

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY**

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 69 OF 1997

**(From Temeke District Court Civil Appeal No.92 of 1996
originating from Probate and Administration Cause
No.123 of 1996 of Temeke Primary Court)**

KASSIM YUSUF KAMBANGWA.....APPELLANT

versus:

MRISHO OMARI.....RESPONDENT

JUDGEMENT

This judgement is in respect of a very unfortunate but interesting matter which can only be appreciated by going through its history as detailed hereunder.

Armed with a hand-written letter for which he was the author and a letter dated 3/5/96 authored by Mwenyekiti. Mji mpya, Kata ya Mudurani, Temeke District, one Mrisho Omari Yusuf (Respondent in this Appeal) on 6/5/96, vide ERV No. 03247301 filed, Probate and Administration

Cause No. 123/96 in Temeke Primary Court praying to be appointed an Administrator of the Estate of his deceased father, Omari Yusufu Kambangwa, who died in 1981. The latter fact is revealed in a written summary of his application (usually, in Primary Courts, reduced into writing by a court clerk or Magistrate, whoever is available) which further disclosed that apart from him (Omari), deceased had also left behind 3 other issues, namely, Ally Omari, Ashua Omay and Sinahamu Omari. This, however, was somehow in contradiction with the above mentioned letter, for while in his application, Mrisho prayed to be appointed the Administrator of the Estate of Omari ~~Yusuf~~ Kambangwa, the letter by the Mjiniwema chairman indicated that he was to apply to be the Administrator of the Estate of his grandfather, Yusuf Salum Kambangwa, who left behind three issues including Mrisho's father. The letter claimed that the heirs of Yusufu Salum Kambangwa had picked on Mrisho (a grandson) to be the Administrator. However, it seems the letter was disregarded, as the Misc. Cause No. 123/96 filed concerned the Estate of Mrisho's father as exemplified by the summary of the application, the ERV issued; the advertisement made in Uhuru Newspaper dated 27/5/986 and the various court processes on court record.

Notwithstanding his prayer when filing, on 12/8/98, when the probate cause came up for hearing, Mrisho applied to the court that his uncle, Kassim Yusufu Kambangwa be the one appointed the

Administrator instead (of his father's estate) which prayer was supported by Jumanne Yusuf Kambangwa (the other surviving uncle) and his (Mrisho) two sisters and brother. What followed is quite interesting. The court there and then recorded,

“Mahakama, warithi wote wamemthibitisha Mzee Kassim Yusufu Kambangwa asimamie mirathi.”

Hukumu: Msimamizi wa mirathi hii ni Mzee Kassim Yusufu Kambangwa

Sgn: Zuhura

2. Hussein

Sahihi: M.J. Matenyange-Hakimu

12/8/98 (emphasis mine)

One would have expected the proceedings to stop immediately after the appointment of the Administrator, awaiting the administration of the Estate and subsequent filing of Accounts with the court. Instead the same person already appointed embarks on giving evidence, surprisingly, praying to be appointed Administrator as exemplified by some of his statement,

“Omari Yusufu Kambangwa alifariki mwaka 1981 na kuacha watoto hao. Hivyo naomba kusimamia Mirathi na haki za watoto hao.”

In the same evidence he disclosed how the deceased had a share in their father's (Yusufu Salum Kambangwa) property, house No. 5 located along Liganga Street. This evidence prompted each of the beneficiaries present to ask for the sale of the said house so that the 4 children of Omari Yusufu Kambangwa get their father's share in that house. Even the said Kassim Yusufu Kambangwa is on record as supporting the selling of the house. This mix up of issues set in a lot of confusion because up to that stage what was before the court was an application for the appointment of an Administrator of the Estate of Omari Yusufu Kambangwa and not Yusuph Salum Kambangwa, which application had already been granted by declaring Kassim Yusufu Kambangwa as an Administrator of the Estate of Omari Yusufu Kambangwa. The Administration of the Estate of Yusufu Salum Kambangwa was up to that stage not an issue before the court as no one had, before that court made an application to that effect. The confusion is vividly shown in the relatives' and assessor's views given after Kassim had deposed. The record of the assessor's views runs as under,

"Maoni ya washauri: Mzee Hussein - Msimamizi ateuliwe na warithi ni watoto 3 wa marehemu, na kwa sababu mtoto mmoja Omari alifariki na kuacha watoto 4 basi hao ndio warithi hakuna nafasi ya baba yao. Msimamizi pia asimamie mirathi ya marehemu ndugu yake afuatilie malipo ya T.H.A.

Zuhura: Msimamizi asimamie mirathi pia awagawie watoto wa marehemu katika hiyo nyumba ya urithi, na pia haki zake T.H.A. zilipwe."!

Are the assessors referring to both Estates?

Are they dealing with Omari's Estate whose application was
was the one before them?

Thereafter, the magistrate composed "Hukumu" which substantially deals with the issue of the Estate of Yusufu Salum Kambangwa and particularly the house No. 5 of Liganga Street, observing that although in Islamic law grandchildren do not inherit the 4 issues of Omari are entitled to the share their father had in the relevant house which was being misused and enjoyed by Kassim alone. In conclusion however this "Hukumu" seems to have vacated another 9 worded "Hukumu", already quoted above in which, the same court stated.

"Msimamizi wa mirathi hii ni Mzee Kassim Yusufu Kambangwa",
for in its concluding part, it states.

"....ila tu Mahakama haikubaliani na ukoo kuwa msimamizi
achukue usimamiaji", and proceeded to prescribe how the two
Estates should be shared by heirs. Even at the danger of making this
judgement unduly long let the record speak for itself:="

"URITHI WA BANDARINI THA:- Kwa mwajiri wa marehemu
Omari Yusuph Kambangwa.

Warithi ni:-

1. Mrisho Omari Kambangwa
2. Ally Omari
3. Ashore Omaha
4. Sinhamu Omari

Jinsi utaratibu wa urithi utakavyogawiwa kwa sheria na mila ya Kiislam.

Nyumba Liganga Na. 5 Kassim Yusuf Kambangwa

Omari Yusufu Kambangwa

Jumanne Yusufu Kambangwa

wagawane sawa mgao wa watu 3, na watoto 4 wapate fungu la baba yao.

MGAO WA T.H.A.BANDARINI:

watoto wa kike apate robo ya mali na itayobakia watoto 3 wa kiume

wagawane sawa katika salio ya mali.

Mshauri Na. 1 Sgd Hussein

“ “ 2 Sgd Zuhura

Sahihi: M.J.Matenyange- Hakimu

12/8/96

The above "Hukumu" was passed on 12/8/96. Four days later (16/8/96) on its own motion and in the absence of any interested party the court ordered that House No. 5 be valued by government valuer. On 20/8/96 the court records that Kassim Yusuf Kambangwa should be brought before it because he had obstructed the valuation of the relevant house, and it would seem he was immediately apprehended as reflected by the record which runs as under,

"MAHAKAMA:- Mzee Kassim amefikishwa hapa na anaomba radhi mahakama na kukubaliwa lakini kazi imefanywa na mthamini Mkuu wa Serikali.

Pia Mahakama imemuagiza Mrisho Omari ambaye ndiye aliyekuwa aanze kufuatilia suala la mirathi ya marchemu ambaye hivyo kwa kuwa Mzee Kassim hivi sasa imani imeisha kabisa. Na ataendelea kuleta ukorofi katika mirathi hii”, (emphasis mine)

One may ask himself as to whether, by the last order, Kassim’s appointment as Administrator has been nullified appointing Mrisho instead!

Against these findings Kassim Yusufu Kambangwa appealed to the Temeke District Court (DC Civil Appeal No. 92 of 1996) arguing among others, ^{and} raising a totally new matter, that the lower court erred in holding that

- (i) no one had been appointed Administrator of the Estate of Yusufu Salum Kambangwa when that was already done by appointing him vide Probate and Administration Cause No. 161 of 1987;
- (ii) House No. 5 is included in the Estate of Omari Yusufu ^MKambangwa hence could be inherited by his children contrary to Islamic laws of inheritance.

The District court dismissed the appeal holding that the appellant should hold himself to blame for his failure to disclose the existence of probate & Administration Cause No. 161/87 before the court; that Omari’s children have a right to inherit their father’s share in the disputed

house, and that he himself agreed before the court that the house in question be sold. The District Court also ^{took} judicial notice of the Probate & Administration Cause No. 161/87, and quoting a Handbook of the Mohammed Law of Inheritance by Sheikh Ali bin Hemmed El Buhuri, regarding how to administer two estates together, observed that it was proper to include Yusufu Salum Kambangwa's Estate into the Estate of Omari Yusufu Kambangwa. It concluded,

"It is the duty of the administrator to work out how much the late Omari deserved in all the property involved in probate & Administration Cause No. 161/87, then the share be included in the present probate. Appellant is thus instructed to do so in the old cause and remit the share of the late Omari to Primary Court Temeke as soon as possible otherwise the house will have to be sold as ordered by the Primary court".

Trying to assail the above judgement the Appellant has now come to this court on 7 grounds of appeal as follows:-

1. That the Primary Court Magistrate erred in entertaining the application for grant of letters of administration which was time barred.
2. That the primary court magistrate erred in entertaining the application for grant of letters of ^(sic!) application without proof that the alleged deceased one Omari Yusuf Kambangwa wa really dead.

3. That the whole case in the Primary Court was actuated by fraud.
4. That some parties in the Primary Court and District Court are fictitious, that is to say, the alleged deceased and the respondent.
5. That the application for letters of administration in the Primary Court at Temeke No. 32 of 1996 was res judicata to Probate No. 83 at Kariakoo Primary Court.
6. That the Lower Courts erred in finding that the matter was ^{not} a normal civil suit.
7. That the lower Courts erred in finding that the Grand children have the right to inherit from their deceased grand father.

Mr. Maira, Advocate, appeared for the Appellant, Kassim Yusufu Kambangwa, while Mrs Mutabuzi, Advocate, appeared for Respondent, Mrisho Omari. The learned counsel presented their arguments by way of written submissions.

In support of the Appeal, Mr. Maira, Advocate, vehemently argued that though the Magistrate's Court Act, 1984 does not provide limitation of time in respect of Probate and Administration causes in Primary Courts, as these are of civil nature, they are governed by 5th Schedule to the

MCA 1984, hence limitation Act is applicable. He went further by arguing that though not applicable in Primary courts, Rule 31 of Probate Rules is persuasive and that the time limit of 3 years thereunder should apply to such causes and that this cause was filed out of time as it was delayed for 15 years (1981-1996). He called to his aid the maxim - Interest reipublicae ut sit finis liticorum: that there should be an end to law suits; it is for the general welfare that a period be put to litigation. Mr. Maira goes on to challenge that there was no evidence adduced to establish the death of Omari Yusuf Kambangwa; that the proceedings in the primary court were actuated by fraud as it changed from dealing with the estate of Omari to the distribution of house No. 5 Liganga street; that execution was hurriedly embarked upon as the valuation of the house was ordered just 4 days after judgement and deceased's son ordered to make a follow up of the Estate when he was not an administrator, and that Appellant was threatened, humiliated, remanded in custody several times and forced to sign documents whose contents were unknown to him and that fraud and deceit should benefit ^{no} one (*fratris et dolus nemini patrocinari debent*). The Appellant further argued that the lower courts erred in not holding that the matter was just a normal suit and not probate; that the alleged Omari Yusufu Kambangwa is fictitious while the alleged Mrisho Omari is Mrisho Jumanne Maneno because his father was Jumanne Manneno, a brother to Appellant with whom they only shared a mother and therefore, as an illegitimate child he could not inherit from Appellant's father (Yusuph Salum Kambangwa) and finally that Mrisho

Jumanne (now purporting to be Mrisho Omari - Respondent) having been appointed the Administrator of the Estate of Jumanne Maneno (now purporting to be Omari Yusuf Kambangwa) vide Probate and Administration Cause No.83/83, the Probate & Administration Cause hand, No. 123/1996 is Res judicata.

In response, Mrs Mutabuzi, for the Respondent, countered that the Appellant is not appealing against the decisions of the lower courts but rather has introduced new issues not argued before the lower courts which is an abuse of the process of the law.

Responding however to the grounds of Appeal one by one, Mrs Mutabuzi insisted that limitation of time not having been argued before the two lower courts can not be entertained at this stage; that an argument that Omari Yusuph Kambangwa was not proved to have died is funny for Appellant himself so admitted in the primary court and that in any case the 5th schedule to the Magistrate's court Act does not set out prerequisites for opening of Probate and Administration cause hence the question of death of the owner of the estate to be administered is left to the decision of the parties and the court; that the allegation of fraud can not be true regard being had to the inconsistencies and fabrications, adding that in any case it is a new issue and that if it were true he would have raised it before the District Court; that the allegations that Omari Yusufu Kambangwa is fictitious are ridiculous and incomprehensible for he

himself admitted that the deceased was his blood brother; that the existence of probate No. 83 of 1983, if true, was within Appellant's knowledge hence should have disclosed it, adding however that it is false to say that Mrisho Jumanne is Mrisho Omari and that Jumanne Maneno is Yusuf Kambangwa and finally that this matter can not be interpreted to mean a civil suit as that would offend S.2(1) of the Law of Limitation Act, No. 10 of 1971, which has provided definition of a suit, as

"means any proceedings of a civil nature instituted in any court but does not include an appeal or application". In conclusion Mrs. Mutabuzi observes,

"all grounds in this appeal are not derived from the decisions of both the lower courts but they are new issues of fact: as such not properly before thiscourt".

In the final reply Mr. Maira reiterated his submissions insisting that there was fraud; that the remedy available is for the nullification of the lower courts proceedings and ordering hearing denovo because (citing 5 corpus juris seccundum. 372 at page 732 and the Halsbury's Laws of England, 3rd edition, Vol 22 (lord simonds) at page 790) judgements obtained by fraud are to be set aside for being frivolous and vexatious, and that thereafter this court could hear evidence afresh for" on

appeals from court of probate jurisdiction, the appellate court, generally try the case denovo" (C.J.s S 758-at page 198) as Probate proceedings are not normal proceedings.

Now let us go into an analysis of the arguments. I should start by pointing out that I found it pertinent to go into details of the proceedings before the Primary Court because of the nature of the arguments presented on appeal to the District Court and this court. As rightly pointed out by Mrs Mutabuzi, arguments on appeal introduced quite new matters not canvassed before the trial court such that one is left at a loss, wondering how such serious matters if true, could have escaped the Appellants' presentation before the Primary court!

Considering this and the conduct of the proceedings before the primary court at some stages my observation at the commencement of this judgement that this matter is both "interesting and unfortunate" is not without base.

While commending Mr. Maira's ingenuity in presentation of his arguments I am sorry to say that they cannot assist him in this appeal because they are matters unsupported by the record and it is trite law that a memorandum of Appeal and oral arguments on appeal are not evidence. The only ground which cannot be challenged merely on this score is the

one related to limitation of period for that is a question of law for which the court can even raise suo motto - s 3 of the Law of Limitation Act, Act No. 10 of 1971

As already portrayed at the beginning of this judgement when going through what transpired before the primary court, the allegations of fraud by Mr. Maira are not supported let alone being suggested by the record. The primary court proceedings leading to this state of affairs took place on only three different days - 12/8/96, 16/8/96 and 20/8/96. On the first day, the Appellant as well as the Respondent and all the beneficiaries of the Estate were present and they consented to the appointment of Appellant as the Administrator of the Estate of one Omari Yusuph Kambangwa. This was after Respondent who was the very Applicant in this Probate and Administration Cause No. 123/96 had decided to vacate his position in favour of Appellant. Had the court acted properly the matter would have rested at that. However, it is the very Appellant who went further to introduce matters related to the estate of his late father, Yusufu Salum Kambangwa, which duly sparked on the question of selling the House on Plot No. 5 Liganga. Appellant confessed to have been utilising for years rent collected from the said house to the exclusion of his brothers, Jumanne Yusuf Kambangwa and Omari Yusufu Kambangwa (deceased) and that's how it came to be passed that the said house should be sold so that the share of Omari Yusufu Kambangwa be given to his children - Mrisho, Ally, Ashura and Sinhamu. Appellant himself

consented to the idea of selling the house. Putting aside the irregularities, i.e. mixing the two estates, some confusions and somehow an ambiguity regarding appointment of Administrator, ^{where} does Mr. Maira get a scintilla of the existence of fraud in these proceedings of 12/8/98? I see none.

Again, the proceedings of 16/8/96 are very brief. The court simply gave the order of having the Liganga house valued by a government valuer. While conceding that one may ask himself a question as to how did this come about because the court acted suo motto, fraud is too remote to be imputed simply for this somehow suspicious step, for it is just a continuation of what transpired on 12/8/96 whereby an order was made that the house should be sold. Let it be made clear that at this point I am not concerned with the legality or otherwise of the order. I am concerned with whether directly or circumstantially fraud can be said to exist on merely looking at these proceedings. As already concluded I can not see a suggestive element of the same.

As for the court proceedings dated 20/8/96 one can only note the somehow rough dealing by the court with Appellant. But, even then, it is on record that Appellant was refusing to have the relevant house valued by the Government valuer and was thus called upon to show cause thereof.

We thus sail through the three day proceedings without seeing the alleged "threats, intimidation, remanding and forcing an Appellant to sign documents or statements" (in any case there were no statements or documents tendered) save for his forced appearance before the court for failure to allow the government valuer to act on the disputed house.

The above put aside, the three days proceedings are concluded with a general consensus on names - Yusuf Salum Kambangwa being the grandfather of Respondent and father of Kassim Yusuph Kambangwa, Jumanne Yusuph Kambangwa and Omari Yusuph Kambangwa the deceased (the latter being the father of Respondent, Mrisho Omari, Ashura Omari, Ally Omari and Sinahamu Omari). All these names were among others, uttered by Appellant himself on 12/8/96. With this kind of situation it defeats common sense to have the same Appellant turn round and claim that the alleged deceased brother, Omari Yusuf Kambangwa is fictitious and never died; that his name is Jumanne Maneno instead and therefore all his issues should be known by Maneno and not Omari! For reasons discussed above grounds 2 - 4 of the memorandum of appeal have no base on which to stand and are accordingly dismissed. In the same vein ground five falls as well, for, apart from there being no Probate and Administration Cause No. 32 of 1966, of Temcke Primary court related to this matter (unless inadvertently, Appellant meant No. 123/96) No. 83 of 1983, if it ever existed (I failed to trace the relevant record) related to the estate of a different person in the alleged name of Maneno and not Omari Yusuf Kambangwa appearing in the present record.

Next I should briefly deal and dispose of ground 6 - that the matter was not a probate cause. When filing the application the Applicant clearly showed that it related to the appointment of the Administrator of the Estate of Omari, father of Mrisho, Ally, Sinahamu and Ashura. I can not bring myself to comprehend what Mr. Maira means when he argued that it was a civil suit because the obvious is rightly borne out by the record. There may have been some irregularities here and there but surely this was clearly a Probate and Administration cause. Ground six falls as well.

We remain with grounds one and seven. I will deal with ground one first. Mr. Maira argues that though the 5th schedule to the Magistrate's Court Act does not provide period of Limitation, as Probate and Administration proceedings are of Civil nature they are governed by the Law of Limitation Act, and calls in Rule 31 of the Probate Rules for guidance fixing time limit to 3 years. Indeed facts show that the relevant Probate Cause was filed about 15 years after Omari's death (1981-96). As conceded by Mr. Maira there is no express provision prescribing time limit within which to file an application for Probate and Administration in Primary Courts. Rule 31 of the Probate Rules he cited is inapplicable as these Rules made under the Probate and Administration Ordinance do not apply to proceedings before the Primary Court.

This ground one of the memorandum of appeal has exercised my mind a great deal. Under part III of the 1st Schedule to the Law of Limitation Act, item 21, the only closer item to applications before the court, provides,

“Application under the Civil Procedure Code, 1966 the Magistrates’ Court Act, 1963 and or other written law for which no period of limitation is provided in this Act or other written law - sixty days.” Being an application and not being provided for anywhere else I am of the view that Probate and Administration Causes in Primary Courts fall under this item.

However, while appreciating the maxim - Interest republicae ut sit finis litium, that it is for the general welfare that a period should be put to litigation, I am of the considered opinion that limiting the filing period for serious matters as Probate Causes (in primary courts) to just 2 months (60 days) with respect, is highly unreasonable. This is contrary to common sense and public policy. In most Tanzanian traditions, 2 months after one’s death, members of the family concerned would still be observing various funeral rites, and it is uncommon, and in fact, unexpected that our people would have shelved the grief and rushed for the formal application for the Administration of the deceased’s Estate.

That apart, in most cases, Probate and Administration causes applications are filed after meetings and discussion by family members to decide on a fit person to Administer the Estate, and invariably such sitting^s are done well after the said period of 60 days. In any case I find no logic in limiting applications before primary courts to 2 months while those filed in higher courts are given three years - Rule 31 of the Probate Rules, prescribe,

“32 (1) - In any case where probate and administration is for the first time applied for after expiration of three years from the death of the deceased, the petition shall contain a statement explaining the delay.

(2) should the explanation in the petition be unsatisfactory the court may require such further proof of the alleged cause of delay as it may think fit”.

Our cries notwithstanding however that is the law, and we can only call upon the authority concerned to effect the needed amendment which can conveniently be carried out under the 5th Schedule to the MCA, 1984.

In the meantime, however, while I can not buy Mr. Maira's proposition that the period of limitation (3 years) prescribed under Rule 31 should "persuasively" be applied to probate causes before primary courts because that would be a clear application of an irrelevant law for Probate Rules don't apply to primary courts, I am of the settled view that in upholding item 21 of part III of the 1st Schedule to the Law of Limitation Act courts should employ a liberal approach to avoid absurdity. It should be noted that in our environment most of the Probate and Administration Causes are not contested. The majority of these applications are filed to secure a legal Representative to retrieve few entitlements of the deceased statutorily so provided, and which cannot be accessed unless there is an Administrator appointed and recognised under the law. These would include accessing to bank Accounts, and where deceased was employed, his death gratuity. Even in such situations apart from the reasons I have already explained; that observing funeral rights and summoning family members, most likely than not, can not be accomplished within the 2 months' period provided under item 21 of the schedule referred to above, it takes months and probably years for family members to become aware of deceased's rights which require a legal representative. In such situations if courts do not employ a liberal approach we will find ourselves barring for good the otherwise deceased's entitlements i.e. Monies lying in bank Accounts or death gratuity which could otherwise assist the needy children and their mothers.

delay in the filing of the cause, and, further that its just determination had been prejudiced by that delay it would have rejected it. Notwithstanding the 15 years lapse of time, apart from Omari's issues who stand to benefit as heirs by the sustenance of the cause, there is no one else who can claim even a speck of prejudice by the same. Ground one falls as well.

We now turn to the last ground of appeal - that the lower courts erred in holding that the grand-children can't inherit. This argument is baseless because as rightly observed by the District court, the record clearly shows that the Appellant himself conceded in his own words that the Respondent's father had a share in the Liganga house, No. 5. He died before his share was ascertained as the Appellant seems to have decided to enjoy the dues derived from that house to the exclusion of his brothers (Jumanne and Omari) for a long time as duly confessed by him before the lower court. Appellant may now have an eye to a bigger share in this house but on the facts available the Islamic law of exclusion cannot assist him for it is his brother's share that the Respondent and his brother and sisters are aiming at and to which they are entitled. This ground of Appeal is thrown, as-under as well.

That said I have asked myself what should be done to cure the otherwise irregularities vivid here and there and to expedite the procurement of entitlements ^{due} to Respondent, his brother and sisters. Upon full consideration of the matter, I should make the following observations and conclusions. I am in full agreement with the lower courts that the

Appellant should blame himself for non-disclosure of the existence Probate and Administration Cause No. 161/87; and that, nevertheless judicial notice of its existence should be taken. That being the case the order for the selling of the house No. 5, Liganga street, should have been made in that Cause (161/87). The Primary Court in Probate Cause No. 123/96 should have limited its directives to the appointment of Administrator and pointing out that among other property to be administered is a share of the deceased Omari in the Liganga house. The court then had power to call upon Appellant to table the Account's and distribution of the Estate he had been appointed to Administer in No. 161/87, wherein Omari's share would be shown and if not revealed, the Respondent would have called upon the court to require Administrator (Appellant) to so indicate failure of which the court could then decide as it deemed fit. As earlier observed, the primary court in taking proceedings in Probate No. 123/96 beyond the appointment of the Administrator by involving detailedly the other Estate of Yusuf Salum Kambangwa, and also distributing both Estates created unnecessary confusions, and I cannot subscribe to the district court's conclusion that this is what is envisaged under the Handbook of the Mohamedan law of Inheritance by Sheik Ali Bin Hemed El Buhuri, chapter IX:- what is envisaged there, among others, is a situation where no Administrator had been appointed to

any of the Estates. Here, Yusuf's Estate has an Administrator already:
Appellant.

In accordance with the circumstances of this case, apart from dismissing the Appeal on grounds and reasons already stated, for the ends of justice I feel compelled to make the following orders:-

- a) The unclear appointment of Appellant, Kassim Yusuph Kambangwa as the Administrator of the Estate of Omari Yusuph Kambangwa is set aside. If he has failed to give accounts let alone to distribute his father's Estate since 1987 when he was appointed Administrator in Probate and Administration Cause No. 161/87 (and where there was no contest as regards property) it would be expecting miracles for him to act in this cause where his interest of keeping the Liganga house to himself is being challenged and where he has already alleged fictitious deaths, existence and fraud! Mrisho Omari Yusufu, deceased's son, is duly appointed instead. He has to collect the deceased's dues and property including making a follow up of his father's share in house No. 5, Liganga Street. He should report of the progress of the whole exercise of the Administration of the estate to the Tembeke Primary Court within three months of the delivery of this judgement.

- (b) The decision of the primary court supported by the District Court, of selling the Liganga House, No. 5, is set aside for having been dealt with in the wrong file and prematurely. In lieu thereof the same Primary Court is directed to call upon the Appellant to present accounts and distribution of the Estate for which he was appointed an Administrator in Probate and Administration Cause No. 161/87 within a month from the date of delivery of this judgement for necessary orders and directions as it may deem fit.
- (c) In line with the above orders the distribution of the two Estates made by the Primary Court on 12/8/96 is accordingly set aside: further directions and orders as may be deemed proper to be ~~made~~ after the Administrators in the respective Estates have acted as directed.

Save for what have been directed the Appeal is dismissed with costs.

L. Kalegeya
Judge

Delivered on 5/10/98