

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
(LABOUR DIVISION)  
AT BUKOBA**

**PROBATE AND ADMINISTRATION APPEAL NO. 06 OF 2021**

*(Originating from Probate and Administration Cause No. 06 of 2021 of Karabagaine Primary Court and arising from Revision No. 03 of 2021 of the Bukoba District Court)*

**DIANA DESDEDIT.....1<sup>ST</sup> APPELLANT**  
**DEOGRATIAS LWELAMIRA.....2<sup>ND</sup> APPELLANT**

***VERSUS***

**YUSTINA KOKWENDA.....RESPONDENT**

**JUDGMENT**

*1<sup>st</sup> December & 13<sup>th</sup> December 2021*

***Kilekamajenga, J.***

The 1<sup>st</sup> appellant in this case is alleged to be the wife of the late James Elias Lwelamila who died on 11<sup>th</sup> February 2021 whilst the 2<sup>nd</sup> appellant is the brother of the deceased. On the other hand, the respondent is the biological mother of both the deceased and the 2<sup>nd</sup> appellant. The deceased was the government employee who worked as a lecturer at the Institute of Rural Development Planning (Chuo cha Mipango - Dodoma). After his demise in Dodoma, his body was transported to Bukoba for burial at Nshambya within Bukoba Municipality. Immediately thereafter, the appellants applied for the administration of the estate of the deceased at Karabagaine Primary Court and were accordingly granted. Later, the respondent realised that the appellants were granted the



administration and she wrote a complaint letter to the District Court of Bukoba. The District Court revised the decision of Primary Court and revoked the appellants' administration of estate on the reason that there were several irregularities in the appointment of the appellants. The appellants, being aggrieved with the decision of the District Court, appealed to this Court for justice. Their memorandum of appeal contained the following grounds of appeal:

- 1. That the District Magistrate grossly erred in law to interfere and nullify the Primary Court judgment by entertaining the respondent as a third party to the proceedings while she was not a party at the trial Court. (Copy of the District Court judgment is attached and marked D.1).*
- 2. That, the District Magistrate grossly erred in law and by way of reasoning to act on the alleged complaints letter by the Respondent while the Respondent herself participated in her own capacity to the clan members meeting held on 23/03/2021 (copy of the clan members meeting is attached and marked D.2).*
- 3. That, the District Magistrate grossly erred in law to entertain the respondent in Revision No. 03/2021 while the respondent was at liberty to file objection proceedings at the Primary Court, since she was well aware of what was going on at the Primary Court.*
- 4. That, the District Magistrate grossly erred in law and by way of reasoning to interfere and nullify the decision of the Primary Court, without any*



*reasonable cause the act of which may jeopardize the properties of the deceased estate as he left no children regarded as principal heirs.*

- 5. That, the Primary Court Magistrate was proper and correct in his judgment to balance and appoint the Appellants as administrators of the deceased Estate as the 1<sup>st</sup> Appellant is the only wife to the deceased and 2<sup>nd</sup> Appellant is the elder brother of the deceased. That good enough, both of the appellants where closer to the deceased and well aware of the deceased properties. (copy of the Primary Court judgment is attached and marked D.3).*
- 6. That, the deceased died intestate and died without leaving any children (principal heirs) behind as he was not yet blessed to produce any child with the 1<sup>st</sup> Appellant. Therefore the Primary Court Magistrate was proper and correct to appoint the appellants putting into consideration that the obligations of administrators of the deceased state are well stipulated according to the law and for the purpose of safeguarding the properties of the deceased.*

The nature of the dispute and the complaint from the 1<sup>st</sup> appellant and from the deceased's employer on who was the right person to administer the estate of the deceased, prompted this court to determine the appeal immediately after its filing. The parties were informed about the appeal and appeared for hearing. All the parties were laypersons and unrepresented.

The court invited the appellants to argue the case and the 1<sup>st</sup> appellant had the following submission: that, though she was not legally married to the deceased,

she was the wife because her parents received dowry from the deceased. She had a relationship with the deceased before payment of the dowry. The 1<sup>st</sup> appellant worked in Mwanza for a temporary employment at Bukumbi Hospital before the deceased convinced her to leave the job and join him at Dodoma. She left her job on 06<sup>th</sup> May 2020 and went to live with the deceased in Dodoma and the deceased paid dowry on 30<sup>th</sup> May 2020. By the time they stayed together, she was frequently communicating with the deceased's family including the respondent. She further alleged to have contributed to the construction of the house that the deceased left at Dodoma. In February 2021, the deceased became ill and finally died. She indicated her dissatisfaction on the deceased's family which has considered her as a useless partner despite nursing the deceased until his death. She also complained about the deceased's act which made her quit her job. She now wants a capital to start her new life. She believed to be an appropriate person to administer the estate of the deceased.

On his part, the 2<sup>nd</sup> appellant submitted that, after the deceased's burial, the clan meeting was convened on 23<sup>rd</sup> March 2021 and proposed the 1<sup>st</sup> appellant to administer the deceased's estates. The application for administration was filed at Karabagaine Primary Court closer to the 1<sup>st</sup> appellant's home. The 1<sup>st</sup> appellant was appointed the administrator and requested the assistance of the 2<sup>nd</sup> appellant. In his view, it was wrong for the respondent to complain at the District Court because she could have done so at Karabagaine Primary Court. The 2<sup>nd</sup>



appellant believed to be the right person to administer the estates because he is responsible for the whole family and there is no any other adult person to administer the estate than him. He further averred that, the respondent is ill and cannot administer the estate because she is not able to make follow-ups on issues pertaining to the deceased's estate.

In response, the respondent averred that, she is the mother of the deceased. She wanted to administer the estate because she is responsible for her son's property. She vehemently insisted that, the deceased was not married and did not leave behind any child. She only saw the 1<sup>st</sup> appellant at the funeral. The respondent confirmed that the 1<sup>st</sup> appellant only stayed with the deceased for six months. In her view, the 2<sup>nd</sup> appellant should look for his own properties than eyeing on the deceased's estate. The estate being the properties of her own son, she believed to be the right person to administer the estate.

When rejoining, the 1<sup>st</sup> appellant assailed the respondent for not recognising her as a widow and she prayed for her share from the deceased's estate. Thereafter, there was no meaningful rejoinder from the 2<sup>nd</sup> appellant.

It is pertinent therefore at this stage to address the grounds of appeal advanced by the appellants. On the first ground, the appellants argued that the District Court erred in law and fact to interfere with the decision of Karabagaine Primary Court while the respondent was not a party at the Primary Court. On this point,



the record of the District Court of Bukoba shows that, after the appellants were appointed the administrators of the estate of the deceased by the Primary Court, the respondent who was not among the parties during the trial and who was not aware about the case, finally filed a complaint letter to the District Court challenging the appointment of the appellants. The District Court, in response, invited the parties to address it on the complaint; the court finally invoked its revisionary powers on the decision of the Primary Court. It was therefore appropriate for the respondent, who was not the party to the proceedings of the trial court, to move the District Court by way of revision. She could not have lodged an appeal because that avenue is closed for her.

On the second ground, the appellants argued that the respondent also participated during the clan meeting which proposed the 1<sup>st</sup> appellant to administer the estate. On this point, I am a bit hesitant to believe whether the respondent participated at the alleged clan meeting. While the minutes of the alleged clan meeting show that the deceased was married to the 1<sup>st</sup> appellant, before this court, the 1<sup>st</sup> appellant stated that she was not legally married. She only stayed with the deceased for less than a year though he (deceased) had already paid dowry. Furthermore, though I am not a handwriting expert, by comparison, the signature appearing on the alleged clan minutes is completely different from the one appearing on the complaint letter written to the District Court. The respondent's signature on the minutes might have been forged.

A handwritten signature in black ink, appearing to be 'D. Byanga', is located in the bottom right corner of the page.

On the third, the appellants averred that the respondent was at liberty to file an objection at the Primary Court since she was aware about the case. I have already stated on the controversy concerning the minutes of the alleged clan meeting. I am therefore hesitant to believe whether the respondent was aware about the case. However, the approach taken by the respondent was still lawful. Moreover, the record shows that somebody called Grace objected the appellant's appointment but her objection was not fruitful. The respondent's approach was another proper channel to find justice in this case. I find no any illegality on the revision No. 3/2021. I therefore find no merit in this ground.

On the fourth ground, the appellants assailed the District Court for interfering and nullifying the decision of the Primary Court without reasonable cause. I carefully read the file and the decision of the Primary Court and I found sound reasons for nullifying the decision of the Primary Court of Karabagaine. **First**, the appellants' appointment was hastily done. For instance, the 1<sup>st</sup> appellant applied for the appointment on 29<sup>th</sup> March 2021; form number II was immediately filled-in and the application was scheduled for hearing on 14<sup>th</sup> April 2021. If at all form number II was placed on any notice board, it therefore existed for only 14 days something which did not offer sufficient notice to the public. On 15<sup>th</sup> April 2021, the appellants were appointed to administer the estate. In other words, the appointment was done within sixteen days from the day of filing the application.



There are no reasons to explain the speed tracking the appellants' appointment.

**Second**, some documents were not filled-in before the appointment could be completed. Only two documents were filled-in namely form number II and IV.

**Third**, the deceased was buried at Nshambya within Bukoba Municipality the place where his family lived but the appellants filed the application for appointment at Karabagaine Primary Court which is away from the place where the deceased was buried. I understand, the territorial jurisdiction of the Primary Court is within the District Court where it is established but is always prudent to file this kind of application closer to the deceased's place of abode or where he/she was buried. In this case, the nearest Primary Court to the place of deceased's burial was Bukoba Urban Primary Court and not at Karabagaine Primary Court. This ground is devoid of merit.

On the fifth ground, the appellants advanced an argument that the 1<sup>st</sup> appellant was the only deceased's wife and the 2<sup>nd</sup> appellant being the deceased's brother were the right persons to administer the deceased's estate. However, when the parties appeared before me, the 1<sup>st</sup> appellant informed the court that she started an affair with the deceased and lived with him from May 2020 until February 2021. The 1<sup>st</sup> appellant further argued that the deceased paid dowry on 30<sup>th</sup> May 2020. The major issue is whether the 1<sup>st</sup> appellant was the deceased's wife under the law and whether the appellants are the right person to administer the deceased's estate.



Marriage is an institution which is governed by the Law of Marriage Act, Cap. 29 RE 2019. The same Act defines marriage as a union between a man and woman intended to last for the joint lives. **See, section 9 of the Law of Marriage Act.** Marriage being a contract, there are four ways in which it may be contracted thus: civil marriage, Christian marriage, customary marriage and Islamic Marriage. **Section 25(1) of the Law of Marriage Act** provides:

*25.—(1) A marriage may, subject to the provisions of this Act, be contracted in Tanzania—*

*(a) in civil form;*

*(b) in civil form or, where both the parties belong to a specified religion, according to the rites of that religion;*

*(c) where the intended husband is a Muslim, in civil form or in Islamic form; or*

*(d) where the parties belong to a community or to communities which follow customary law, in civil form or according to the rites of the customary law.*

In this case, the 1<sup>st</sup> appellant confirmed that she never went through any of the ceremonies stated above though there was a customary cerebration when dowry was paid. However, payment of dowry alone does not initiate a marriage unless coupled with a ceremony to officiate it. The payment of dowry was just a step towards the marriage contract but it cannot be construed as a marriage. In fact, even if dowry could not have been paid, customary ceremonies blessing the



union between a man and woman are sufficient to prove the customary marriage. On this point, **section 41 of the Law of Marriage Act** provides:

- 41. A marriage which in all other respects complies with the express requirements of this Act shall be valid for all purposes, notwithstanding—*
- (a) **any non-compliance with any custom relating to dowry** or the giving or exchanging of gifts before or after marriage;*
  - (b) failure to give notice of intention to marry as required by this Act;*
  - (c) notice of objection to the intended marriage having been given and not discharged;*
  - (d) the fact that any person officiating thereat was not lawfully entitled to do so, unless that fact was known to both parties at the time of the ceremony;*
  - (e) any procedural irregularity; or*
  - (f) failure to register the marriage.*

In this case, there was no customary marriage contracted between the 1<sup>st</sup> appellant and the deceased hence the two may, under the law, be construed to have married.

On the other hand, the 1<sup>st</sup> appellant alleged to have stayed with the deceased for almost seven months, i.e. from May 2020 to February 2021. Under the law, their union between them cannot act be presumed as legally married because they stayed for less than two years as the law requires. For clarity and easy understanding, I wish to reproduce section 160 of the Law of Marriage Act thus:

*160.-(1) Where it is proved that a man and woman have lived together for two years or more, in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married.*

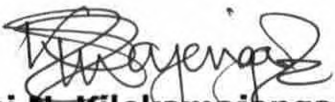
Under the above provision of the law, the period spent by the 1<sup>st</sup> appellant together and the deceased did not fit into the requirement of the law and therefore they cannot be presumed as husband and wife. At best, according to the law, the 1<sup>st</sup> appellant was not a wife, but alas, a merely leman.

On the 6<sup>th</sup> ground, the appellants argued that the appellants were the right persons to administer the deceased's estate. On this point, I have already analysed the status of the 1<sup>st</sup> appellant who alleged to be the deceased's legal wife while she is not. On the other hand, the 2<sup>nd</sup> appellant is the deceased's brother who is battling with her mother on the administration of estate. For a person to be appointed the administrator, at least, he/she should be a trustworthy person able to handle the deceased's estate without misappropriation. In my view, the appellants may not be the right persons for the administration of the deceased's estates. I find no merit in this ground of appeal. In conclusion, the District Court was right in nullifying the appellants' appointment. I hereby dismiss the appeal and uphold the decision of the District Court. The respondent is at liberty to file an application for appointment in order

to administer the estates of her son (deceased) who died single and without leaving behind a child. No order as to costs. It is so ordered.

**DATED** at **BUKOB**A this 13<sup>th</sup> day of December, 2021.




  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**13/12/2021**

**Court:**

Judgment delivered this 13<sup>th</sup> December 2021 in the presence of the appellants and respondent all present in person. Right of appeal explained.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**13/12/2021**

