

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

**TEMEKE HIGH COURT SUB – REGISTRY**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**PC CIVIL APPEAL NO. 17 OF 2023**

*(Arising from Probate Appeal No. 1/2022 of the District Court of Temeke at One Stop Judicial Centre before Hon. S. Swai – SRM Original, Probate Cause No. 1/2020 of Kariakoo Primary Court before Hon. J.D Kobo – RM)*

**HASSAN OTHMAN HASSAN.....APPELLANT**

**VERSUS**

**ABDULSWAMADU OTHMAN HASSAN.....1<sup>st</sup> RESPONDENT**

**ABDULFATAH OTHMAN HASSAN.....2<sup>nd</sup> RESPONDENT**

**JUDGEMENT**

**24/7/2023 & 31/7/2023**

**M. MNYUKWA, J.**

This is the second appeal. The appellant filed the present appeal to challenge the decision of the district court of Temeke at One Stop Judicial Centre that confirmed the findings of its subordinate court. In brief, on 20/1/2020, the appellant was appointed by Kariakoo primary court to be the administrator of the estate of the late Othman Hassan Sarawany, his father who passed away on 2007. After appointment, the appellant was supposed to file inventory and exhibit accounts of the estate within four months from the date of appointment but the same was not complied with. It was for the same reason that the trial court revoked letters of

administration which was granted to him upon a prayer by the respondents and the first respondent was appointed as a new administrator. This decision aggrieved the appellant who appealed against the said decision at the district court of Temeke alleging that, the trial court had no jurisdiction to entertain a probate case since the deceased lived and died in Bagamoyo and that the trial court gave contradictory decision on the reason for revocation.

After hearing both parties to the case, the 1<sup>st</sup> appellate court dismissed his appeal and upheld the decision of the trial court, still aggrieved he is now before this court with two grounds of appeal that;

- 1) The learned magistrate grossly erred in law and in fact by dismissing the appeal while the trial primary court had no jurisdiction to entertain the probate matter*
- 2) The magistrate erred in law by dismissing the appeal while sustaining order for revocation from the office of the administrator of the estate of the late Hassan Othman without evaluating the primary court proceedings and see that the appellant never failed in his administration duties*

He prayed for this court to revoke the appointment of the respondent as the administrator of the estate of the late Othman Hassan Sarawany, to allow the appeal and nullify the judgement and decree of the trial court, each party to bear its own costs and any other relief fit to be granted.



At the hearing of the appeal, the appellant and the 2<sup>nd</sup> respondent appeared in person, unrepresented while the 1<sup>st</sup> respondent was represented by Mr. Omar Abubakari, learned advocate. By the order of the court this appeal was argued orally.

In supporting the appeal, the appellant adopted his memorandum of appeal to form part of his submissions. Submitting on the first ground of appeal he said that, the district court of Temeke erred in holding that the primary court of Kariakoo had jurisdiction to entertain the probate cause no.1 of 2020. His argument was, his late father was living in Bagamoyo and had some properties in Bagamoyo, hence the trial court lacked jurisdiction. He prayed for the appeal to be allowed

On the second ground, the appellant argued that he had already executed his duties as administrator and distributed the estate to the heirs as per inventory. He said to have been filed the inventory at the trial court and he had already distributed the deceased's estate to heirs. He then prayed for the appeal to be allowed.

Contesting the appeal, the learned advocate for the 1<sup>st</sup> respondent argued that the appellant filed a probate cause at Kariakoo primary court since the deceased lived and had a property in Kariakoo. He submitted further that the trial court had jurisdiction since the deceased was a



Moslem. He cited 5<sup>th</sup> schedule of the Magistrates Court Act, **[Cap 11 R.E 2019]** to support his argument. He prayed for this ground to be dismissed.

It was his argument on the second ground that the first appellate court was right to hold that the appellant failed to file inventory in court as required by the law. He also stated that, the appellant did not object his revocation in court. He referred this court to the Ruling of the trial court which was delivered on 6/12/2021. He then prayed for the appeal to be dismissed with costs.

On his part, the 2<sup>nd</sup> respondent argued also against the appeal by submitting that, the trial court had jurisdiction since the deceased was living at Kariakoo and had properties too. He added that, the deceased had property at Kiwalani within Dar es Salaam region and other properties at Bagamoyo and Mafia. He said, in some occasion deceased was living in Bagamoyo. He argued further that, the reason for revocation of letters of administration issued to the appellant was because he failed to file inventory and distribute the estate to the legal heirs. He then prayed for the appeal to be dismissed. He retires by stated that, the administrator did not distribute the deceased's estate.

When re-joining, the appellant reiterated what he had submitted in chief but he added by saying that, he accepted his appointment to be revoked if the heirs were called and accepted his revocation but he said, nothing of sort was done yet the trial court continued to revoke his appointment. He prayed for the appeal to be allowed.

Considering the submissions of the parties and having gone through the records, I must say again this is a second appeal of which I am enjoined not to interfere with the concurrent findings of the two courts below unless, they arrived to the decision based on the wrong principle of laws or misapprehension of evidence.

Now, the issue for consideration and determination is whether the appeal has merit. In the course of determining the above issue, I will determine the two grounds of appeal as presented by the appellant.

Starting with the first ground of appeal, the parties were arguing for and against the jurisdiction of the trial court. The question is whether the trial court had jurisdiction to entertain probate cause No. 1/2020. This question is answered in positive due to the reason that it is on record and undisputed fact that the deceased left his house No. 6 at Mvita Street Kariakoo. And, it is trite rule that application for letters of administration or probate can be filed in the jurisdiction of the court where the deceased

had a place of abode at the time of his death or had properties. This is also evident in a form (Form No.1 which is in the schedule to the **GN No. 49/1971**) that initiates probate proceeding in primary courts, at para 6 of the same has these words;

*Marehemu alipofariki alikuwa mkaaji*  
*wa.....*  
*na/au alikuwa na mali katika eneo la mamlaka*  
*ya mahakama hii. [emphasis is added]*

It is from this Form now is settled that, courts in places where deceased left his/her properties can have jurisdiction to entertain probate matters. Same for this case at hand, it is undisputed that the deceased left a property at Kariakoo, therefore I join hands with the 1<sup>st</sup> appellate court that Kariakoo primary court had jurisdiction to entertain Probate Cause No. 1/2020. This ground of appeal lacks merit and it is hereby dismissed.

Coming to the second ground of appeal, I don't think if this ground should detain me much since among the major functions of the administrator is to file and exhibit inventory and accounts of estate in court. As far as the Primary Court (Administration of Estate) Rules, **GN No. 49/1971** is concerned, the same should be filed within four months as per Rule 10. Unfortunately, the appellant in this case neither did he

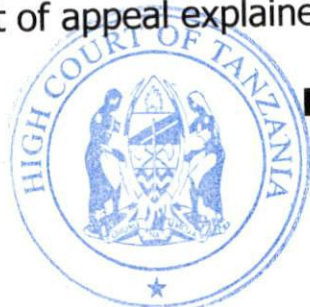


filed inventory nor exhibited the accounts of estate in court. I say so because, inventory and accounts of estate are filed in prescribed Form No. V and VI and when I went through the records, I never find them despite appellant's submission that he filed the same before the trial court. Thus, I think appellant ought to have proved before the trial court that he filed the said inventory since the law strictly requires whoever alleges to prove. This ground also lacks merit, it is hereby dismissed.

That being said, this appeal is dismissed in its entirety. Since it arises from probate matter. I make no orders as to costs.

Order accordingly.

Right of appeal explained to parties.



**M.MNYUKWA**  
**JUDGE**  
**31/7/2023**

**Court:** Ruling delivered on 31<sup>st</sup> July 2023 in the presence of the appellant in person and in the absence of the respondent.

**M.MNYUKWA**  
**JUDGE**  
**31/7/2023**