

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

AT DAR ES SALAAM

PROBATE CAUSE NO. 422 OF 2019

NORGAITY MAYEKA..... APPLICANT

VERSUS

ANGELA MAYEKA..... RESPONDENT

Date of last Order: 16/10/2019

Date of Ruling: 23/10/2019

R U L I N G

MGONYA, J.

The prayer sought by the Applicant intends to move the Court to order the Respondent herein to vacate the suit premises or an eviction order evicting the Respondent from residing in the premises that belong to the Applicant and her deceased husband.

The Application has been brought under ***S. 100 of the Probate and Administration of Estates Act [Cap. 352 R.E. 2002]***. The Application is supported by the Affidavit of **Norgaity Mayeka** the Applicant herein.

The Applicant was represented by Mr. Denice Tumaini Advocate while the Respondent was represented by Mr. Kevin Kidifu Advocate and sometime by Mr. James Mwenda, Advocate. When the matter came for hearing the Counsel for the Applicant Mr. Denice Tumaini prayed that the Applicant's Affidavit and exhibits be adopted and reference be made to the Chamber Summons. The submission by the Applicant was strongly opposed by the Counsel for the Respondent through their Counter Affidavit and submission.

It is the Applicant's prayer in the Chamber summons that the Respondent is ordered to vacate the suit premises within 14 days; failure to do so, a forceful eviction order be granted for the same. The Applicant reiterates that having being appointed Administratrix of the estate of the late Ivor Mayeka her deceased husband, she intends to execute the duties of an Administrator but fails to do so by the actions of the Respondent denying to vacate the suit premises.

Submitting further, the Applicant averred that, the suit premises the Respondent resides in, is one of the properties of her deceased Husband which befalls within the jurisdiction of the Administration and that the same is the matrimonial home that the Applicant and the deceased used to reside in every time they

visited Tanzania since the deceased had been working for gain in Harare the capital city of Zimbabwe.

Moreover, the Applicant states to face difficulties in administering the duties of the office of an Administrator and hence forth seeks for grant of the prayers sought in the Chamber Summons, since the Respondent has been residing therein from the time the deceased had begun suffering from the sickness that finally took his life. The Respondent being an invitee into the suit premises requested to live therein until her house that was under construction was complete.

However, from the time the late Ivor Mayeka passed, the Respondent drastically changed in habit where as she denied to vacate the premises and even further denied the Applicant the right/access into the premises resulting the Applicant in incurring extreme costs for lacking premises to reside in while being in Tanzania.

On the other end, Mr. Kevin Kidifu and Mr. James Mwenda Counsel for the Respondent, challenged the Application by stating that, the section that the Applicant has used to move the Court in the Chamber Summons has been misconceived for it is to be applicable where the Administrator in respect of all causes of action that have survived the deceased to sue and may exercise

the same power for recovery of debts of the deceased at the time of his death.

Counsel for the Respondent further stated that this suit did not survive the deceased but was brought after the deceased had died.

Moreover, the Advocate for the Respondent replying to the Application before this Honourable Court, he submitted the matter at hand is purely a family matter of persons that are joined by the late Ivor Mayeka, the Applicant being the Wife of the deceased and the Respondent being the biological daughter of the deceased.

Counsel further informed this Court that, it was the deceased who invited the Respondent to premises to use, possess and keep the same in good condition. And that the right to stay in the premises cannot be relinquished at this juncture by a mere Application, since the Respondent still has interest in her biological Father's premises.

Moreover, the appointment of the Administratrix to estate stands to be challenged by an Application for revocation before Hon. Dr. Ngwalla J. for the appointment of the Administratrix did not follow procedure of law neither was the family engaged in her appointment through the clan meeting.

Counsel for the Respondent also went further in challenging the will left behind by the deceased by it being tainted with elements of fraud and hence unlawful therefore the application cannot be granted on such bases. He further averred that, it is in the record that the Applicant has been residing in that house without being disturbed by any person. And that the Respondent by residing in the suit premises, lives the wishes of the deceased who is her father as he was the one that allowed her access to the same.

Upon careful reading the pleadings and submissions filed by the Parties, the above is the summary of the matter at hand. At this juncture, I venture to determine prayers sought for in the Chamber Summons as herein below.

To start with, I overrule the preliminary objection by the Respondent as presented earlier the same is misconceived and proceed with determining the instant Application as herein below.

It is undisputed that the Applicant is the wife of the deceased Ivor Mayeka who had been married to the deceased since **December 1994** and that she and her late husband have from time to time being living in the suit premises every time they visited Tanzania. It is however pleaded in the pleadings and the

submissions of the parties that the disputed premises belonged to the deceased and no one else.

In line of the aforesaid, it is also not disputed that the Applicant was the one who was appointed by the High Court of Tanzania as the Administrator of the deceased's estate. In line with the requirements of the Law under **Section 108 (1) of the Probate and Administration of Estates Act Cap 352 [R. E 2002]**, the law has outlined various duties of the Administrators in executing their office.

It is in record and evidenced by the will of the late Ivor Mayeka under paragraph 9 that, I quote:

"Further I give and bequeath any other immovable property which I own to my children AMINA and ASANTE, Jointly and in equal shares. I direct that if I should die before the beneficiaries of the immovable property attain the age of eighteen (18); I nominate NORGAITY KANHEMA to manage the immovable property on behalf of the beneficiaries".

It is therefore from the above paragraph I find legality of the Applicant requiring having access to the premise so as to administer her duties as the Administrator.

The Respondent being invited to live in the premises and take care of the same when the deceased and the Applicant were in Harare, does not make the Respondent a sole owner or vest her with the rights to obstruct the Applicant from entering the premises and obstructing her to administer the duties of an Administrator.

The Respondent has claimed and reminded this Honourable Court to be the biological daughter of the late Ivor Mayeka and that she being the daughter of the deceased has interest and rights over her Father's estate. Indeed, from the pleadings and submissions from both parties, that is the position and it is not disputed.

However, that does not rest her with more right to the property in issue more than other beneficiaries left behind by the deceased late Mayeka.

However being the daughter of the deceased and having interests and rights to the deceased's estate that does not mean that the Respondent is not within late Mayeka's Family. There are legal ways to challenge the Applicant's appointment as well noted from the Respondent's Counsel Submission but in exclusion of obstructing the Administrator from executing her duties.

It is from the above, the Respondent ought to have approached the doors of the Court to challenge the Will and not to act in the manner she has as stated by the Applicant. This Court being the Court that had appointed the Applicant as Administratrix of the deceased estate and the same is expecting vested to see the duties are administered and not blind fold itself on the obstruction of any kind hindering the Applicant execute her duties. Moreover, it has to be noted that, by mentioning that there other matters pending the court that involves the same parties herein or challenges anything, does not bar this Honourable Court in determining the instant Application.

The Respondent has a wide room of chances to seek for justice via proper legal channels rather than what she practices as of now. The Courts have time limitation to be availed with the Inventory so as to see that the duties shouldered upon the Applicant are adhered to.

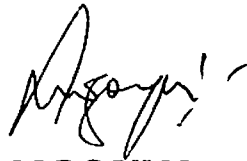
Having said that from the reasons secured above, the Application is found to have merit. **It is hereby granted accordingly.**

For avoidance of doubt, the Respondent is hereby ordered to peacefully vacate the suit premises and handle the same to the

Applicant/give vacant possession **within 14 days** from the date of this Ruling.

I make no orders as to costs.

It is so ordered.

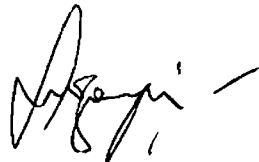


L. E. MGONYA

JUDGE

23/10/2019

Court: Ruling delivered in chamber in the presence of Mr. Denice Tumaini, Advocate for the Applicant, Mr. James Mwenda, Advocate for the Respondent and Ms. Emma RMA this 23rd day of October, 2019.



L. E. MGONYA

JUDGE

23/10/2019