

**IN THE HIGH COURT OF TANZANIA
AT ARUSHA**

PC CIVIL APPEAL NO. 21 OF 2013

**(Originating from Arusha District Court C. Revision No. 12/2013
Arusha Urban Primari Court Probate & Administration
Cause No. 221/2013**

DAUDI MAMBEA MSHANA ----- APPELLANT

VERSUS

MWANAIIDI KIHAMA MSANGI ----- RESPONDENT

REVISIONAL ORDER

F.H. MASSENGI, J.

Applicant Daudi Mambea aggrieved by the judgment of Arusha District Court is now appealing on the following grounds:-

1. That the District Court erred in law and in fact when it declared that the chance to apply for appointment of being an administrator of deceased estates is open to any interested party.
2. That the District Court erred in law and in fact when by nullifying the proceedings of the Primary Court
3. That the District Court erred in Law and in fact when by nullifying the proceedings of the Primary Court
4. That the district Court erred in law and in fact when the judgment twice, vague with different decisions. Appellant is under the service of Mr. Ngemela learned advocate while respondent Mwanaidi Kihama Msangi is under the services of Mr. Bakari George and Mr. George Mwapila.

The appeal was fixed for hearing on 20/5/2014 but parties didn't enter appearance. I ought have dismissed the appeal for want of prosecution but going through the record I found it prudent to revise the same. I will demonstrate as to why I have decided to make revision. Appellant Daudi Mambea filed Probate and Administration cause No. 221/2013 in the Arusha Urban Primary Court praying to be appointed as the administrator of the estate of the late Mwanaidi Mambea Mshana. In the cause of trial Mwanaidi Kihamba Msangi, one of the deceased's relative lodge a complains to the District Court of Arusha among which was that Daudi Mambea in filing the probate cause in the Primary Court did not attach his application with death certificate and that the attached clan members minutes were not genuine even the letter from village executive officer. The District Court dealt with the complains by way of revision which is the subject of this appeal. The District Court in it revisional order quashed the Primary Court proceedings on the ground that the Primary Court erred in the following aspects:-

- (1) Accepting the application for appointment of administrator without the application be attached with death certificate
- (2) The application didn't contain minutes of the clan meeting to show the heirs have consented to and entrusted the administrator to administer the estate
- (3) The application lacked affidavit as to the domicile of the deceased person sworn by the administrator
- (4) Surety bonds were also lacking.

The District Court cited section 33(1) of the Probate and Administration of Estates Act Cap 352 to be the provision of the law which provides for the above requirements.

That decision of the District was wrong as Cap 352 is not applicable in the Primary Court Probate and Administration issues. Section 3 of the same interprets Court as follows:-

"*Court*" means the High Court and includes, in any case in which a District Delegate has jurisdiction, a District Delegate, but does not include a district court.

The law applicable in probate and administration of deceased's estates in Primary Courts is the 5th Schedule to the Magistrates Court Act Cap 11.

Secondly the complains raised by the respondent's were to be raised before the trial primary court which could have dealt with them in the cause of hearing or as an objection to the trial.

From the above reasons I find that the decision of the District Court was based on a law which is not applicable in Probate matters arising in Primary Courts and therefore the decision is a nullity and I hereby nullify it. I also order the nullified proceedings of the Primary Court to be resorted and record be remitted to the Primary Court, so as proceedings to continue from where they ended.

Each party to be its own costs.

(SGD) F. H. MASSENGI

JUDGE

10/07/2014

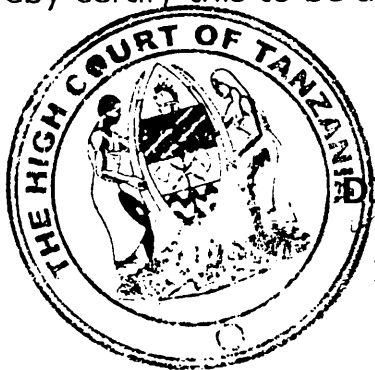
Delivered in court this 10th day of July, 2014 in absence of both parties.

(SGD) F. H. MASSENGI

JUDGE

10/07/2014

I hereby certify this to be a true copy of the original



[Signature]
DISTRICT REGISTRAR

ARUSHA

24/7/14

FHM/HJ