

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 212 OF 2016**

*(Original High Court Probate and Administration Cause No. 1 of 2010)*

**SAMSON EMSON MASANGWA ..... 1<sup>ST</sup> APPLICANT**

**PHILIPINA EMSON MASANGWA ..... 1<sup>ST</sup> APPLICANT**

**VERSUS**

**MAGRETH EMSON MASANGWA ..... RESPONDENT**

**I. MAIGE, J**

**RULING**

This is an application for revocation of the letters of administration of the estate of the late EMSON MASANGWA granted by this Court in favour of the Respondent herein. The application is preferred under section 49(1) of the Probate and Administration of Estates Act, Cap. 352, R.E, 2002 ("PAEA") and it is supported by the affidavit by EDNAH MNDEME, learned advocate for the applicant. It is opposed by the counter affidavit and a supplementary counter affidavit of the respondent.

On the date of hearing, the applicants was represented by EDNAH MNDEME, learned advocate whereas the respondent was represented by LENGAI MERINYO, learned advocate. The hearing of the application was by way of oral submissions. I have duly consider them.

The letters of administration sought to be revoked was granted on 22.07.2010 according to the chamber summons and affidavit. This application has been preferred on 1.11.2016. It is more than 16 years from the date of the grant. The applicants did not bother in their affidavit to account for this inordinate delay. Neither in their oral submissions through Edinah Mdeme, learned advocate. There is no suggestion in the affidavit of there being an order extending time for pursuing the instant application either.

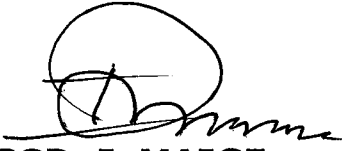
The instant application is premised under section 49 of **PAEA**. Among the grounds of the application deposed in the affidavit are improper filing of administrative oath and defectiveness of the probate and administration proceedings. These are not among the grounds for revocation contained in the respective provisions. In any event the particulars of the impropriety of the administrative oath and the proceedings are not in the affidavit.

Yet, the applicants claim in the affidavit that that what purport to be their signatures in the consent of beneficiaries was forged. Alas, the said consent document has not been attached in the affidavit. More so,

the applicants have not exhibited any specimen signatures or any document containing their genuine signatures from which a comparison could be made to determine the claim. They have not exhibited any forensic report from handwriting expert too. With this, I subscribe to Mr. Marinyo, learned advocate for the respondent that there is no factual basis on which the Court can imply forgery in the consent document as claimed or at all.

The applicants blame the respondent for willfully omission to exhibit inventory and true account of the estate. In her supplementary counter affidavit, the respondent far from denying the assertion, has exhibited a copy of inventory and true account signifying that the same was filed in Court. In the reply to the counter affidavit, it seems to me, the applicants are no longer maintaining their position. They are now claiming that the inventory and true account are defective in law. With respect, I agree with the counsel for the respondent that defectiveness of an inventory and true account is not among the grounds for revocation of a grant envisaged in section 49 of **PAEA**. In any event, the factual deposition in the reply to the counter affidavit cannot be the basis of the application and more so where it is substantially inconsistent with what which is in the affidavit in chief. I agree with the counsel for the respondent that the material contradiction between the affidavit in chief and the reply to the counter affidavit affect the probative value of the factual evidence in the affidavit in chief such that it could not be the basis of revocation assuming, which is not, that it is within the parameters of section 49(1) of the **PAEA**.

In my opinion therefore, the application is devoid of any merit. It is accordingly dismissed with costs. It is so ordered.

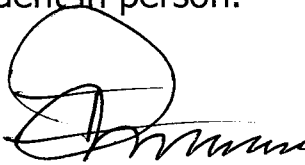
  
**SGD: I. MAIGE**

**JUDGE**

**19/10/2018**

Ruling delivered this 19/10 /2018 in the absence of the applicants and in the presence of the respondent in person.



  
**SGD: I. MAIGE**

**JUDGE**

**19/10/2018**