounded and the first appellate court was right in his findings that the administrator before an objection was taken had his job done. The problem in this probate was caused by the trial Magistrate's failure to discharged his/her ical legal duties when the administrator filed the final accounts. I am constrained to remark that, judges and magistrates alike, when dealing with probate matters, I myself Included, hereby reminded of this last but very crucial point of determining the fate of the inventory and statement of accounts and make appropriate orders, including closing the file. 12 With the above findings of this court, the arguments by Mr. Daudi that the first appellate Magistrate erred in law in the circumstances of this appeal are but devoid for any useful merits. The cases cited were considered but are found distinguishable from the circumstances we have here because there was extension by the trial Magistrate, which was not contested. On the above reasons, I find the second ground of appeal without merits, and thus has to fail and is dismissed. On the second issue whether the first appellate court's decision to reinstate the respondent was justified/' This issue will not detain this court much because even the counsel for respondent conceded that much as the appellant had filed an inventory, then, there was no need of the first appellate court to re-appoint him but was discharged him. Indeed, once final statements of accounts are filed, the trial court is duty casted to call ail beneficiaries, hear them and if no dispute, close the file. Where there is objection or dispute hear parties and make necessary orders according to the evidence before the trial court. With that note, I find out that the first appellate court erred in re-appointing the respondent who had done his job as per the directives of the court. This court thus hereby using its revisionai and supervisory powers reverse the order of re-appointment of the 13 respondent and substituted with the order of discharge. With the extent explained above, the 3, 4,6 and 10 grounds are to fail for reasons stated above. That said and done, this appeal is found to be of no merits and is hereby dismissed with no order as to costs this being probate matter involving blood brothers and to bring to an end of this matter. It is so ordered. Dated at Mor^xo this 14^^ day of Juie,,i2024 OF 4^ 45 2^ > LU S.M. MAGOIGA V JUDGE 14.06.2024 COURT: Judgement delivered in chambers at Morogoro in the presence of Mr. Mkiryia Daudi learned advocate for the appellant who present in person and in the absence of Ms. Mbeni, learned advocate for the respondent who was aware oi ent date tod^y on 14^" day of June, 2024 c 4 4- —^ > S.M. MAGOIGA JUDGE 14 14.06.2024 COURT: Right g ained LU GOIGA

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