IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

PC PROBATE APPEAL NO. 09 OF 2022

(Arising from Probate Appeal No.4 of 2022 of the District Court of Moshi at Moshi. Originating from Probate Cause No. 274 of 2021 of Moshi Urban Primary Court.)

STEPHEN DENIS CHUWA .....APPELLANT

VERSUS

FLORA DENIS CHUWA ..... RESPONDENT

JUDGMENT

10/11/2022 & 07/12/2022

SIMFUKWE, J.

This Appeal emanates from Probate Appeal No. 04 of 2022 of Moshi District Court. The historical background of the matter as captured from the records is to the effect that the appellant and the respondent are siblings from the same father but different mothers. The appellant applied for letters of administration in respect of the estate of his deceased father Denis Nabaku Chuwa before Moshi Urban Primary Court (trial court). The trial court issued citation and the respondent herein filed an objection to the effect that there was no family meeting which was held to appoint the appellant to be administrator of the deceased's estate.

The trial court after receiving evidence from both sides found that the purported Will which appointed the appellant was not the Will in the eyes

of the law. Therefore, the trial court directed family members to convene a meeting and appoint an administrator or any person who is interested with administration of the estate of the deceased.

The appellant was aggrieved by the said decision of the trial court, he unsuccessfully appealed to the district court. Consequently, he preferred this second appeal on the following grounds:

1. *That, the District Court, being the first appellate court, totally failed to re-evaluate the evidence adduced at the Primary Court, the trial court and reached at the wrong conclusion by cementing the trial court's finding that there has not been the family/clan meeting held to appoint any administrator, while in reality the meeting was conducted and the Appellant herein was appointed as one of the Administrators of the estate of the late Denis Nabaku Chuwa.*
2. *That, the District Court erred in law and fact by cementing the trial court's decision which sustained the caveat and neglected to appoint the Appellant as an Administrator of the estate of the late Denis Nabaku Chuwa on the ground that there was no family/clan meeting held to appoint any Administrator, while that is not the legal requirement as there is no provision of the law that requires family/clan meeting as pre-requisite for one to apply for grant of probate or letters of administration.*

3. *That, being the first Appellate Court, the District Court has totally failed to re-evaluate the evidence adduced at the trial Court and reached at a wrong conclusion, like the trial Court, by directing the heirs to convene family/clan meeting in view to appoint the Administrator (s), whıle in reality at this juncture that is impossible bearing in mind the circumstances of this case, that is the presence of the two conflicting sides, those who support the Appellant, on one hand, and those who support the Respondent, on the other hand.*
4. *That, being the Appellate Court, the District Court erred in law for its failure to determine the grounds of appeal presented before it, specifically ground five which addresses the issue of the two conflicting sides. Besides, the District Court proceeded to frame its own issues for determination and finally reached at a wrong conclusion by directing the heirs to convene meeting instead of directing the Primary Court to determine the Appellant's application for grant of letters of administration after having ruled that the Primary Court had jurisdiction over the matter.*

During the hearing of the appeal, the appellant was represented by Mr. Nafikire Mwamboma, learned counsel while the respondent was represented by Ms Witness Andrew, learned counsel.

The learned counsel for the appellant argued the first and second grounds jointly on the reason that both grounds were in respect of lack of clan

meeting which is not a legal requirement. It was submitted that the two courts below failed to evaluate evidence properly since a clan meeting was held on 20/1/2017 and all the children of the deceased attended the said meeting including the respondent. That, one of the agendas was appointment of administrator of the estate of the deceased whereby two persons were nominated: Dennis and Theobald, the sons of the deceased. That, since Theobald was not interested in petitioning for letters of administration for four years then, Stephen Chuwa decided to file petition. Thus, it was not correct that there was no clan meeting.

Mr. Mwamboma continued to argue that even the decision of the district court at page 13 of the judgment acknowledged that minutes of the meeting were admitted as exhibit. However, the district court alleged that the said meeting concerned finalisation of the funeral and not appointment of administrators of the estates of the deceased. The respondent signed the said minutes of the meeting. It was stated that the law does not prescribe the procedure of a clan meeting for nomination of administrators of estates.

Also, the learned counsel faulted the two courts below for failure to appoint the appellant on allegation that there was no clan meeting. He contended that even if it is assumed that there was no clan meeting, the issue is whether one cannot be appointed to be an administrator of the estates of the deceased in the absence of minutes of clan meeting. He elaborated that there is no law prescribing such a thing. He cited the case of **Elias Madata Lameck vs Joseph Makoye Lameck, PC Probate and Administration Appeal No. 1 of 2019**, in which when this court faced similar scenario at page 2 of the judgment Hon. Kahyoza, J. held that:

"……. I wish to point out that there is no legal requirement that once a person dies intestate, the deceased's clan members must convene and appointing a person to administer that person's estate."

From the above authority, Mr. Mwamboma was of the view that what has to be considered is whether the petitioner has interest in the estate of the deceased. That, in the present case the appellant is the son of the deceased which is obvious that he has interest in the estate. Thus, he was entitled to be appointed to be an administrator of the estate of his deceased father.

He continued to state that from page 3-4 of the cited case the procedures where there are no minutes of clan meeting were outlined. He prayed the court to adhere to the cited case under the doctrine of *stare decis* in the sense that cases of the same kind should be decided in the same way.

On the 3rd ground of appeal which is in respect of re-evaluation of evidence by the first appellate court, it was submitted to the effect that the first appellate court failed to evaluate evidence on the record as a result, it reached a wrong decision. The learned counsel averred that ordering the parties to convene a clan meeting was not proper as the said direction was impossible. Reference was made to page 13; 2nd paragraph of the judgment of the primary court where it was stated that:

"Mahakama hii imepitia hoja za pande zote mbili ambapo ushahidi uko wazi kuwa marehemu aliacha familia mbili na kwa mazingira yalivyo familia hizo hazina maelewano mazuri baina yao."

The learned counsel questioned that if the trial magistrate discovered that there was misunderstanding between the two families why did he order the two families to convene a meeting? Mr. Mwamboma was of the view that the trial court should have considered factors prescribed by the law for appointing an administrator of the state.

On the 4th ground of appeal, the district court was condemned for failure to consider grounds of appeal presented before it. It was illustrated that, before the district court, the appellant advanced five grounds of appeal as noted at page 5 of the judgment of the district court. At page 9 of the judgment, the Magistrate framed his own issues. However, the fifth ground of appeal was not considered by the 1st appellate court which Mr. Mwamboma was of the opinion that it was a grave error pursuant to the Court of Appeal decision in the case of **Amos s/o Alexander @ Marwa versus Republic, Criminal Appeal No. 513 of 2019** at page 9 and 10 in which failure by a Resident Magistrate to consider the grounds of appeal and drawing up issues for determination of the appeal was held to be fatal.

He continued to say that the 1st appellate court was obliged to consider the grounds of appeal separately or generally. That the holding from the case of **Malmo Montagekonsult AB Tanzania Branch vs Margret Gama, Civil Appeal No. 86 of 2001** (unreported) was underscored in the cited case.

It was submitted further that failure to consider grounds of appeal was stated at page 10 of the judgment in the case of **Amos Alexander** (supra) that:

"We need not mince words, the judgment by the first appellate court is not a judgment which the law envisioned as argued by Mr. Mayenga."

Also, reference was made to the case of **Mwajuma Bakari (Administratrix of the Estate of the late Bakari Mohamed vs Julita Semgeni and Another, Civil Appeal No. 71 of 2022** CAT at Tanga at page 7 where it was held that:

"Unfortunately, the High Court Judge decided the appeal basing on that issue only and left the grounds of appeal raised before it unattended. It is trite law that the court is enjoined to consider the grounds of appeal presented to it either generally or one after another, and failure to consider the grounds is fatal to the decision."

Mr. Mwamboma insisted that failure to consider the grounds of appeal is fatal.

Apart from the grounds of appeal, the learned counsel prayed for leave to present another legal issue which is to the effect that parties were not accorded right to be heard in respect of validity of a will. That, at page 2 of the judgment of the primary court there was one ground of caveat, which is absence of clan meeting. However, at page 13 to 14 the trial magistrate raised the issue of validity of a will *suo motto* which formed basis of his decision. That, the trial court diverged from the issue before it. Thus, parties were not accorded with an opportunity to address the issue of validity of a will. He argued that there is a number of decisions to that effect.

Mr. Mwamboma added that even the decision of the district court based on validity of a will. Therefore, parties were denied right to be heard

contrary to **Article 13 (6) (a) of the Constitution of the United Republic of Tanzania**. He referred to the case of **Mbeya Rukwa Autoparts and Transport LTD versus Jestina Mwakyoma [2003] TLR 251**, in which the above position was echoed. He stated that the effect is that the decision reached is rendered void *ab inition*. That, the decisions of the two courts below were illegal.

The learned counsel prayed the court to allow this appeal and the judgments of the two courts be set aside and the primary court be ordered to appoint the appellant to be administrator of the estates of the deceased. He also prayed for costs of this case as the appellant has incurred costs of transporting him from Dar es Salaam and instruction fees.

In reply, Ms Witness submitted that it is not true that there was a family meeting. The deceased had two wives namely Stellah Denis Chuwa and Lucy Denis Chuwa and 14 children namely: Digna, Agripina, Leonard, Beatrice, Stephen, Hilda, Flora, Elizabeth, Simon, John, Theobald, Gisela, Jimmy and Jack. That, the last two children were born out of wedlock. The learned counsel disputed the contention that all heirs participated in the alleged family meeting.

Ms. Witness averred that in the record, there were two versions of minutes of the meeting. That, in the first version, both wives of the deceased and John Dennis Chuwa did not attend the meeting. It was alleged that failure to involve the wives of the deceased prejudiced them as it was held in the case of **Hyasintha Kokwijuka Felix Kamugisha vs. Deusdedith Kamugisha**, **Probate Appeal No. 04 of 2018,** HC at Bukoba at page 12, last paragraph that:

"In my view, even where the court receives the minutes of the clan meeting, it is important to know if the interested persons in the estates were involved. For instance, the court may ask whether the children of the deceased were involved in the meeting. If not, there must be sufficient reasons why they did not attend the meeting."

According to Ms. Witness, the second version of the minutes of the meeting is to the effect that the appellant was appointed as administrator of the estate of the deceased. The said minutes have no attendance. Thus, on the same date two meetings were convened with different chairpersons. It was submitted that there was no meeting which appointed the appellant to be administrator of the estate of the deceased.

Further to that, Ms. Witness argued that according to the records of the primary court, children of the deceased met and agreed that they should trace a will. That, at page 6 of the ruling of the primary court, Clemence Gervas Chuwa conceded that there was no meeting for appointment of the administrator of the estate of the deceased.

In respect of the second ground of appeal, it was submitted that the said ground is a new ground which was not raised before the 1st appellate court contrary to the law. He referred to the case of **Omary Kassim Mbonde vs. Republic**, **Criminal Appeal No. 175 of 2016,** Court of Appeal of Tanzania at page 8 and 9 where it was held that:

"Indeed, there are a range of cases in which the court had occasion to observe that as a second appellate court, it

cannot adjudicate on grounds of appeal which were not raised and determined in the first appellate court."

The learned counsel for the respondent said that the above cited case quoted with approval the case of **Samwel Sawe vs. Republic, Criminal Appeal No. 135 of 2004** in which it was stated that:

"As a second appellate court, we cannot adjudicate on a matter which was not raised as a ground of appeal in the second (sic) appellate court. The record of appeal at pages 21 to 23, shows that this ground of appeal by the appellant was not among the appellant's ten grounds of appeal which he filed in the High Court. In the case of ***Abdul Athuman v. R*** *(2004) TLR 151 the issue on whether the Court of Appeal may decide on a matter not raised in and decided by the High Court on first appeal was raised. The Court held that the Court of Appeal has no such jurisdiction. This ground of appeal is therefore, struck out."*

In addition, it was argued that the appellant was the one who produced the two minutes before the trial court. Thus, the 2nd ground of appeal should be disregarded.

Responding to the third ground of appeal, which concerns failure to re-evaluate evidence by the first appellate court; the learned counsel stated that it was not true that differences between these two families will fail them to convene a meeting. She said that before the trial court, both parties admitted that they had family meetings. At page 2, 2nd paragraph of the decision of the trial court it was stated that:

"Alidai kuwa ameleta pingamizi kwa sababu wao wako familia mbili na hawajawahi kukaa kikao cha kumteua msimamizi wa Mirathi bali kikao kilichokaa kilikuwa cha familia baada ya kuvunja tanga na kilikuwa na malengo tofauti kwani ilikuwa ni kwa ajili ya Kwenda kutafuta wosia wa marehemu na kwakuwa walikutana wanandugu wote walisaini."

From the above quoted paragraph, Ms. Witness commented that there is no challenge of the family members to meet to appoint an administrator of the estate of the deceased. She elaborated that at page 11 of the ruling of the trial court at paragraph 4, the appellant admitted that there were 3 family meetings and mentioned the chairpersons of the said meetings.

On the fourth ground of appeal which concerns failure of the 1st appellate court to consider the raised grounds of appeal; it was the contention of Ms. Witness that the 1st appellate court may determine one ground of appeal after another or discuss the grounds generally. She cited the case of **Mwajuma Bakari (Administratrix of the Estate of the Late Bakari Mohamed vs. Julita Semgeni and Another**, Civil Appeal No. 71 of 2022 Court of Appeal of Tanzania at Tanga at page 7 which held that:

"In the first place, an appellate court is not expected to answer the issues as framed at the trial. That is the role of the trial court. It is, however, expected to address the grounds of appeal before it. Even then, it does not have to deal seriatim with the grounds of appeal as listed in the Memorandum of Appeal. It may, if convenient, address the

grounds generally or address the decisive ground of appeal only or discuss each ground separately."

She argued that in the present case, the district court discussed the grounds of appeal at page 9 of its judgment. Also, at page 13, 3rd paragraph the 2nd and 3rd grounds of appeal were addressed. While the 4th and 5th grounds of appeal were dealt generally at page 19 of the judgment of the district court. Therefore, it is not true that the first appellate court did not address the raised grounds of appeal.

Concerning the issue of validity of the will which was raised in submission in chief, it was replied that the parties were heard before the trial court. That, the record of the trial court shows that the issue of the draft of a will was discussed by both parties. At page 7 – 8 of the judgment of the trial court the appellant stated that he searched for the said will which enabled him to institute the probate cause. At page 8, second paragraph, the issue of a draft Will was discussed well. Also, at page 9 and 10 of the judgment of the trial court, Agripina Denis Chuwa who was the respondent's witness testified about the said Will. It was further submitted that the said Will lacked legal requirements pursuant to the **Local Customary Law Declaration No. 4 of 1963 G.N. No. 436 of 1963**. That, a Will should not be written by using a pencil and that there should be witnesses of the Will.

The learned counsel asserted that it is on the reason of lack of legal requirements of a Will that the trial court ordered that parties should convene a family meeting and appoint an administrator afresh.

In conclusion, the learned counsel implored the court to dismiss this appeal and uphold the decision of the first appellate court and grant any other reliefs which this court will deem fit and just to grant.

In rejoinder, on the first ground it was submitted that if the said wives of the deceased and son had not participated in the family meeting, they could have complained. Strangely, the said three family members did not object the appointment of the appellant as an administrator. He argued that normally, citation of the probate cause is published for the sake of informing those interested in the estate of the deceased to object if they so wish. Therefore, that cannot invalidate the minutes. Also, he argued that the cited case is distinguishable to this case since every case should be decided by considering its own circumstances. That, the respondent was listed no. 9 in the attendance of the meeting and she never disputed her signature. That, the minutes which were referred in submission in chief, show that two persons were appointed to be administrators of the estate of the deceased, one person from each wife which suggests that they were fair to balance interests of each side.

Mr. Mwamboma also submitted that Theobald was reluctant to institute a probate cause, that is why the appellant instituted the matter alone.

He was of the opinion that the allegation that there was no meeting is an afterthought. That, other meetings mentioned by the learned counsel, were just cementing the first meeting.

On the second ground of appeal, the learned counsel specified that, the learned counsel for the respondent had conceded to their submission in

chief and that she had not opposed the fact that lack of clan meeting is not a criterion for denying appointment of one to be an administrator.

Mr. Mwamboma concurred with the contention that the grounds which were not raised in the first appellate court cannot be raised in the second appellate court. However, he was of the view that, it was a general rule and every general rule has an exception. He said that grounds of appeal that raise a point of law can be raised at any stage of the case even at an appellate stage. That, the principle in general reads: grounds of appeal that were not raised in the first appellate court cannot be raised in the second appellate court except those involving points of law. He cemented the above argument by referring to **section 59(1) (a) of the Evidence Act, Cap. 6 R.E. 2002** and the case of **Harid Maulid and Another vs. Republic**, **Criminal Appeal No. 342 of 2022** at page 9 which held that:

> *"With regard to the first ground of appeal as submitted by the learned senior state Attorney, even though it is a new ground, since it is on a point of law; the Court is not precluded from entertaining it. This is because a point of law can be raised at any stage of the proceedings."*

In the instant matter the learned counsel submitted that the second ground of appeal, raises point of law on the issue of clan or family meeting not being a legal requirement when one is applying to be granted letters of administration of estate. He argued that even if it was not a legal issue, still at page 19 of the judgment of the district court, the court upheld the decision of the trial court on the issue of clan meeting and directed that a clan meeting should be conducted. Thus, they were challenging the said

decision of the district court. He opined that producing minutes of a clan meeting which were rejected by the trial court did not suffice to dismiss the prayers of the appellant to be appointed.

On the 3rd ground of appeal, Mr. Mwamboma agreed with the reply of the learned counsel for the respondent that there was no challenge in conducting a family meeting. However, he specified that such position was before the current dispute had rose. He added that in the current circumstances of the case, the family members are no longer in good terms. That, demeanour of witnesses is exclusive mandate of the trial court. It is the trial Magistrate who witnessed the parties that they were not in good terms. Thus, the district court erred to order parties to conduct a clan meeting.

On the fifth ground of appeal, it was insisted that the hearing about the Will was a mere passing and the issue of validity of a Will was raised by the court *suo motto*. However, it formed part of the decision of the district court and the trial court. He commented that if the parties were accorded right to be heard on the issue of a Will, the appellant could have been able to prove the validity of the said Will. He insisted that there was violation of **Article 13(6) (a)** of the Constitution of the United Republic of Tanzania.

On the fourth ground of appeal, it was emphasized that failure to consider the fifth ground of appeal, lead the district court to direct parties to conduct a family meeting. He stated that one of the cases which he had cited states that all complaints must be determined even if the grounds are determined generally. He added the case of **Salum Njwete @ Salum Scorpion vs. Republic**, **Criminal Appeal No. 182 of 2019,** CAT at

Dar es salaam, in which the whole judgment was nullified for failure to determine each ground of appeal.

I have keenly gone through the grounds of appeal, submissions of both parties and records of the two courts below. I wish to make it clear that this court being the second appellate court will not fault the concurrent findings of the two lower courts unless there is misapprehension of evidence, miscarriage of justice or violation of principles of law. See the case of **Helmina Nyoni vs Yeremia Magoti, Civil Appeal No. 61 of 2020, (CAT)**.

On the first ground of appeal, the learned counsel for the appellant faulted the 1st appellate court which cemented the decision of the trial court that there was no clan meeting which appointed the appellant to be the administrator of the estates. It was submitted that the meeting was conducted on 20/01/2017 and all family members attended including the respondent herein. One of the agenda was appointment of administrator where the appellant together with his brother one Theobald Chuwa were appointed.

The learned counsel for the respondent argued to the contrary. She stated that, there were two versions of minutes of the meeting on the record, on the first one the deceased's wives and one John did not attend and the second minutes have no attendance.

The above submissions suggests that there are allegations of misdirection and misapprehension of evidence. I have examined the 1st appellate court's records, while answering this issue the appellate magistrate at page 19 had this to say:

> *"...I am also satisfied that there has not been the family/clan held to appoint any administrator as correctly ruled by the learned trial resident magistrate, what all was held was the so called "Kikao Matanga" to evidence that assertion the testimony of SM2, SM3, SM4, SM5, SM6 and SM7 entail it all that there has not been any family meeting on appointment of the administrator in respect of the deceased estates." (sic)*

I also examined the said minutes of the meeting which were alleged to appoint the appellant as the administrator of the estates. What I have learnt from the minutes is that, despite the fact that the respondent together with her witnesses denied that there was no such meeting, still their evidence suggests otherwise. I have reached to that conclusion on the following reasons:

First, the respondent while being cross examined by the appellant at page 5 of the typed proceedings said that:

> *"Kikao kiliridhia maandiko yote ya baba kwa sehemu lakini mengine hatukuridhika kuhusu mpangilio wa Nyumba za Marehemu."*

At page 8, SM3 had this to say:

> *"Kikao kiliridhia kuwa mama Flora abaki na gari aina ya Escudo.*
>
> *Nakumbuka pia kulikuwa na maelekezo kuhusu silaha.*

SM4 at page 10 said that:

"nakumbuka tulipata andiko la Marehemu na lilisema mimi na wewe tuwe watendaji wakuu na kulikuwa na maelekezo kuhusu silaha. Nakumbuka mama Flora aliomba kubaki na gari."

At page 14 SM6 stated that:

"...na sista Digna alisema wewe na Theobald mkirudi Dar es Saalam mkae pamoja muanze kushughulikia suala la usimamizi wa Mirathi lakini Theobald alipinga akidai hayupo tayari..."

From the above quotations, it goes without saying that the family meeting was conducted and one of the agenda was that the appellant and his brother Theobald were suggested as administrators of the estate vide the 7th agenda. It does not click into the mind, when it is alleged that the said meeting was not conducted while the respondent and his witnesses testifies to some of the contents of the said minutes as established in the above quotations.

However, the appellant was appointed basing on the draft will which the trial court was of the view that in the eyes of the law, it was not the Will at all. The same was cemented by the 1st appellate court. On this, I do agree with both learned magistrates.

Mr. Mwamboma argued that even if the said Will was not there still there is no requirement of having the clan meeting before one is appointed to be administrator of the estate. I also agree with the learned counsel for the appellant that clan meeting is not a legal requirement, it is a matter of practice. The primary factor to be considered is the interest which a

person has in the deceased's estates. See the case of **Naftary Petro vs Mary Protas, Civil Appeal No. 103 of 2018.**

In the instant matter, the clan meeting was conducted, save for the defect that they relied on the Will which in the eyes of the law was not a Will. I am not supporting the findings of the lower court which ordered the family members to convene a meeting so that they could appoint the administrator and these are my reasons: ***First,*** the appellant had interests over the estates as he is the son of the deceased. ***Second;*** since 20/1/2017 no one showed interest to file petition for the letters of administration except the appellant who filed the same on 24.11.2021. In the circumstances there was no need of ordering the clan meeting to be conducted so that the administrator could be appointed as held by the lower courts taking into consideration that the respondent did not advance any reason which disqualify the appellant from being appointed to be administrator of the estate of the deceased.

On the 3rd ground of appeal, it has been alleged that the appellate magistrate failed to re-evaluate evidence of the trial court and concluded his decision by directing the heirs to convene a meeting to appoint the administrator while it was impossible to convene a meeting. The respondent's counsel argued that there were no challenges to appoint the administrator. This ground of appeal has been discussed and answered herein above. I therefore reiterate my findings on the second ground of appeal.

Lastly, on the 4th ground of appeal it has been argued that the appellate court failed to determine the 5th ground of appeal. The respondent's counsel was of different opinion that the same was determined generally.

I have gone through the records of the first appellate court on the issue of evaluation of evidence, I am of considered opinion that the same was dealt with generally as seen at page 19 of the judgment.

The learned counsel for the appellant also raised a concern that the parties were not heard on the issue of the validity of the Will. Ms. Witness for the respondent argued that parties were heard as they discussed the said issue.

This issue was not among the filed grounds of appeal in the first appellate court. However, since the same is the issue of law, despite the fact that the same was not raised in the filed grounds of appeal, this court will deal with it.

I am aware that the court should not decide matters affecting rights of the parties without according the parties an opportunity to be heard in that aspect. This has been stated in the case of **Scan -tan Tours Ltd vs The Registered Trustees of the Catholic Diocese of Mbulu, Civil Appeal No. 78 of 2012.** (CAT)

According to the trial court's records, the issue which was before the trial court was that they never had the clan meeting to discuss who would be the administrator of the estate. The appellant claimed that the draft Will appointed him that's why the meeting approved him to petition for administration.

Having heard the parties and their witnesses, the trial court was of the opinion that since the foundation of the petition was centered on the said draft Will then, it was necessary for the court to determine whether the same met the legal requirement.

The record speaks loudly, that the appellant referred to the said Will in his evidence and so it was necessary for the trial magistrate to consider whether the same met the requirement of a Will. In the circumstances, with respect, I don't agree with the contention that the parties were not heard on the issue of the Will as rightly submitted by the learned counsel for the respondent.

Basing on the findings particularly on the first ground of appeal, I partly allow this appeal. Since the petition for letters of administration was not heard on merit, I hereby remit the matter to the trial court so that the appellant's petition for administration of estate can be heard on merit before another magistrate.

It is so ordered.

Dated at Moshi this 07th day of December, 2022.

X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE