

TANZANIA / JUDGMENT

SWAFIATH

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30 May 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (BUKOB A SUB-REGISTRY) AT
BUKOB A CIVIL APPEAL NO. 43 OF 2023 (Arising from Civil Appeal No,11 of2023 of Muieba
District Court, Original Probate Cause No. 15 of2017 Muieba Urban Primary Court) SAFIATH
IDD..... Ist APPELLANT HAMDAN
IDD..... 2nd APPELLANT VERSUS EDWARD
SIJAONA..... RESPONDENT

JUDGMENT

17/10/2024 & 06/11/2024 KIWONDE, J. The appellants named above, being aggrieved by the
decision of the first appellate court delivered on 30th May 2023, (L. G. Mwambeleko, SRM), have
appealed to this court basing on four (4) grounds of appeal as follows:

- i. That the learned District Magistrate erred in law and in fact to nullify the appointment of the two administrators regardless of the fact that the respondent herein has failed to be faithful and i discriminating the beneficiaries in distributing the estate of the late Idd Almas Katenda. ii. That both courts below erred in law and in fact to bless the inventory filed by the respondent regardless the fact that the said inventory is strongly disputed by the beneficiaries for being discriminatory and which its filing was tainted with irregularities. iii. That both courts below erred in law and in fact to continue believing the respondent as the administrator of the estate of the late Idd Almas Katenda regardless of the fact that he is executing his duty against the valid Will and declaration of the late Idd Almas Katenda. iv. That the District Court decision is against the basis of the appeal and the decision of the primary court. The appellants asked that the decision of the first appellate court be nullified (sic), the appointment of the respondent be revoked but the appointment of Nasil Elias and Ahmad Idrisa be upheld, cost of the appeal and any other relief this court deems fit and just to grant. The counsels for the parties, by leave of this court, argued the appeal by way of filing written submissions. 2 In nutshell, in his submissions in-chief, the counsel for the appellants started by informing this court that the four (4) grounds of appeal are merged into one, that is whether the proceedings regarding the appointment of the respondent by the trial court with a Will in Probate Cause No. 15 of 2017 blessed by the District Court in Civil Appeal No. 11 of 2023 were proper. Then the counsel for the appellants submitted that there was Probate Cause No. 6 of 2010 which appointed Adam Idd Almas, Abdu Idd Almas

and the Ward Executive Officer, but they failed to discharge their duty and the respondent applied for their revocation vide Probate Cause No. 15 of 2017 and he was appointed to replace them. He said the respondent was issued with Form No. IV (letter of administration). The counsel argued that the trial court had not to open fresh file since the previous one had not been closed. Besides that, the counsel said the respondent was appointed under wrong provision of the law, that is rule 7(2) of the Magistrates' Courts Act, Cap 11. Also, the counsel submitted that the respondent alleged existence of a Will, but the trial court never discussed it and the District Court skipped the same, so, its validity is not known. 3 In reply, the counsel for the respondent argued that the appellants have introduced a new ground of appeal and argued it different from the four grounds of appeal. According to him, this amounted to failure to prosecute the appeal and asked it to be dismissed. Apart from that, the counsel for the respondent submitted that the validity of the Will can be challenged at the trial court by special proceedings and evidence to prove its validity can be adduced. He added that this court not to revoke the appointment of the respondent for he is a party and defending the pending appeal before the Court of Appeal of Tanzania. The counsel said there was no irregularity. Concerning opening fresh probate matter, the counsel argued that the respondent acted on the directives of the trial court after revoking the appointment of the three named administrators. He contended that the respondent has discharged his duty up to filing of the inventory in court, save for the disputed deceased estate. There were no rejoinder submissions. From the lower courts records and the written submissions, the issue for determination is whether this appeal has merit or not. 4 Before embarking to the grounds of appeal, I have considered the concern raised by the counsel for the respondent that the appellants have failed to prosecute the appeal by arguing on a new and different ground of appeal. It is apparent from the records that in the petition of appeal, the appellants were challenging unfaithfulness of the respondent in the administration of the deceased estate for he carries out the same with discrimination, that the inventory he filed is tainted with irregularities, strongly objected for being discriminatory to some of the beneficiaries, that he is still believed while he is executing his administration duty against the valid Will and declaration of the deceased Idd Almas Katenda and finally, that the decision of the District Court was against the basis of the appeal before it. So, it is obvious that the appellants completely deviated from the grounds of the appeal and raised a new one relating to the correctness of the proceedings by the trial court in appointing the respondent. Thus, I am in one accord with the counsel for the respondent that the appeal has not been prosecuted. In law, the parties are bound by their pleadings. The appellants had to argue the presented grounds of appeal or if there was a need to raise 5 other grounds different from the previous, they would file additional grounds of appeal or amend the petition of appeal. For the reason that the appellants have deviated from the grounds of appeal, I concur with the counsel for the respondent that this is tantamount to failure to prosecute the appeal. However, there is an apparent irregularity showed by the counsel for the appellants that right from the filing of Probate Cause No. 15 of 2017 while the previous one, Probate Cause No. 6 of 2010 had not been closed, the trial court exercised procedural flaw. The counsel for the respondent replied that the respondent acted on the directives of

the court that is why he initiated a fresh probate matter and he introduced an issue of existence of the Will. This court, in my view, should not leave the irregularity to stand still and or persist. This court has a duty to ensure that the lower courts act in accordance with proper legal procedure. The first appellate court was reluctant to correct the anomaly on reason that this would cause delay in the administration of the deceased estate and delay the rights of the lawful heirs. I am aware that the matter has reached at the filing of inventory save for the disputed deceased estate. But if the process 6 is restarted, the appointed administrator will take over the duty from where his predecessor ended. Moreover, the reason that the respondent is defending the appeal to the Court of Appeal, is not tenable in law for he lacks capacity due to his improper appointment. Based on this reason of irregularity, and the parties have had opportunity to be heard on this aspect through their submissions, I invoke revisionary powers under section 44 (1) of the Magistrates' Courts Act, Cap 11 (R. E 2019) to nullify the proceedings and quash the decisions of both the first appellate court in Civil Appeal No. 11 of 2023 and Probate Cause No. 15 of 2017, the order of appointment of the respondent is hereby revoked and set aside. The respondent has to return all necessary documents to the trial primary court. I order the Probate Cause No. 6 of 2010 to proceed from where it ended and the interested parties to pursue their rights according to law. Under the circumstances of the matter, I order no cost. Dated at Bukoba this 6th November 2024. JUDGE 06/11/2024 7 Court: Judgment is delivered in chamber in the presence of the appellants, the respondent and Grace Mutoka (RMA) this 6th November 2024 and the right of further appeal is explained. F. H. KIWON DE JUDGE 06/11/2024 8

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