

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CIVIL APPEAL NO.56 OF 2021**

*(Originating from Civil Case No. 64/2019 of Resident Magistrate Court of Arusha.)*

**CHRISTINA LUCAS NYARI.....APPELLANT**

**Vs**

**MARIA LUCAS NYARI.....1<sup>ST</sup> RESPONDENT**

**CHRISTOPHER LUCAS NYARI .....2<sup>ND</sup> RESPONDENT**

**INNOCENT LUCAS NYARI.....3<sup>RD</sup> RESPONDENT**

**ELIZABETH LUCAS NYARI.....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

*Date of last Order: 24-8-2022*

*Date of Judgment: 30-9-2022*

**B.K.PHILLIP,J**

Aggrieved by decision of Resident Magistrates' Court of Arusha at Arusha in Civil Case No. 64 of 2019, delivered on 5<sup>th</sup> November 2021 the appellant herein lodged this appeal on the following grounds;

- i) That, the Resident Magistrate Court of Arusha erred in law and fact when it admitted, heard and determine the Civil Case No.64 of 2019 when it lacked jurisdiction to do so.*
- ii) That, the Resident Magistrate Court of Arusha erred in law and fact when it decided that the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>d</sup> respondents proved on the balance of probabilities that they were indeed (sic) the children of the late Lucas Sudi Nyari.*

- iii) *That, the Resident Magistrate of Arusha erred in law and fact when it decided that appellant should give the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>d</sup> respondents their share of the inheritance from estate of late Lucas Sudi Nyari when the appellant had discharged her duties as administratrix of the late Lucas Sudi Nyari on 19/2/2016 and she was no longer in possession and in control of the same.*
- iv) *That, the Resident Magistrate of Arusha erred in law and fact when it decided that appellant should give 3<sup>d</sup> respondent his share of inheritance from estate of late Lucas Sudi Nyari when 3<sup>d</sup> respondent never appeared in Court to prove on balance of probabilities of his case (sic) against appellant and when the appellant had discharged her duties as the administratrix of the late Lucas Sudi Nyari on the 19<sup>th</sup> day of February , 2016 and she was no longer in possession and in control of the same.*

A brief background to this appeal is that, the appellant herein is the administratrix of the estate of the late Lucas Sudi Nyari who passed on in 2013. She was so appointed by the Primary Court of Maji ya Chai (Henceforth "The Primary Court") vide Probate and Administration Cause No. 15 of 2013. The 4<sup>th</sup> Respondent lodged a claims at the Primary Court of Maji ya chai to challenge the appellant's appointment as the Administratrix of the deceased estate on the following grounds; that she not involved in the whole process concerning the administration of the deceased estate and her children were not involved too, there was no minutes of the family meeting, the said Probate and Administration Cause No.15 of 2013 was not published, the appellant was collecting proprieties which do not form part of deceased estate and the WILL presented in Court by the

appellant was not genuine. The trial magistrate (Hon. J.D. Mwita ) heard the 4<sup>th</sup> respondent's claims aforesaid on merit and dismissed them on 16<sup>th</sup> April 2014. His findings were to the effect that the appellant did not present any WILL before the Primary Court and the 4<sup>th</sup> respondent was not the wife of the late Lucas Sudi Nyari. Finally, he ordered the appellant herein to continue with the administration of the deceased estate.

Eventually, in compliance with the Court Order aforesaid, 9<sup>th</sup> August 2016, the appellant filed her inventory and accounts (Form No.v and No. vi) in respect the deceased estate at the Primary Court . On 26<sup>th</sup> November 2019 the respondents ( plaintiffs in the lower Court) instituted Civil Case No. 64 of 2019 at Resident Magistrate's Court of Arusha in which 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> respondents ( who were 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs in the lower Court) prayed to be declare as a biological children of the late Lucas Sudi Nyari and 4<sup>th</sup> respondent ( who was the 4<sup>th</sup> plaintiff in the lower Court) prayed to be declared that she was a legal wife of the late Lucas Nyari). In addition, all respondents prayed for an order compelling the appellant to give them their share of inheritance as lawfully heirs of late Lucas Sudi Nyari. The case was heard on merit and at the end of the day the trial magistrate held as follows; that the 4<sup>th</sup> respondent failed to prove on the balance of probabilities that the appellant forged a marriage certificate between her and the deceased, the 4<sup>th</sup> respondent was living with the late Lucas Sudi Nyari without legal marriage thus, she is not entitled to inherit from the deceased estate , the appellant was the only legal wife of the late Lucas Sudi Nyari , the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> respondents proved on the balance of probabilities that are biological children of the late Lucas

Sudi Nyari thus, they are lawfully heirs of the late Lucas Sudi Nyari and are entitled to inherit from his estate. Finally, the trial magistrate ordered the appellant to give the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondents their shares of inheritance from the deceased estate within six months from the date of the Order.

This appeal was argued by way of written submission. Dr. E.K. Mchami, learned advocate appeared for the Appellant whereas the respondents were not represented. They appeared in person. However, Francisca A. Lengeju, learned advocate from Legal and Human Right Centre Legal Aid Unit- Arusha prepared the written submission on their behalf.

Submitting on the 1<sup>st</sup> ground of appeal Dr. Mchami argued that since it was the 4<sup>th</sup> respondent's case that she celebrated a customary marriage with the late Lucas Sudi Nyari, then it means the 4<sup>th</sup> respondent's case against the appellant is based on laws pertaining to customary marriage. He contended that the 4<sup>th</sup> respondent's claims were supposed to be instituted at Primary Court because that is the Court vested with powers to try matters involving application of customary laws. To cement his allegation he cited section 63 (1) of the Magistrate Court Act.( Henceforth " the CMA")

In rebuttal, Ms. Lengeju submitted that the appellant supposed to raise the issue on Jurisdiction before the trial Court as a point of preliminary objection either in her written statement of defence or immediately at the commencement of the hearing of the case. Since she failed to raise it before the trial court it is improper to raise it now at this stage, contended Ms. Lengeju. She urged this Court to dismiss the 1<sup>st</sup> ground of appeal.



In rejoinder, Dr. Mchami reiterated his submission in chief and added that the issue on jurisdiction was raised in the first paragraph of the written statement of defence filed by appellant before the trial Court . The same was heard by way of written submission and the trial Court dismissed it.

Moreover, Dr. Mchami added that the issue of lack of jurisdiction of a trial Court can be raised at any time including in appellate stage.

Having analyzed the submission made by the learned Advocates, let me proceed with the determination this ground of appeal. As correctly submitted by Dr. Mchami, Court's records reveal that the appellant raised the issue on lack of jurisdiction of the trial Court as a point of preliminary objection. Thus, Ms. Lengeju's argument that the issue on the jurisdiction of the trial Court was not raised at the trial Court is misconceived. Also, I am in agreement with Dr. Mchami that the issue on jurisdiction of the trial Court can be raised at any time even in appellate stage, regardless whether it was raised at the trial Court or not.[ see the case of **Mwananchi Communication Ltd and 2 others vs Joshua K. Kajula and 2 others, Civil appeal No. 126/01 of 2016** and **Tanzania Revenue Authority vs Tango Transport Company Ltd, Civil Appeal No. 84 of 2009** (Both unreported)].

It is a trite law that before entertaining any matter the Court has to ascertain whether it is vested with jurisdiction to deal with it or not. In this appeal the Court's records reveal that what moved the respondents to institute the aforesaid Civil Case no. 64 of 2019, whose judgment is the subject of this appeal are the orders made by the Primary Court in Probate and Administration Cause No.15 of 2013, in which the Primary

Court appointed the appellant herein as the administratrix of the estate of the late Lucas Sudi Nyari. Not only that, thereafter dismissed the 4<sup>th</sup> respondent's claims against the appointment of the appellant as the administratrix of the deceased's estate. As alluded at the beginning of this judgment, at the trial Court the respondents prayed to be declared as lawful heirs of the estate of late Lucas Sudi Nyari among other things. Under the circumstances, it is obvious that the respondents' claims are totally hinged on inheritance rights and emanates from the aforesaid Probate and Administration Cause No.15 of 2013. The law is very clear that the Primary Courts are the ones vested with powers to deal with inheritance matters, in particular where the law applicable is customary law as it is, in this case.

From the foregoing, I find myself in agreement with Dr. Mchami that section 63 (1) of the MCA is applicable in this matter. [ Also, see Rule 8 of the Primary Courts ( Administration of Estates ) Rules, G.N.No.49 of 1971]. In addition, looking at the plaint filed by the respondents at the lower Court, it appears the 4<sup>th</sup> respondent was aggrieved with the decision of the Primary Court, in the aforesaid Probate and Administration Cause No.15 of 2013. This can be discerned from what is pleaded in paragraph 9 of the plaint. The same reads as follows;

*" That immediately after the death of the said Lucas Sudi Nyari the defendant herein with ill will forged the Marriage Certificate claiming to be the lawful wife of the deceased. In the forged certificate the defendant petitioned for letters of administration of the estate the late Lucas Sudi Nyari vide Probate and Administration Cause No.15 of 2013 a Maji ya Chai Primary Court and was appointed as the Administrator of the said estate . Attached is the copy of marriage Certificate and the*

*letter from registration insolvency and trusteeship agency ( RITA) on the official search of the marriage between the defendant and the late Lucas Sudi Nyari B1 and B2 respectively, plaintiff crave the permission of this Court for it to form part of the plaint.”*

From the foregoing, I am of a settled opinion that the 4<sup>th</sup> respondent was supposed to appeal against the dismissal of her claims by the Primary Court instead of filing the said Civil Case No.64 of 2019. It is noteworthy that since the Primary Court had already rule out that the 4<sup>th</sup> respondent was not a wife of the deceased. That order can be reversed by a higher Court by way of appeal not otherwise.

For the foregoing reasons, it is the finding of this Court that the trial Court had no jurisdiction to entertain the case filed by the respondents. Thus, the 1<sup>st</sup> ground of appeal has merits. Consequently, I hereby nullify the proceedings of the trial Court and set aside the judgment thereof. The 1<sup>st</sup> ground of appeal suffices to dispose of this Appeal. Therefore, I will not proceed with the determination of the remaining grounds of appeal. Since this case involves family matters each party will bear his/her own costs.

Dated this 30<sup>th</sup> day of September 2022



  
**B.K.PHILLIP**  
**JUDGE**