

**IN THE HIGH COURT OF TANZANIA**

**AT TANGA**

**MISC. CIVIL APPLICATION NO.40 OF 2007**

*(Originating from Probate and Administration  
Cause No.10/1968)*

**FATUMA BAKARI**

**ASHA BAKARI**

.....**APPLICANTS**

**VERSUS**

**AHMED MOHAMED AL-LAAMAR.....RESPONDENT**

**18/6/09 & 28/8/09**

**RULING**

**TEEMBA,J;**

The applicants, FATUMA BINT BAKARI and ASHA BINT BAKARI, filed this Chamber Summons under sections 29, 49(1)(2) and 107 of the probate and Administration of Estate Act, Cap.352 R.E. 2002 and any other enabling provisions of the law. The applicants are seeking for the following orders:-

- a) "That the Honourable Court be pleased to revoke and/or annul the Grant of Probate and Administration granted to AHMED MOHAMED AL- LAAMAR in Probate and Administration Cause No.10 of 1968 in respect of the late ABUBAKARI BIN HASSAN.
- b) That the Honourable Court be pleased to provide for succession of FATUMA BAKARI and ASHA BAKARI to the office of the said Ahmed Mohamed Al – Laamar the executor as joint administrators of the said Estate and vest in the said FATUMA BAKARI and ASHA BAKARI of any property belonging to the said Estate.
- c) The costs of this application be provided for.
- d) Any other remedy as the Honourable Court deems fit and just to grant."

The application is supported by a joint affidavit of the applicants. It is deponed that the applicants are the legal heiresses and biological daughters of the late

Abubakari Bin Hassan, the deceased, who died in 1968. It is common ground that the deceased left a WILL and the respondent was legally appointed the Executor by the High Court in the Probate and Administration Cause No.10 of 1968. It is further deposed that the respondent has failed to file an Inventory to show how the property/estate was distributed to the heirs. The applicants listed farms No.151, 152, 153 and 155, bank account and houses indicating that the respondent did not account for that property. In their affidavit, the applicants are also claiming that the respondent acted against the WILL which directed that the property should not be distributed until when the second applicant, ASHA BAKARI, attained the age of 25 years. The applicant added that, contrary to the direction by the WILL, the respondent sold part of the estate. It is averred that he sold twelve houses at Pangani township and One house at Ngamiani, Tanga. Furthermore, the respondent is accused of illegally transferred to himself and other people the houses and farms located at Pangani Mauya. These are farms No.151,153,154 and 155. The applicants claim that the proceeds of the sold properties were not accounted for in an Inventory.

The respondent, who is advocated by Mr. Akaro, filed his counter-affidavit. He admitted to have executed the WILL and completed the administration duties long time, to be precise, twenty – one years ago. He stated that he duly filed an Inventory (attached to the counter affidavit) in this Court. The respondent denied to have acquired any property from the estate of the deceased.

The respondent's counter affidavit is also to the effect that the applicants in 1989 confirmed that the respondent was not holding anything belonging to the estate of their deceased's father. However, the respondent admitted, in a way, that properties which were sold prior to the time specified in the WILL of the deceased (that is, before Asha attained the age of 25 years) are only those which fell apart by dilapidation and those to which the applicants consented, but the proceeds of sale were not distributed prior to the appointed time. The respondent also claimed that some of the properties were sold by the applicants

when he was detained by the Government during the 1984 crack down of suspected economic saboteurs.

The applicants filed their joint reply to the Counter-affidavit. They claimed that the counter affidavit filed by the respondent is full of false information and their names and signatures were forged. They stated that the alleged proceeds of the sale of properties was never distributed to the applicants.

I have noted from the pleadings and attachments, that the applicants have complained to different fora in respect of the estate of the deceased, and the complaint is the same. However, they have finally resorted to come back to court.

The parties argued this application by way of written submission. The applicants submitted for the first prayer, that, the respondent's appointment as an Executor of the WILL be revoked/annulled because he has failed to execute the WILL according to law. I hasten to say that I perused all the documents attached to the pleadings respectively. The main issue for determination in this application is whether there is anything left to be executed according to the deceased's WILL. The applicants strongly believe that there are houses and farms in possession of the respondent while the latter denies and claims that he has distributed the properties and has filed the Inventory in court. The respondent attached a copy of the Inventory to his counter affidavit and the submission. He went ahead and submitted that the court record in respect of Probate and Administration Cause No.10 of 1968, will prove that the matter was concluded. Admittedly, the Court was interested to inspect the record but unfortunately, I was not able to recover the file. It is for obvious reason, that the matter was filed in 1968 about forty-one years ago, and due to poor record keeping system, the record could not be easily accessed.

Notwithstanding that the old court record is not available, the respondent indicated that the applicants on 10<sup>th</sup> May 1989 admitted to have received their Title for farm No.169 at Mfungonyani – Mauya Pangani. However, the Inventory is dated 24<sup>th</sup> February, 1989. These two documents contradict each other. The

inventory shows that the respondent had distributed the estate by 24/2/1987. How was it possible that the title for farm No.169 was given to them in the following year? There is argument from the respondent that he did not distribute the property to the daughters, heirs, until when Asha Bakari, attained the age of 25 years. Parties did not disclose when Asha attained the age of 25 years.

Without going into the merits of deciding whether or not the respondent executed the WILL in a proper and acceptable way, the court is of the settled opinion that if the Inventory was filed in Court, it is an indication that execution process of the WILL was completed. But the applicants have alleged that there are more properties which were not listed in the WILL and which belonged to the deceased. These properties are the centre of this application and the reason to revoke the appointment of the executor/administrator. There is no doubt that, the parties are not in a position to work together as co-administrators of the Estate of the deceased.

Once the execution process is completed, the best alternative, in case of future complaints, one would suggest that the applicants be advised to institute an action against the respondent. This was an argument by Mr. Akaro, learned counsel for the respondent. Mr. Akaro was of the views that, since the distribution was effected in 1986 when the applicants were over 25 years, it does not make sense for them to file this application well over 20 years later. I take note of this argument but on the other side of the coin, there are allegations of non-disclosure of other deceased properties. In the event that the allegations are proved to be true, it will be unfair for the applicants who have raised it several times. In addition, where it is proved that the property exists, it will also be difficult to recover it if another administrator is not appointed. For the interest of justice, I am of strong views that if the application is granted, the applicants will legally be able to pursue their rights in two ways. One, by recovering the deceased's estate, if anything was left out by the respondent in his capacity as an administrator/Executor. If not appointed as administrators, it may become

difficult for them to do so. Two, the applicants, in their capacity as heiresses, may sue the respondent for recovery of any property misappropriated.

In the upshot and for the reasons given above, I grant the prayers as presented in this application. No order for costs.

  
**R.A. TEEMBA, J.**  
**20/8/2009**

28/08/2009

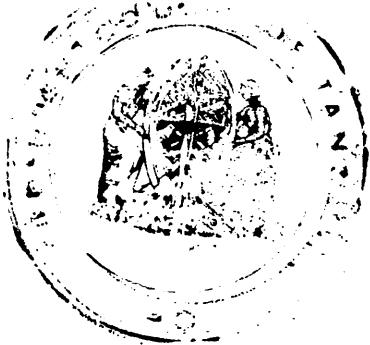
Coram – M.R. Mlaw – DR

Applicant – Present

Respondent – Mr. Akaro for Respondent

C/C Nakijwa

Ruling delivered in the presence of the applicants and Mr. Akaro learned Advocate of the respondent, this Friday, 28<sup>th</sup> day of August 2009.



  
**M.R. MLAWA – DR.**  
**28/8/2009**