

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY**  
**AT MWANZA**

**MISCELLANEOUS CIVIL APPLICATION NO. 107 OF 2018**

(Arising from HC Mwanza Misc. Civil Application No. 27 of 2018, original Probate and Adm.  
Cause No. 05/2016 Mwanza HC)

**ABDUL KAMUANDA RWENZA ..... APPLICANT**  
**VERSUS**  
**SAKINA WANJIRU RWENZA ..... RESPONDENT**

**RULING**

**09/10/2018 & 24/01/2019**

**RUMANYIKA, J.:**

Made under Sections 100 and 108 of the Probate and Administration of Estates Act Cap. 352 R.E. 2002 (the Act), application is for an order compelling Sakina Wanjiru Rwenza (the respondent) to render a true and accurate account among others, of proceeds and rents from a number of tenants on the premises on Plot No. 121 Block "S" Nkurumah Road Mwanza and illegal sale of motor vehicles Reg. Nos. T. 163 AGQ Toyota Hiace and Reg. No. 256 AYW make Mark II Toyota Saloon. Estate of the late Alhaj Amri Rwenza. It is supported by affidavit of Abdul Kamuhanda Rwenza (the applicant). Whose contents essentially, Mr. Heri Kahangwa learned counsel for him wished to adopt during the hearing. Mr. Linus learned counsel appeared for the respondent.

When the application was called on 09/10/2018 for hearing, the respondent raised two (2) points of preliminary objection (p.o). Namely:-

**One;** that on account of wrong citation of the parties, the court was improperly moved. Applicant having personally instituted the matter (not as administrator of the estate). Contrary to **Order II Rule 5 of the Civil Procedure Code Cap. 33 R.E. 2002.**

**Two;** that the supporting affidavit was incurably defective. Therefore no application at all for bad jurat of attestation. As it was not clear if the attesting officer knew the deponent or was just introduced to him. Leave alone dates of.

That the application was prematurely instituted. Much as Misc. Civil Application No. 27 of 2018, on objection to applicant being appointed administrator of the estate was still in court pending. That it is was like the applicant now attempted to pre-empting the matter.

Mr. H. Kahangwa submitted that as long as essentially he applied as applicant personally. That there was no issue of wrong citation of the parties.

As for jurat of attestation, the learned counsel, and as far as the initial affidavit was concerned, the deponent was in fact identified. Save for the supplementary affidavit. In which case the application remained intact.

Thirdly, that still the applicant remained a co-administrator of the estate. Irrespective of the pending in court objection application.

On rejoinder, Mr. Linus learned counsel submitted that with it (the supplementary affidavit) and its effects gone, there could be no application naturally. That is it.

The pivotal issue is whether the application is competently before the court. The answer is no. Reasons are as under:-

**One;** the applicant did not show or prove that indeed he instituted the application duly sanctioned by co-administrators of the estate at issue.

**Two;** from the records, and by the letter of even date received on 19/09/2018 by Deputy Registrar of this court having withdrawn from conduct of it, Halima Rwenza wasn't a co-administratrix of the estate any longer. Assuming others had sanctioned him to institute the matter, yet the applicant lacked consent of a fellow. It could not therefore be ruled out that the applicant instituted the application self-invited and probably with personal interests.

With regard to the supplementary affidavit and contents, for the reasons all gone (as per applicant's concession), I could find no such material irregularities in the supporting affidavit. Much as the deponent was accordingly identified by S.R. Kahangwa. The copy served on the respondent's counsel may be that lacking yes! But that happening it is only court's copy that counted. The limb of p.o is overruled.


**Three;** with respect to Misc. Civil Application No. 27 of 2018 and status of the applicant, good practice dictated that one should have waited until final determination of the matter now pending in court. Much as the

present proceedings would, by logic and common sense tantamount to pre-empting application. What the hurries? Limb of the p.o is sustained.

What was in this case equally important was the fact that admittedly having been appointed on 15/08/2017 co-administrator of the estate, and on expiry of the 1<sup>st</sup> six (6) months (on 15/02/2018 latest). Without proof that he had sought and was granted extension of time before submission of inventory and the probate proceedings being marked closed. Unless he was a life time administrator of the estate (which is not the case), the applicant could not have automatic *locus stand* any further.

In the fine, the p.o is sustained. The incompetent application is dismissed with costs. Ordered accordingly.

Right of appeal explained.



**S. M. RUMANYIKA**  
**JUDGE**  
**18/01/2019**

Delivered under my hand and seal of the court in chambers this 24<sup>th</sup> day of January, 2019 in the presence of the Mr. Erick advocate for the applicant and Mr. Linus advocate for the respondent.



**O.H. Kingwele**  
**DEPUTY REGISTRAR**  
**24/01/2019**