

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

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 10 OF 2017

*(From Kilombero District Court in Probate Appeal No. 3 of 2016.
Original Probate and Administration Cause No. 52 of 2015 of
Ifakara Urban Primary Court)*

DAMIAN AMRI MKUYA.....APPELLANT

VERSUS

MARY AMRI MKUYA.....RESPONDENT

JUDGMENT

25 May, & 6 July, 2018

DYANSOBERA, J.:

The deceased **Amri Mkuya** died intestate way back in 1961. He was survived by twelve children, namely, Anthony Amri Mkuya, Veronica Amri Mkuya, Stephano Amri Mkuya, Mariam Amri Mkuya, Clementina Amri Mkuya, John Amri Mkuya, Simon Amri Mkuya, Celestina Amri Mkuya, Damian Amri Mkuya, Mary Amri Mkuya, Fredrick Amri Mkuya and Eneloxia Amri Mkuya. He also left behind two widows.

Following the death of the late Amri Mkuya, Fredrick Amri Mkuya, also deceased, was appointed as the administrator of the estate of the deceased. After the death of Fredrick Amri Mkuya, Mary Amri Mkuya successfully petitioned before the Primary Court of Kilombero District at Ifakara Urban for letters of administration vide Probate and Administration Cause No. 52 of 2015. She was granted letters of administration on 18th September, 2015 to administer the

estate of their late father Amri Mkuya. In appointing the respondent as administratrix of the deceased's estate, the trial court required her to comply with the 5th Schedule to the Magistrates Courts' Act as amended by Act No. 2 of 2002 that is to collect the deceased's estate, pay the outstanding debts and distribute the remaining estate to the heirs. It was also ordered that in performing her administration duties, she was to comply with the directions of the court and then submit and inventory.

The appellant was aggrieved with the appointment of the respondent and appealed to the District Court at Kilombero vide Probate Case Appeal No. 3 of 2016. At the first appellate court his main complaints were that the participants of the meeting did not sign against their names, that the meeting was not attended by VEO instead of the Ward Land Executive Officer as provided for by the law, that the respondent's name was unlawfully written as he did not attend and that the division has not been exhibited in court. He prayed that the appeal be upheld and the administration by the respondent be nullified.

In his judgment, learned Resident Magistrate found that the grounds were mere personal complaints or grudges in which the appellant could have moved the trial Magistrate by formal complaint whereby the trial court would proceed to hear the said complaints and if proved and upon hearing the respondent, the court would give directions. The District Court was of the view that there was no point of or fact that warranted the court to entertain the appeal. the appeal was,

for that reason found baseless and was dismissed. That was on 19th day of October, 2016.

Aggrieved, the appellant has further appealed to this court challenging the decision of the first appellate court. This is, therefore, a second appeal. a total of five grounds of appeal have been preferred namely:

1. That the trial District Court failed to analyse, evaluate and assess the dispute/evidence adduced before it henceforth it came up with wrong conclusions rendering a failure of justice
2. That, the trial District Court erroneously believed and relied on its decision, the respondent's claims that the properties in dispute are not matrimonial properties without having received any documentary proof thereof.
3. That, the trial District Court erred both in law and fact by its failure to inquire/or demand proof of the respondent's legality to be appointed as administratrix while some of the properties were already divided to those who are heirs and heiresses
4. That the trial Magistrate at Kilombero District Court erred in law and fact by its failure to consider the issue of consideration that the appellant as one of the heir was not involved in the clan meeting of appointing the administratrix of the late Amri Mkuya

5. That, the trial court erred in law and fact for the failure to consider the demand of the appellant to be heard over his objection in connection to the appointment of the respondent as the legal administratrix of the late Amri Mkuya.

At the hearing of this appeal, the respondent was not present and the appellant prosecuted the appeal on his own, unrepresented. The appeal was, therefore, heard ex parte.

The appellant had not much to tell the court save that his main complaint was against the appointment of the respondent as administratrix of the estate of the deceased. He said that that they were born twelve children but only five of them are alive.

I have considered the grounds of appeal and the records of the trial Primary Court and the first appellate District Court. I have found nothing wrong in what the District Court on the first appeal decided.

First, the record is clear that contrary to what the appellant appears to have conceived the District Court, the said court was not the trial court as the appellant seems to suggest in his grounds of appeal but was an appellate court having seized the record of appeal by virtue of the Probate Appeal No. 3 of 2016. In the same vein, this was not a matrimonial proceeding but a probate and administrative matter.

Second, the proper cause the appellant was bound to take if at all he was satisfied with the appointment of the respondent as administratrix of the estate of the deceased was to go back to the

Primary Court and ask for revocation. It was wrong for the appellant to pursue the revocation move by way of appeal either to the District Court up to the High Court. The directions of the District Court that the appellant should have gone back to the Primary Court and request for the revocation of the respondent as administratrix of the deceased's estate was sound in law and justified.

This court (Hon. Prof. Ibrahim Juma, J (as he then was)) in PC Civil Appeal No. 35 of 2010 between **Mzee Ally Mdoka v. Kijakazi Mzee** discussed at length elaborating on the application and importance of the **Fifth Schedule to the Magistrates Courts Act**. It was observed in part that:-

“The Fifth Schedule to the Magistrates Courts Act provides for the powers of primary courts in administration cases. The District Court has correctly restated the law that the same primary court which appoints an administrator is also vested with powers to invalidate any appointment of administrator of the estate. The learned district magistrate [Nzowa-RM] has in my opinion correctly stated that paragraph 2 [b] of the Fifth Schedule to the Magistrates Courts Act gives primary courts very wide latitude in not only in appointments of administrators of estates but also ordering the revocations of those appointments whenever the need arises. The relevant paragraph 2 [b] of the Fifth Schedule provides, A primary court upon which jurisdiction in the administration of deceased's' estates has been conferred may-

[a] either of its own motion or on an application by any person interested in the administration of the estate appoint one or more persons interested in the estate of the deceased

to be the administrator or administrators thereof, and, in selecting any such administrator, shall, unless for any reason it considers inexpedient so to do, have regard to any wishes which may have been expressed by the deceased;

[b] either of its own motion or an application by any person interested in the administration of the estate, where it considers that it is desirable to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under subparagraph (a);

[c] revoke any appointment of an administrator for good and sufficient cause and require the surrender of any document evidencing his appointment”

(emphasis supplied)

In the instant case, the records of both the Primary Court of Kilombero District at Ifakara Urban and the District Court of Kilombero clearly show that the learned Magistrates applied to the letter and spirit the provisions of the Fifth Schedule to the Magistrates' Courts Act, Cap. 11 R.E.2002.

As rightly pointed out by this court in the case of **Mzee Ally Mdoka** (supra) the administration of the deceased's estate is a long process which is not restricted to the appointment of administrators. Primary Courts under the Fifth Schedule to the Magistrates Courts Act are vested with wide powers and its power and jurisdiction ceases only where an administrator has made full account to the primary court for his administration and probate is closed.

Third, there is evidence that the first administrator of the deceased's estate has already performed the tasks of administration and the respondent was just appointed to over see the matters which were pending in court. The complaints of the appellant in the 2nd, 3rd, 4th and 5th grounds of appeal lack legal merit.

The appeal is dismissed with no order as to costs.



W.P. Dyansobera

JUDGE

6.7.2018

Dated and delivered at Dar es Salaam this 6th July, 2018 in the presence of the appellant in person.



W.P. Dyansobera

JUDGE