

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 727 OF 2016

(Original Probate and Administration Cause No. 17 of 2016 before

Hon. Dyansobera, J.)

TWARIB SEIF HAMIS

(Administrator of Estate).....1ST APPLICANT

HADIYA MOHAMED JUMA.....2ND APPLICANT

MBWANA ALLY MBWANA.....3RD APPLICANT

HAMIS MBWANA ALLY.....4TH APPLICANT

ZAINAB S. KIBOGOTA (Next of kin of

Yassin Mohamed and Twarib Mohamed).....5TH APPLICANT

VERSUS

UMUKURUTHUM OMARY HAMIS.....RESPONDENT

R U L I N G

14 Dec. 2017 & 14 Mar. 2018

DYANSOBERA, J: -

This ruling is on two main orders, namely, first, a revocation of letters of administration granted to the respondent by this court in Probate and Administration Cause No. 17 of 2016 and second, a

temporary injunction to restrain the respondent, her agents or any other persons from disposing the property by way of sale, transferring the deceased's estate.

The said orders are sought by way of an application made by a chamber summons filed under sections 71, 72 (2), 82, and 85 (2) of the Probate and Administration of Estates Act, [Cap. 352 R.E.2002], and sections 68 (c) and 95 of the Civil Procedure Code [Cap. 33 R.E.2002].

It is in the applicants' affidavit supporting the application that the applicants are family members of the late **Mohamed Mbwana Ally** who died on 4th day of January, 2016 at Tumbi Hospital in Kibaha District. It is averred that after the death, a meeting was convened and the 1st applicant was appointed to be an administrator of the deceased's estate. He therefore, instituted Probate and Administration Cause No. 395 of 2016 at Magomeni Primary Court which, on 1st day of September, 2016 appointed him as administrator. It is further averred in the same affidavit that, the respondent, maliciously, without justification, knowledge and consent and participation of the applicants filed a Probate and Administration Cause No. 17 of 2016 in this Court.

Under paragraph 5 of the affidavit it is contended that on 20th day of September, 2016 when the respondent served them with a letter of

administration, they discovered that the respondent had filed another matter in the High Court on the same estate. Besides, the respondent has started illegally unequal distribution without involving a valuer and that she is now, by way of sale, processing to transfer the deceased's estate.

The respondent in her counter affidavit has resisted the allegations against her maintaining that the 1st applicant was appointed by the Magomeni Primary Court in Probate and Administration Cause No. 395 of 2016 while she, the respondent had already been appointed by the High Court of Tanzania vide Probate and Administration Cause No. 17 of 2016.

On 16th day of November, 2017, this application was heard and Mr. Manyanga Mohamed, learned advocate for the applicants submitted in support of the application while Mr. Juma Nassoro, learned counsel for the respondent submitted in opposition of the application.

From the submissions of counsel for both sides, the court has to determine who of the two, that is the 1st applicant and the respondent is the lawful administrator of the estate of the late Mohamed **Mbwana Ally** and second, whether the court should grant the orders sought by the applicants.

First, the record of this court is clear that respondent was duly appointed by this court under section 33 (1) of the Probate and Administration of Estates Act [Cap.352 R.E.2002]. As rightly submitted by Mr. Juma Nassoro, learned counsel for the respondent, the appointment was made after the court was satisfied that the petition had complied with the provisions of Rule 39 (a) of the Probate and Administration Rules, Government Notice No. 369 of 1963. There is no suggestion leave alone proof that the respondent who was legally appointed by this court has violated the law or has failed to perform his legal obligation of administering the estate.

Second, the 1st applicant was appointed by the Primary Court at Magomeni twenty one days after this court had appointed the respondent. This means that the Probate and Administration Cause No. 395 of 2016 was aimed at circumventing the order of this court in Probate and Administration Cause No. 17 of 2016, the conduct which is unacceptable and should be discouraged.

Third, as of now, there is only one administratrix of the deceased's estate that is the respondent. This is so because the appointment of the 1st applicant by the Magomeni Primary Court in Probate and Administration Cause No. 395 of 2016 was reversed and his letters of

administration revoked by the District Court of Kinondoni in Civil Revision No. 4 of 2017. In that case, the District court, inter alia, observed:

“At the High Court one Umukuruthum Omar Rashid was appointed administrator of the estate of the late Mohamed Mbwana Ally on 9.8.2016. The Magomeni Primary Court after twenty one days from the date Umukuruthum Omary Rashid was appointed by the High Court, appointed another administrator of the estate of the same deceased person Mohamed Mbwana Ally whereas one Twarib Seif was appointed on 1st September, 2016. It was bad for Magomeni Primary Court to appoint another administrator while the High Court had already appointed the administrator.”

In that ruling delivered on 4th September, 2017, the District Court gave the following orders:

1. The application for revision is granted
2. Proceedings in Magomeni Primary Court Mirathi Na. 395 of 2016 are quashed
3. Letters of administration granted to Twarib Seif Hamis is revoked
4. Each party to bear own costs.

With this state of affairs, the application for revision cannot be granted, the same is declined.

For the reasons stated above, the application is dismissed with no order as to costs



W.P. Dyansobera

JUDGE

15.3.2018

Delivered this 15th day of March, 2018 in the presence of the applicants and Mr. Juma Nassoro, learned advocate for the respondent.



W.P. Dyansobera

JUDGE