

TANZANIA / JUDGMENT

ZAMRA PROBATE AND CIVIL APPEAL

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF SHINYANGA AT SHINYANGA CIVIL APPEAL REF. No. 202404181000008487 ZAMRA ISSA RAMADHAN.....APPELLANT VERSUS SELEMAN ROMOLE.....1st RESPONDENT YAHAYA NASSORO.....2nd RESPONDENT [Appeal from the decision of the District Court of Maswa at Maswa.] (Hon. A. M. Hamis RM.) dated the 22nd day of March, 2024 in Civil Appeal No. 19 of 2023

JUDGMENT

10th September & 12th December, 2024. S.M. KULITA, J. This is an appeal from Maswa District Court. The story behind this appeal in a nut shell is that, through Probate Cause No. 21 of 2021 Nyalikungu Primary Court within Maswa District, the respondents herein together with Asia Swai and Zaituni Ngamba, applied for letters of administration for the estates of one Issa Ramadhani Kilima. On the way, the duo, Asia Swai and Zaituni Ngamba dropped their interest. So, there remained respondents herein, who were lastly appointed by the trial court as administrators for the estates of the late Issa Ramadhani Kilima. That was the 2nd day of September, 2021. Soon after that appointment, one Asia Salehe Swai preferred a Probate Appeal No. 01 of 2021 at Maswa District Court, against the respondents, contending that, it was wrong to appoint untrustworthy persons as administrators of the estates of the late Issa Ramadhani Kilima. Eventually, the said appeal was found to be unmeritorious. That was 16th February, 2022. That decision aggrieved Asia Salehe Swai, hence appealed to the High Court, through PC. Civil Appeal No. 24 of 2022. The records provide that, due to the non-appearance of the said Asia Salehe Swai on the 9th day of August, 2022, the presiding Judge observed the following as he was dismissing the said appeal, I hereunder quote; - “.....the respondents who were duly appointed by the trial primary court should administer the estate of the late Issa Ramadhani Kilima. No further appointment of administrators unless the respondents are revoked by the trial court under due process of the law. The respondents should execute their duties without delay.....” After such dismissal and commentary order by the presiding Judge, Asia Salehe Swai instituted an application for restoration of the dismissed appeal, through Misc. Civil Application No. 31 of 2022 at the same High Court registry. Unfortunately, for failure to give sufficient cause for non-appearance to court on that 9th August, 2022, the dismissal date, the presiding Judge dismissed the said

application for restoration. That was on 13th March, 2023. On what it appears to be a move to challenge the High Court's order, one Zamra Issa Ramadhani (the appellant herein) emerged and approached the trial court through Misc. Probate Application No. 1 of 2023, seeking for revocation of administrators (respondents herein) for the reason that they are unfaithfully utilizing the deceased's estates. In the final analysis, the trial court found the complaints against the administrators to have not been exhibited and proved, hence, there was no chance to revoke administration of the respondents. However, the said trial court went further by appointing the appellant, Zamra Issa Ramadhan, to be an additional administratrix. Again, that decision of adding the appellant to be among the administrators aggrieved the respondents, hence appealed to the District 3 Court of Maswa through Civil Appeal No. 19 of 2023. Through it, the court nullified the trial court's order of appointing the appellant as co- administratrix for the reason that, it goes contrary to the High Court's order that prohibited further appointment of administrators. Lastly, the said appellate court additionally gave two months for the respondents to accomplish their duties as administrators for the estates of the deceased. That was 22nd March, 2024. That decision of Maswa District Court aggrieved the appellant herein (Zamra Issa Ramadhan), hence this appeal with two grounds; one, that the trial court wronged to revoke appointment of the appellant as administratrix (co-administrator), and two, that the trial court wronged to confirm respondents as administrators. On 6th August, 2024 the matter was scheduled for hearing through written submissions. Mr. Paul Kaunda, Advocate represented the appellant whereas Ms. Beatha George Ntugwa, Advocate, represented the respondents. Submitting in support of the appeal Mr. Kaunda submitted that, the appellant moved the Primary Court of Nyalikungu through the Probate Cause No. 21 of 2021 to be appointed as administratrix for the estates of the deceased who is her late father and that she was rightly appointed. To him, the trial court did so within the purview of provision of paragraph 4 2(b) of the 5th schedule of the Magistrates Court Act, Cap. 11 RE 2019. To cement his position Mr. Kaunda cited the cases of Naftary Petro vs. Mary Protas, Civil Appeal No. 103 of 2018, CAT at Tabora and Mohamed Hassani vs. Mwanahawa Mzee [1994] TLR 225. With this submission, Mr. Kaunda was of the opinion that, the appellant was wrongly revoked by the District Court as administratrix for the estates of her late father. In reply, Ms. Beatha George Ntugwa, Advocate, submitted that, as long as the High court order rejecting further appointment of administrators till revocation of these respondents remains unchallenged, then the first appellate court was right to revoke the appellant who was wrongly appointed administratrix for the deceased's estates. On a further remark, Ms. Beatha opined that, the appellant's move, as it was stated by her mother one Asia Salehe Swai, is to delay administration of the estates of the deceased. In rejoinder, Mr. Kaunda stated that, this court is not bound with the obiter dictum of this court while referring to the order given by Hon, Matuma, J. He further pointed out that, whenever there is variance of laws between the case law and the statute, the statute must prevail. To bolster his assertion, he cited the case of NBC vs. J.M. SINZOBAKWILA

[1978] LRT 39. These submissions by Mr. Kaunda were in respect to the 5 High Court order in connection with the appointment of further administrators as mandated with provision of paragraph 2(b) of the 5th schedule of the Magistrates Court Act [Cap. 11 RE 2019].

Otherwise, Mr. Kaunda reiterated his submissions in chief. I have earnestly gone through both parties' submissions, authorities supplied and the available records. I find the issue for determination in this appeal is whether the appellant was properly appointed as an additional administratrix for the estate of her late father. Firstly, both parties to the case do not dispute that, this matter concerning the same deceased, one Issa Ramadhan Kilima and that the same person, Zamra Issa Ramadhan, the Appellant herein, ever come before this High Court as an appellant in the PC. Civil Appeal No. 24 of 2022, and the presiding judge for of the time, Hon. Matuma, J, prohibited further appointment of administrators till revocation of the existing administrators. Further, parties are not in dispute that, when the appellant herein was additionally appointed as administratrix for the estate of the late Issa Ramadhan Kilima, the prohibiting order of the High Court was still intact. It was not challenged and never turned. 6 It is further undisputable that, a Primary Court, under the provision of paragraph 2(b) of the 5th schedule to the Magistrates Court Act [Cap. 11 RE 2019] is empowered to appoint an additional administrator for the administration of the deceased's estates. The issue is whether the primary court was right to utilize its power of appointing an additional administratrix while there is an existing order of its superior court, prohibiting the same. In his rejoinder submission, Mr. Kaunda was of the opinion that, whenever there is conflict between the statutory law and the case law, the statutory law prevails over case law. With this submission, Mr. Kaunda was of the views that, the Primary Court was correct to appoint additional administratrix though there is an existing order of the High Court prohibiting the same. Now my concern is, at which platform this principle should be invoked? In spite of having different cases at High Court on this same issue, though before different judges, still the said cases are all about the same matter. The fact that the said cases are/were before the same court, the decisions which have already been made or about to be made in those cases, cannot be corrected by any other Judge of the High Court even if 7 the same looks fatal. It is upon the superior court, that is Court of Appeal to challenge it/them. However, it should be taken into consideration that, the laws which are said to be conflicting each other, as per Mr. Kaunda, have been given by the High court and the Primary Court in the same matter. In such a situation, obvious the decision of the High Court should prevail. Further to that, I took trouble to go through all records of the case at hand including the High Court Order by Hon. Matuma, J. dated 9th August, 2022 and noticed that the said order was for the sake of justice, that is, making the litigation reaching to an end, and not for the purpose of defeating justice. Be it noted that, that is among the factors where inherent powers of the court under section 95 of the Civil Procedure Code [Cap 33 RE 2022] are used to be applied and it is for the sake of justice. Further to the endeavors that I have devoted to give, it still remains that, the superior court's order binds all courts bellow it and still remains intact till the same is reversed by the superior court, as for the matter at hand, the Court of Appeal or the same court while sitting in Review. Otherwise, what has been done by the Primary Court, that is making 8 decision against an order of its superior court, High Court, was wrong as correctly held by the District Court. In upshot, I find this appeal unmeritorious, hence dismissed. The administrators are ordered to further administer the deceased's estates. They should

immediately file inventory and statement of accounts before the trial court. That should be done within a period of 2 (two) months from the date of delivery of this judgment. According to the trend of this case, I hereby order the appellant to bear the costs. S.M. Kulita JUDGE 12/12/2024 DATED at SHINYANGA this 12th day of December, 2024. S.M. Kulita JUDGE 12/12/2024 9 10

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