

IN THE HIGH COURT OF TANZANIA

(At Dar es Salaam)

Probate and Administration Cause No. 11 of 2004

**IN THE MATTER OF THE ESTATE OF THE LATE SEBASTIAN
RUGAIMUKAMU KAKOTI TIGWERA [DECEASED]**

AND

**IN THE MATTER OF APPLICATION FOR GRANT OF LETTERS OF
ADMINISTRATION BY JOSEPH SHUMBUSHO**

RULING

Date of last Order: 16-12-2010

Date of Ruling: 07-02-2011

JUMA, J:

This is a Ruling on a Notice of Preliminary Objection on the point of law, contending that the joint affidavit of the Applicants Mary Grace Tigwera, James Rugaimukamu and David Rugaimukamu Kakoti is incurably defective for contravening the mandatory section 8 of the **Notaries Public and Commissioners for Oaths Act (Cap. 12 R.E. 2002)**.

The background to this Ruling traces back to 11th March 2009 when the three Applicants filed in this Court a Chamber Application under sections 44, 49 and 64 of the **Probate and Administration of Estates Act (Cap. 352 RE 2002)**, and sections 68 (e) and 95 of the **Civil**

Procedure Code, Cap. 33. Joseph Shumbusho is the Respondent in the application wherein the applicants are seeking,

“an order to rescind, revoke, cancel and decline to confirm and also deny the grant of Letters of Administration to the Applicant JOSEPH SHUMBUSHO.

The application is supported by a joint affidavit taken out by the applicants wherein they also disclosed the reasons behind their application. According to the joint affidavit, the three applicants are natural born children of the late Sebastian Rugaimukamu Kakoti Tigwera who passed away on 8th December 2002. That while they had initially agreed and consented that their elder brother Joseph Shumbusho be granted letters of administration of the estate of the deceased, Mary Grace Tigwera, James Rugaimukamu and David Rugaimukamu Kakoti now want this Court to prevent their elder brother from the administration of the estate because he has failed to act in good faith.

This application was opposed by the Respondent Joseph Shumbusho who swore a counter affidavit on 7th August 2009 to contend that he had been administering the estate openly and by informing the beneficiaries the developments at each stage of the administration of the estate.

At the hearing of the Preliminary Point of Objection the Applicants were represented by Mr. Luguru the learned Advocate. Respondent was advocated by the learned Mr. Makubi. On the point of objection touching on defective joint affidavit Mr. Makubi reiterated that section 8 of the

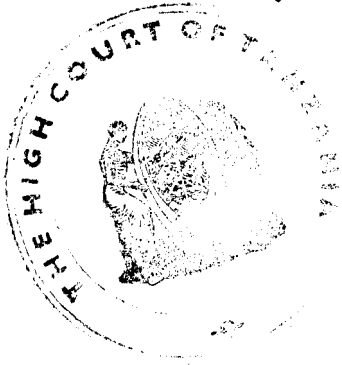
Notaries Public and Commissioners for Oaths Act requires the jurat to indicate at what place and date when the oath was taken. According to Mr. Makubi the joint affidavit supporting the chamber application seeking to bar the Respondent from administration of the estate of the deceased is not dated in its jurat contravening the applicable law. The fact that the affidavit lacks the date makes it defective and hence unfit to support the application before this Court. To support his submission, Mr. Makubi referred the case of **Zola and Others vs. Ray [1969] EA 691** where according to the learned Advocate the Eastern Africa Court of Appeal held that if an affidavit is a nullity, the trial judge should not act on it but should dismiss the motion.

On behalf of the Applicants, Mr. Luguru wondered which joint affidavit the learned Advocate for the Respondent was referring to, because the proper records show that the joint affidavit of the Applicants was sworn at Dar es Salaam on 2nd March 2009 before a Commissioner for Oaths.

I have looked at the joint affidavit which the Applicants presented for filing on 11th March 2009 in support of their chamber application. I have also considered the oral submissions put forward by the two learned counsel. With respect, the joint affidavit has not contravened Section 8 of the **Notaries Public and Commissioners for Oaths Act, directing** affidavits' jurat of attestation to state place and on what date the oath or affidavit is taken or made. The jurat of the joint affidavit clearly shows that the Applicants were sworn at Dar es Salaam on 2nd March 2009 before

Mr. Zakaria Maftah (Advocate). It was one Mohamed Al-Noor, known to Mr. Maftah who introduced the three Applicants to the learned Advocate.

From my foregoing finding, the preliminary objection on the point of law that the joint affidavit of the applicants contravenes mandatory section 8 of the **Notaries Public and Commissioners for Oaths Act (Cap. 12 R.E. 2002)** has no basis and is hereby dismissed with costs.




I.H. Juma
JUDGE
07-02-2011

Delivered in Court Chambers in the presence of:


I.H. Juma
JUDGE
07-02-2011