

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB-REGISTRY**

AT ARUSHA

CIVIL REVISION NO. 14 OF 2022

(C/F Civil Revision No. 1 of 2022 District Court of Karatu of Karatu, Original Probate Cause No. 5 of 2022)

FAUSTA AMAMI *(Legal Administratrix of Amani Umbe)* **APPLICANT**

VERSUS

LEAH AMANI **1ST RESPONDENT**

MARRY SAFARI **2ND RESPONDENT**

SAFARI AMAMI UMBE..... **3RD RESPONDENT**

RULING

15th December, 2023 & 4th March, 2024

TIGANGA, J.

Before Karatu Primary Court (the trial court) in Probate and Administration Cause No. 5 of 2022, the applicant herein petitioned to be appointed as administrator in respect of her husband's estate, the late Amami Umbe (the deceased). The probate was objected to by the 3rd respondent who is the applicant's son claiming that their late father had two wives, but the applicant has not acknowledged the 2nd wife who had five children with the deceased, thus, she won't be fair in administration of the said estate. He also claimed that the family meeting proposed him as the 2nd administrator but the applicant petitioned to be appointed as a sole

administrator. On the other side, the applicant testified that she was the sole wife to the deceased, she denied the fact that the deceased had two wives. According to her, the alleged wife is the deceased's niece, from his mother's side, she used to call the deceased uncle, hence not a wife.

After hearing the objection, the trial court overruled it and proceeded to appoint the applicant herein as an administrator of her late husband's estate. Dissatisfied, the 3rd respondent appealed to the District Court of Karatu, at Karatu in Civil Appeal No. 8 of 2022 (Y.O. KISENG'ERIAN - SRM) which was dismissed for want of prosecution on 29/07/2022. However, while the appeal was still pending at the District Court, on 14/07/2022, the 1st respondent being the applicant's daughter and the 2nd respondent being the applicant's daughter-in-law to his son, the 3rd respondent, filed Civil Revision No. 01 of 2022 before the same District Court (S.S. Mushumbusi - SRM) praying that the District Court revise the trial court's proceeding to satisfy itself as the correctness of the proceedings and give necessary orders.

After the hearing of the application, on 12/08/2022, the District Court nullified the whole proceedings and decision of the trial court on the ground that the time within which the citation was issued was not under

the law. That, the 21 days-time within which the citation was issued was not enough for all the interested parties to be notified. According to his decision, the citation was required to be 90 days.

Aggrieved by the above decision, the applicant has filed this application which is made under section 31 (1) and (2) of the **Magistrates' Court's Act**, [Cap 11 R.E. 2019] (MCA) praying that this Court revise the 2nd decision of the District Court's to satisfy itself to its correctness, legality or propriety of the proceedings and decision made thereon.

During the hearing Mr. Sabato Ngogo represented the applicant whereas the respondents were jointly represented by Mr. Felichism Baraka, both learned Advocates. Supporting the application, Mr. Sabato prayed for the Court to adopt the applicant's affidavit to form part of the submission and submitted that, the legality of the decision made by the trial magistrate is wanting. He argued that there are two decisions emanating from the same, Civil Revision No. 01 of 2022 and Civil Appeal No. 08 of 2022. That, while Civil Appeal No. 08 of 2022 was filed to challenge the decision of Karatu Urban Primary Court in PC Probate Cause No. 05 of 2022, the 1st and 2nd Respondent filed Civil Revision No. 01 of 2022

challenging the same decision of Primary Court. He argued that the presence of two pending matters before the same court is tantamount to abuse of the court process for two reasons.

First, is the fact that Application No. 01 of 2022 faulted Judicial Procedure because according to rule 9 of the **Primary Court Administration of the Estate Rules** (GN No. 49/1971) provides that any creditor, heir, or beneficiary may apply to the court which appointed the administrator to revoke the grant of the appointment. He averred that this provision has given room to any heir, or beneficiary to apply for annulment or nullification of the grant in case the grant was obtained fraudulently or there are some facts which were concealed or where the grant itself was defective in substance. However, in Civil Revision No. 1 of 2022 the respondents' affidavit shows their grievance was the fact that the citation was not made in accordance with the law, the minutes of the family meeting were not submitted, two names were proposed by the clan meetings and that form No. V and VI have never been filed in Court. According to the learned counsel, all these facts were supposed to be challenged by way of objection as provided under the above Rule 9 of GN. 49 of 1971 but not by way of Revision.

It was learned counsel's further submission that, after the trial District Magistrate had brought to the attention that there was an appeal in respect of the same matter pending before another magistrate of the same court, he ought to have refrained from proceeding with the Revision because that could lead to trotting into a trap of having two conflicting decisions of the same court which is what happened. That is, in Civil Appeal No. 08 of 2022 the appeal was not prosecuted, therefore the decision of the trial Primary court remained intact. On the other hand, a Ruling in Civil Revision No. 01 of 2022 nullifies the proceeding of the trial Primary Court.

Learned counsel referred the Court to the decision of the Court of Appeal in **Maria Chrysostom Lwekamwa vs. Placid Richard Lwekamwa and Another**, Civil Application No. 549//17 of 2019 where it was held that the Judicial Officer should refrain from adjudicating matters which are before fellow judicial officer to avoid conflicting decisions or overruling fellow Judicial officer's decisions.

On the second limb of illegality, the learned counsel submitted that, the respondents were not the party to Primary Court Probate No. 5 of 2022, therefore, they had no right to pursue their grievance by way of

Revision. To cement this point, he cited the decision of the High Court in the case of **Sauda MlimaKifi** (s/a Personal Legal Personal Representative of **Peter Chang'a**) **vs. Yunus Adam Mgomba and 3 Others**, Land Revision No.01 of 2016 and emphasized that the 1st and 2nd respondent had no legal right to pursue Revision because they were not parties to the case before the trial court.

Still pressing on the issue of legality, Mr. Sabato submitted that, the District Court erred in deciding that, a citation ought to have been made within 90 days. He averred that under the GN. 49/1971, there is nothing called citation rather there is a notice of hearing which is provided under rule 5 (1) and (2) of the said law. As soon as it may be, the court will fix a date for the hearing of the application the court shall issue a notice to all persons who are near relatives or interested or a person mentioned in the Will. He argued that, issuance of citation is provided in the **Probate and Administration of Estates Act**, [Cap 352, R.E. 2002] which does not apply to the Primary Courts. In the circumstances, the decision which held that there ought to have been a citation of 90 days was made *per incuriam*. More so, the notice was issued as per the law which is why the 3rd respondent filed his objection at the trial court which was heard and

determined. He prayed that, this Court nullify the decision and order of the District Court and the applicant should be allowed to administer the estate of her deceased husband with no order as to costs.

In reply, Mr. Baraka opposed the application and submitted on the 1st ground that, the issue of conflict of interest is styled as a point of Preliminary Objection which in law and practice the applicant was supposed to bring a notice prior. Alternatively, he argued, what is claimed to be the conflict of interest does not affect the decision of this court. This Revision stands for itself and does not depend on any of the cases filed below.

Regarding the existence of another case, the said ground has not been reflected in the affidavit, he prayed for the same to be rejected. Regarding the issue of citation versus notice of hearing, learned counsel submitted that, these are two words with the same meaning in probate matters. That, in both, the Rules and the Act, the aim is to give notice or notify the interested parties to appear and defend their interest. Also, even though the GN No. 49 of 1971 does not set a time for citation or notice, the same has been guided by the case law which was cited and the Court has been directing that the notice must be at least 90 days and if the notice is below 90 days, then the same must be with reason. He went on

arguing that, there is no evidence to prove that a notice was sent, and if it did only one of the two families of the deceased was issued.

Regarding the existence of Civil Appeal No. 8 of 2022 and Civil Revision No. 1 of 2022 before the District Court learned counsel was of the view that, the applicant was required to file an appeal in respect of the Revision before the District Court. He referred the Court to the cases of **Augustine Lyatonga Mrema vs Masumbuko Lamwai** [1989] TLR 273 and **Jackline Ntuyabaliwe Mengi and 2 Others vs Abdiel Reginald Mengi**, Civil appeal No. 332/01 of 2021 where it was emphasized that a right of appeal must be pursued first before the power of Revision is invoked.

Regarding the issue of whether there are two conflicting decisions, Mr. Baraka submitted that the cases filed at the District Court differ and therefore distinguishable from the case at hand. That, in Civil Appeal No. 08 of 2022 the 3rd Respondent was concerned with the appointment of the administrator and in that appeal, the matter was dismissed. On the other hand, on Civil Revision No. 01 of 2022 parties were challenging the proceedings of the Primary court and the order issued thereto thus, the proceedings were filed by different persons and on different matters.

Therefore, since the respondents were not part of the trial court's proceedings, they had a right to file a Revision and not an appeal as alleged by the applicant. He prayed that this Court dismiss the application without cost because nullifying Civil Revision No. 1 of 2022 would create a bad precedent. In his brief Rejoinder, Mr. Sabato reiterated most of the submission in chief and prayed that the application be allowed without costs.

Having gone through both parties' submissions, I will now proceed to determine this revision while guided by one issue which is the core to all chaos to wit;

Whether it is proper for Revision No. 1 of 2022 and appeal No. 8 of 2022 to be tried concurrently in the same court in relation to the same subject matter.

As gleaned from the brief historical background above, it is undisputed that in Civil Appeal No. 8 of 2022, the 3rd respondent filed the appeal challenging the decision of the PC Probate and Administration Cause No. 5 of 2022. It is not certain when the same was filed but the record is clear that it was dismissed for want of prosecution on 29/07/2022.

The record is also clear that on 14/07/2022, the 1st and 2nd respondents in Civil Revision No. 1 of 2022 filed the application for Revision intending to challenge the same decision of the trial court. On this, the position of the law as propounded in the case of **Attorney General vs. Hammers Incorporation Co. Ltd and Another**, Civil Application No. 270 of 2015 (Unreported) it was held that;

“In observation, that to allow a party to prosecute an application for revision where one of the parties has initiated the appeal process is to cause confusion in the administration of justice, and also that apply even where the applicant was not a party to the impugned proceedings before the lower court.”

This was also supported by the Court of Appeal in the case of **Isidore Leka Shirima and Another vs. Hon. Attorney General & 3 Others**, Civil Application No. 151 of 2016 (Unreported) in which it was held *inter alia* that;

“Since the appeal process was actively being pursued. It would be improper for the court, to allow the parties to invoke the revision jurisdiction which would amount to riding two horses at the same time.”

Guided by the principle in the above authorities, I am of the firm view that the District Court erred in entertaining Revision No. 1 of 2022 while there was a pending Civil Appeal No. 08 of 2022 in the same court both challenging the trial court's proceeding and decision. In my strong view, by entertaining Civil Revision Case No. 1 of 2022 the District Court led to controversy and chaos in the administration of justice since he nullified the whole proceeding and decision of the trial court which his fellow magistrate upheld. It was therefore not proper for the District Court to proceed to determine the said revision and appeal at the same time as they both were challenging the same decision of the trial court.

In the upshot, this Revision is allowed, the whole proceedings and decision of the District Court of Karatu at Karatu in Revision No. 1 of 2022 is hereby nullified and set aside. This being a probate matter I give no orders as to costs

It is so ordered.

DATED and delivered at **ARUSHA** this 04th day of March 2024




J.C. TIGANGA
JUDGE