IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MTWARA

MISCELLANEOUS CIVIL CASE APPLICATION NO. 19 OF 2014

(In the matter of application for Revocation of letter of Administration of the Estate of Saidi Ally Nanganga)

ASHA MSAMALA ..... APPLICANT

VERSUS

MARIA SAIDI ..... RESPONDENT

RULING

Twaib, J.

The applicant, Asha Msamala, filed this application praying for this court to revoke the letters of administration granted to the respondent in respect of the estates of the late Said Ally Nanganga, and an order restraining the respondent from trespassing, occupying, and enjoying the properties of the late Said Ally Nanganga which are under the administration of the applicant after the original administrator, one Gideon Nanganga, passed away.

The application has been brought under section 49 (1) (d) and (e) of the Probate Act Cap 352 R.E 2002 and Rule 29 (1) and (2) of the Probate Rules. The applicant supported it by her own affidavit. By consent, I ordered that the application be heard by way of written submissions. The parties duly complied.

In paragraph 13 of the counter affidavit, the respondent wondered as to why the applicant waited for many years since she (the respondent) was appointed

administratrix of the estate before coming up with this application. She followed this up in her reply submissions and argued that the application is time-barred.

In his rejoinder submissions, the applicant simply dismissed the point, saying that the respondent ought to have raised it by way of a preliminary objection, and that failure to do so means that the application is properly before the court. The applicant thus did not respond to that part of the respondent's submissions.

That was a fatal mistake. The issue is a point of law that goes to the jurisdiction of the court to entertain the application. It can be raised at any time, and even by the court itself *suo mottu*, if the parties do not raise it. The fact that the point was raised in the counter affidavit should have put the applicant on notice on the respondent's intention to rely on it.

Moreover, having argued the point in her written submissions, the respondent was calling upon the applicant to respond to her submissions thereon. The applicant chose not to take up that opportunity. She can only blame herself for the consequences of that omission. The court will consider the point and only look at the merits of the application if it is not successful.

Hence, the first issue is whether this application was filed within time. The respondent states that she was granted letters of administration of the estate by the Mtwara Urban Primary Court in 2000. She annexed a copy of her letters of appointment dated 10th May 2010. The applicant says that the grant was made in 2012, but she also annexed a copy of letters of administration granted to her by this court on 15th October 2014 in Probate and Administration Cause No. 1 of 2014. This, in itself, is a contradiction in terms. The propriety of this second grant in her

favour, given that letters of administration were already granted to the respondent many years before, is questionable. Indeed, from Annexure MS4 to the respondent's counter affidavit, this court has to take judicial notice that the grant in favour of the respondent was in fact made on 10th May 2000 by the Mtwara Urban Primary Court.

In her submissions, the respondent submitted that the cause of action in this application arose on 10th May, 2000 when she was granted letters of administration by the Urban Primary Court of Mtwara. The applicant filed her application on 26th November, 2014. That is more than 14 years since the respondent was granted her letters of administration. Item 21 Part 111 of the Law of Limitation Act Cap 89 R.E 2002 provides for a time limit of sixty days for applications under any other laws for which no time limitation is provided. That includes applications under the Probate and Administration of Estates Act, Cap 352 R.E 2002.

It is clear from the affidavits and submissions that the applicant did not take any action for revocation of the respondent's letters of administration until she filed this application on 26th November 2014.

However, instead of concluding my findings and making any orders herein, I wish to refer to a crucial discovery I made in the course of preparing this ruling. It is that the applicant has tried to move the wrong court. She should have filed her application in the Primary Court that granted the letters of administration that she wants to be revoked. This morning, I asked the parties to address me on the point but they, both being lay persons, did not have much to say, and left the matter to the court.

In my view, it would not be appropriate for this court to make any findings as to whether the application is time-barred. Instead, I hold that the appropriate forum for this application, including a determination as to the issues of time limitation, is the Urban Primary Court, Mtwara. I would only direct that court, if such an application is made, to first address itself to the issue of time limitation and only entertain the application if, and only if, it is satisfied that it is not time-barred.

In the event, I strike out this application for having been filed in the wrong court, with costs in favour of the respondent.

DATED and DELIVERED at Dar es Salaam this 29th February 2016.

F.A. Twaib

Judge