

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM REGISTRY)

AT DAR ES SALAAM

PROBATE AND ADMINISTRATION CAUSE NO. 44 OF 2019

In the matter of the Estate of the late **William Samla Gosai**
(Deceased).

AND

In the matter for grant of letters of administration by

Maimuna Elias Barabara APPLICANT

AND

In the matter of application for grant of Letters of Administration
pedente lite.

RULING

20th May & 29th May, 2020.

E. E. KAKOLAKI J

This is a petition for grant of letters of administration to one **Maimuna Elias Barabara** as administratrix of the estates of the late **William Samla Gosai** who died intestate at Kinondoni quarters within Kinondoni District, Dar es salaam Region on the 14th day of September, 1979. The petition was supported by the death certificate dully issued by Registrar General of births and deaths on the 25/01/2019. Accompanying the petition also is bond of administrator, consent of heirs, affidavit as to

domicile, and administrator oaths. Others are administration bond with sureties and certificate as to surety's financial position. All these were made in compliance of Rule 39 of the Probate Rules, GN. No. 369 of 1963. The petitioner was represented by Mr. Fulgence Johnston learned advocate.

When the matter came for hearing on the 12/05/2020 and 20/06/2020 the court suo motto raised a question and wanted to know whether the court was properly moved after noting that the petitioner had cited no provision of the law. Mr. Johnston quickly conceded that it is true the petitioner did not cite any provision of the law to move the court to grant the orders sought. He asked the court to strike out the petition for being incompetent.

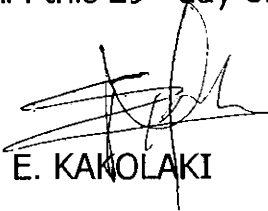
As rightly conceded by the advocate for the petitioner this application is incompetent for non-citation of the applicable law to move the court to grant the orders. This position of the law was stated in the case of **Minani Rashid Vs. Republic**, Criminal Appeal No. 67 of 2009. (CAT-unreported).

"There is no dispute that the High Court was not properly moved by the appellant/applicant. The chamber summons was incurably defective for non-citation of the enabling provisions of the law. It was equally defective for being supported by an incurably defective affidavit. For this reason, there was no competent application before the High Court for extension of time which could either be granted or rejected."

In the same spirit and circumstances of the case; and for the foregoing reasons, I am inclined to hold that the petition before this court is incompetent for non-citation of the enabling provisions and it is hereby struck out.

It is so ordered.

DATED at DAR ES SALAAM this 29th day of May, 2020.



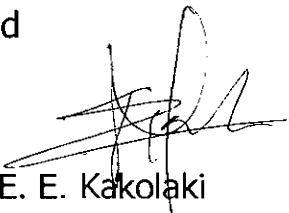
E. E. KAKOLAKI

JUDGE

29/5/2020

Delivered at Dar es Salaam this 29th day of May, 2020 in the presence of Mr. Fulgence Johnstone learned advocate for the petitioner and Ms. Lulu Masasi, Court clerk.

Right of appeal explained



E. E. Kakolaki

JUDGE

29/05/2020