

TANZANIA / JUDGMENT

MOHAMED HUSSEIN Vs BERNAD PAUL TARIMO

COURT
TANZLIIDECIDED
23 July 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. 8051 OF 2024. {Arising from civil Revision No.3/2022 of Mbulu District court, originating from Endagikot Primary Court, probate, and administration cause No. 04/2022/ MOHAMED HUSSEIN MTAGWA..... APPELLANT VERSUS BERNAD PAULTARIMO..... RESPONDENT

JUDGMENT

04th & 23th July, 2024. Kahyoza, J. This appeal originates from a contentious probate matter. Mohamed Hussein Mtagwa (Mohamed) petitioned for letters of administration of the estate of the late Hussein Mtagwa Salehe before the primary court. The primary granted Mohamed the letters of administration of the late Hussein Mtagwa Salehe's estate on 24.8.2022. Mohamed is the late Hussein Mtagwa Salehe's son. Before Mohamed filed the inventory form, Bernard Paul Tarimo (Bernad) applied for revision to the district court praying the court to call and examine the correctness, legality or propriety of the proceedings. He also prayed the district court to quash and set aside the judgment and make orders. The district court nullified the primary court i proceedings and directed Bernad to petition for letters of administration of the Angela Shoka. Aggrieved, Mohamed appealed to this court raising five grounds of appeal which culminated into the following issues-

- 1) was the district court justified to nullify Mohamed's letters of administration of the late Hussein Mtagwa Salehe's estate?
- 2) did the district court decide a land dispute? if the answer is yes, did the district court have jurisdiction to decide the land dispute?
- 3) was the district court justified to rely on the judgment in Civil Appeal No. 35/1999?
- 4) were the proceedings before the district court irregular for failure to serve Mohamed?
- 5) did the district court wrongly revoke the letters of appointment of the late Hussein Mtagwa Salehe's estate? To add to a brief background narrated above; there two persons who died intestate; the first one is the late Hussein Mtagwa Salehe who is the appellant's father and the second one is Angela Shoka. The latter not only that she died intestate but also left no

close relative. As the record bears testimony, both Mohamed and Bernad are struggling to administer and inherit the estate of the late Angela Shoka. The record further shows that, none of them has applied to administer the estate of the late Angela Shoka. 2 Both parties appeared in persons, during the hearing of the appeal. The appellant complained that he was not summoned to appear to the district court to oppose the application. Was the district court justified to nullify Mohamed's letters of administration of the late Hussein Mtagwa Salehe's estate? It is on the record that Mohamed petitioned and was granted letters of administration of the estate of his late father Hussein Mtagwa Salehe. After Bernad applied for revision, the district court quashed the decision of the primary court which appointed the appellant as administrator of the estate of late father because Mohamed was not biologically related to late Angela Shoka. Having considered the facts of this case and the law, I am unable to associate myself with the decision of the district court for several reasons. First, Mohamed applied to administer the estate of his late father, Hussein Mtagwa Salehe and not the estate of the late Angela Shoka. The district court misdirected itself to hold that Mohamed was unfit person to administer the estate of his later father because he was not related to the late Angela Shoka. Secondly, the district court nullified the probate and administration proceedings of the primary court before Mohamed filed the inventory. 3 How did it come to the knowledge of the district court that Mohamed intended to include the estate of the late Angela Shoka in the estate of his father? or that Mohamed was applying to administer the estate of the late Angela Shoka to whom he was not biologically related? It is the inventory which discloses the deceased's estate which the administrator wishes to administer. Thus, the revisionary order was based on extraneous matters, on assumption and without good reason. For argument's sake, even if the district court was made aware that Mohamed intends to include or list the estate of the late Angela Shoka as part of the estate of his late father, was that a ground for his disqualification? I quickly respond that it was not. A court may revoke an administrator for good reason and those reasons were demonstrated in the case of Julius Peter Nkonya vs William Michael Kudoja (Civil Appeal No. 133 of 2021) [2024] TZCA 397, pg 15 (5 June 2024) where the Court of Appeal held that- "the grant of probate and letters of administration may be revoked or annulled on five grounds, namely: the proceedings to obtain the grant were defective in substance; the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case; the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or 4 inadvertently; the grant has become useless or inoperative; and; the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or has exhibited under that part an inventory or account which is untrue in a material respect." The district court did not demonstrate that it revoked the appointment of Mohamed for any of the above grounds, rather he was not biologically related to the late Angela Shoka. Mohamed was not applying to administer the estate of late Angela Shoka. Even if there was evidence that Mohamed had included the property of the late Angela Shoka as part of his father's estate, a person entitled to inherit the late Angela Shoka's estate had a right to contest the inclusion of that estate.

Thirdly, even if there existed the grounds for revocation, the issue is whether the district court had mandate to revoke Mohamed's letters of administration. It had not as it did not appoint Mohamed. It is the court which appointed the administrator, which has the privilege to replace him or revoke his appointment. The primary court is vested with the jurisdiction of confirm or revoke the administrator. The jurisdiction of the primary court to revoke the administrator is under item 2 of the Fifth Schedule to the Magistrates' Courts Act, [Cap. 11 R.E. 2019] (the MCA) which states- 5 "4 primary court upon which jurisdiction in the administration of deceased's estates has been conferred may;

- (c) revoke any appointment of an administrator for a good and sufficient cause and require the surrender of any document evidencing his appointment." As stated in the above provision, there is no gainsaying that, the Bernad should have applied for revocation in the primary court where the administrator was appointed. There is no reason why Bernad opted to apply for revision in the district court and why the district court exercised its powers under section 22 of the MCA to revise the proceedings of the primary court. In addition, it is this Court's holding that the application for revision was filed to the district court prematurely since Bernad had not exhausted the remedies available to him. Bernad had one remedy open to him, which was to apply to the primary court for revocation of the letters of administration granted to Mohamed. See *Hidaya Seleman & Another vs Moshi Salum*, (Civil Appeal No.490 of 2020)[2024]TZCA 425(10 June

- 2024) at Pg 7 where the Court of Appeal stated that- xrThe grounds in the revision, we have no doubt, wou/d, if established, amount to "good and sufficient cause" within the meaning of the Rules. No doubt, therefore that, the proper avenue for the appellants to challenge the appointment at the first instance was by way of an application for revocation 6 before the primary court. It was, in our judgment, quite premature for them to initiate superior proceedings to the District Court to challenge the appointment without exhausting the remedies available at the primary court. That is a notorious principle of law we need not cite any authority" It was proper and lawful for Bernad to apply for revocation instead of applying for revocation for; one, there was nothing wrong, illegal or inappropriate in the decision or order of the primary court to appoint Mohamed to administer the estate of his late father; two, there was nothing irregular in the proceedings; three, as held in *Mohamed Hassani v. Mayasa Mzee and Mwanahawa Mzee*. [1984] TRL 225, the primary court had jurisdiction to appoint the administrator and replace or revoke his appointment to administer the estate of the deceased. It is up to Bernad, the person challenging the validity of appointment of Mohamed, the administrator, to show that Mohamed does not have the required qualifications to administer the estate. He was required to prove that before the court which appointed him; and four, the court may appoint a reputable and impartial person able and willing to administer the estate. See the case of *Mohamed Hassani v. Mayasa Mzee and Mwanahawa Mzee*. (supra) and *Naftary Petro vs Mary Protas* (Civil Appeal No. 103 of 2018) [2019] TZCA 357 (31 October 2019). Lastly, even if the parties had locked horns regarding the issue 7 whether the estate of the late Angela Shoka was part and parcel of the late Hussein Mtagwa Salehe, which is not the case, the remedy for

Bernad was to sue Mohamed to the court competent to determine issues of inheritance or who is the rightful successor of the estate of Angela Shoka. It should be noted that the much as the dispute relates to land that would not make it a land matter. The central issue is who ought to succeed or inherit Angela Shoka's land. I wish to refer the parties to the decision of the Court of Appeal in Mgeni Seif V. Mohamed Yahaya Khalfani, Civil Application No. 01 of 2009 (CAT) (unreported) where it observed that- "It seems to us that there are competing claims between the applicant and the respondent over deceased person's estate. In the circumstances, only a probate and administration court can explain how the deceased person's estate passed on to a beneficiary or a "bona fide" purchaser or the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of administration, where the deceased died intestate or probate, where the deceased passed away testate". I find without hesitation, that, the district court misdirected itself; one, to nullify the primary court proceedings prematurely; and two, to hold that Mohamed being not biologically related to the late Angela Shoka was not entitled to the letters of administration. Mohamed had never applied for letters of administration of the estate of the late Angela Shoka. In addition, it is settled that an administrator may be a widow or widows, parents, or child of the deceased or any close relative; if such people are not available or if they are found to be unfit in one way or another, the court has the power to appoint any other fit person or authority to discharge the duty. See Sekunda Mbwambo Vs Rose Ramadhan [2004] TLR 439. Mohamed petitioned and the primary court granted him the letters to administer the estate of his late father, Hussein Mtagwa Salehe. Having determined the first and fifth issues regarding the justification or otherwise of the district court to nullify the Mohamed's letters of administration of the late Hussein Mtagwa Salehe's estate, I find the appeal sufficiently dealt with. I find no need to answer the remaining issues; first, whether the district court decided a land dispute and whether it had jurisdiction to do that; secondly, whether the district court was justified to rely on the judgment in Civil Appeal No. 35/1999 and finally, whether the proceedings before the district court were irregular for failure to serve Mohamed. The outcome on the issues would not impact the decision reached after determining the first issue. In the end, I allow the appeal and set aside the order nullifying the appointment of Mohamed Hussein Mtagwa (Mohamed) to administer the estate of the late Hussein Mtagwa Salehe. Consequently, I confirm the appointment of Mohamed Hussein Mtagwa as the administrator of estate of late Hussein Mtagwa Salehe. The file shall be remitted to the primary court with dispatch for the administrator to file Form V and Form VI immediately. The appellant is ordered costs. I order accordingly. Dated at Babati this 23rd day of July 2024. J. R. Kahyoza JUDGE Court: Judgment delivered in the presence of parties. Ms Fatina (RMA) is present. a J. R. Kahyoza JUDGE 23/07/2024 10

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/314359/source_file/4c67c478da36aa45/MOHAMED_HUSSEIN_Vs_BERNAD_PAUL_TARIMO.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/mohamed-hussein-mtagwa-v-bernad-paul-tarimo-revocationoflettersofadministration-tanzlii-2024

Prepared on 14 October 2026 · Esheria