

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

AT DAR ES SALAAM

MISC CIVIL APPLICATION NO. 308 OF 2019

**In the matter of the Probate and Administration of
Estate Act, Cap. 352 [R. E. 2002]**

AND

In the matter of the Estate of the Late SIMON NGATOLA

WOISSO

AND

**In the matter of the Application for revocation of the
letters of Administration granted to PRIVA SIMON
WOISSO AND JOSEPH SIMON WOISSO**

BY

JOSEPH SIMON WOISSO

***(Made under Section 49 (1) (d) and Section 49 (2) of
the Probate and Administration of Estates Act, (Cap 352
R. E. 2002)***

Date of the Last Order: 27/2/2019

Date of the Ruling: 15/5/2020

R U L I N G

MGONYA, J.

The Applicant herein **JOSEPH SIMON WOISSO**, filed a Chamber Summons under **Section 49 (1) (d) and section 49 (2) of the Probate and Administration of Estate Act; Cap. 352 [R. E. 2002]** for this Honorable court be pleased to

revoke the letters of administration granted to **PRIVA SIMON WOISSO AND JOSEPH SIMON WOISSO** in Probate and Administration Cause No. 10 of 2016 which were granted on 11th October, 2018 by Honourable Luvanda, J. and grant the same to the **Administrator General** as the sole Administrator for purpose of proper administration of the estate of **the Late SIMON NGATOLA WOISSO**.

The Chamber Summons is supported by an Affidavit dully sworn by **JOSEPH SIMON WOISSO the Applicant herein**.

When the matter came for hearing on 19th November, 2019, before Mr. Dickson Sanga the learned Counsel for the Applicant and Mr. Frank Chundu Advocate for the Respondent, the court ordered the Parties to file their respective written submissions in respect of the instant Application. The said schedule has been adhered to accordingly, hence this Ruling.

Before I determine this matter, let me narrate the brief background of this matter as herein below:

Way back on 02nd November, 2012 the Parties' father one **Simon Ngatola Woisso** died at Muhimbili National Hospital. After his death, one of the deceased's son, **Joseph Simon Woisso** the Applicant herein, petitioned for the Letters of Administration at Primary Court of Temeke. The petition was granted but later the same was challenged by his brother **Priva Simon Woisso** whereas the Primary Court which appointed the Applicant herein, revoked the granted Letters of

Administration from Joseph Simon Woisso and granted the same to Priva Simon Woisso. Aggrieved by the Primary Court's decision, the Applicant thus decided to appeal to the District Court of Temeke. Through the said Appeal, the District Court of Temeke proceeded to nullify the entire Primary Court's proceedings and ordered the Parties to apply for the Letters of Administration afresh if they so wish.

After the District Court Judgment, the Respondent decided to apply for Letters of Administration before this honorable court. The case was presided by honorable Luvanda J. Further, in the cause of that petition hearing, the Applicant herein lodged caveat before this honorable court challenging the Respondent's petition. The court decided that he deceased's estate be co-administrated by the Applicant and the Respondent jointly and cooperatively.

From the pleadings of this matter, it is obvious that communication between these two brothers in respect of administering the estate did not go well, hence the instant Application that the Administrator General should take over the deceased's properties administration and divide the same to respective heirs.

Submitting in support to his Application, it is the Applicant Counsel's assertion that, immediately after delivery of the above Judgment, the Applicant decided to find the Respondent in order to discuss the modality of administering the estate, in

vain. The Counsel further submitted that, the Applicant never met the Respondent despite all his efforts. It was also alleged that, the Respondent neither received the Applicant's calls nor reply his messages. The Applicant's physical follow up also became futile.

It is the Counsel for the Applicant averment that, due to Respondent's refusal to cooperate, the Applicant was unable to administer the deceased's estate alone contrary to the court order which required joint administration of the estate, thus the Applicant decided to knock the door of this honorable court for redress.

In this Application therefore, it is the Applicant's prayer that this honourable court may be pleased to revoke the letters of administration granted to Priva Simon Woisso and Joseph Simon Woisso in Probate and Administration Cause **No. 10 of 2016** granted on 11th October, 2018 by Honourable Luvanda J. and grant the same to the Administrator General for proper administration of the estate of Late Simon Ngatola Woisso.

In response, the Respondent's Counsel Mr. Chundu informed the court that it is the Applicant herein who neglected to cooperate in Administration by deciding not to communicate with the Respondent in anyway even in the event where that entire family members travelled for a meeting and decided to go to the Applicant's home at Ukonga, he was nowhere to be seen.

In the event therefore, the Counsel averred that under those circumstances, the Respondent agreed with all other family members to proceed with administration, whereby the inventory was filed on the 23rd January, 2019 (**Exchequer Receipt No. 24632279**) which was served to the Applicant and his then Advocate. Thereafter, the Respondent herein proceeded to file Accounts of Estate on the 13th August, 2019 (**Exchequer Receipt No. 24644796**). Further, the counsel told the court that, it was after the Applicant was served with the above documents, later about 7 days after they have lodged the accounts of estate by the Respondent herein, on the 20th August, 2019 the Respondent was served with documents of this application.

The Respondent's Counsel further submitted that, it is not true that failure to cooperate between the co-administrators renders the grant useless and inoperative as the Applicant is alleging. The Counsel quoted **Section 104** of the **Probate and Administration of Estate Act, Cap. 352 [R. E. 2002]** (herein "the Act") which provides:

"104 When there are or administrators, the powers of all may, in executors the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration."

From the above section, it is the Respondent Counsel's assertion that, powers of several administrators or executors may be exercisable by any one in some given circumstances. Counsel averred that, the only requirement required under the circumstances is to prove that one has taken out the will or letters of administration. The Respondent's Counsel informed the court that, basing on the powers granted under the above provision, the Applicant's conduct not to cooperate in administering the estate, consideration of the interest of other majority family members taking note that other members agreed and consented, all those made the Respondent herein to exercise the powers conferred upon him under the above provision to file inventory before the court for the purpose of distributing the deceased's estate.

In support of the above assertion, the Respondent's Counsel attached the Joint Affidavit duly sworn by the Parties' siblings confirming that the Applicant is the one who is derailing the administration process which has moved far to filing of the inventory before the court.

From all the above, it is the Respondent's Counsel submission that the instant Application before the court is misconceived and that out of the same the Applicant is trying to place his own interests against the rest of the family members including his own mother. It is further the Respondent Counsel's averment that, since most of all

properties left by the deceased have been under the control of the Applicant herein, this is the major reason that the Applicant has decided not to cooperate to make an end the exercise of administration and division of the deceased's estate.

Further, under those circumstances, it is therefore unbecoming to allege that the Respondent failed to cooperate, but rather it is the Applicant who failed to cooperate and the gist of his neglect was due to the sole fact, he has been solely benefiting from the estate.

In conclusion, it is the Respondent Counsel's prayer that the Application be dismissed with costs for the same is lacking merits.

At this juncture and before I proceed to determine the matter at hand, I have seen it prudent to refer to the decision of my learned brother Luanda J. when granting the parties herein the letters of administration before the court to be the co- administrators to administer the estate of the late Simon Ngatola Woisso. In that regard, I have decided to quite the said decision as herein below:

"The learned Counsel for caveator in his final submission asked the court to dismiss the petition and an order for closure of the deceased's bank account and business at Sabasaba on the ground that the District Court did not order fresh nomination and that the petitioner is untruthful. On the other hand, the learned Counsel for the

petitioner asked the Court to dismiss the caveat and grant the petition, but the circumstances of this probate militate against taking either side advice. I rather take a third path or approach, and appoint the petitioner and the caveator to be co-administrators. My verdict is supported by the fact that since the demise of the deceased on 02/11/2011 being more than five years elapsed, the estate remains un-administered to date. And there is eminent danger of waste and squander the same by unscrupulous heirs. Secondly, the caveator was merely objecting the nomination and intended appointment of the petitioner.

*As premised above, a grant is made to **Priva Simon Woisso** and **Joseph Simon Woisso** as co-administrators, to administer the estate of the late Simon Ngatola Woisso.”*

It is a well-known fact that, the Procedure after grant of probate and letters of administration, the court has a duty to ensure that the legal requirements to administration of estate are adhered and complied with. That among others is, before distribution of the estate to the heirs, to issue notice to the creditors and all who have claims against the estate of the deceased within sixty days of the appointment. Further, after administration and distribution of the estate, the administrator/(s) have to prepare a report of administration (inventory) and send it to court which made the grant. By the inventory, the executor(s) or administrator(s) is informing the

court that the work of administration of the estate in which a grant was made has been completed.

In the matter at hand, it was expected that the two Administrators work hand in hand as directed by the Court and also as required by law. I am aware that the co-administrators have to administer the estate jointly. However, under the given circumstances, that was not the case as every party is claiming that the other was not cooperating. The claim to each other is quiet strange, and that one cannot have an answer as to who is telling the truth as every party is blaming another person. However, under the circumstances, the court must find a way in order to determine this matter.

Under this circumstances, the law has to apply, and that *it* is a well settled principle of law that, a person who desires the court to enter judgment on his or her favour must prove his/her case on the standards required. This has been provided under ***Section 110 and 112 of the Evidence Act Cap. 6 [R. E 2002]***; as herein below:

- " 110. (1) *Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*
- (2) *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

111. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side."

From the above cited authority and law, and from the parties' pleadings and respective submissions in relation to the matter at hand, it is my view that, I better go with who was able to prove the allegations on issue.

From the parties' submissions, I have noted that both parties have submitted their above allegations through their respective Affidavits. Taking into account that Affidavit is a sworn evidence, then I have taken the facts submitted by both Parties through their respective Affidavits very seriously. The definition of an Affidavit was well observed in the case of ***OTTU VS AG AND OTHERS, Misc. Civil Application No. 15/97 - HC at Dar es Salaam*** (Katiti, J.) had this to say:

"The expression, "affidavit", unfortunately despite its being a lawyers everyday tool, is not defined by any statute, I could lay my hands on. But the lexicon meaning of the expression "affidavit" is that it is a sworn statement in writing, made especially under oath, or affirmation before an authorized Magistrate or Officer."

Referring to the Applicant's affidavit, he is stating that the Respondent is one who was not cooperating making a bear

allegation that he tried every way to make the meeting with his co-administrator in vain. However, the little proof to that is not indicated even in a slight glance. On the other hand, it is the Respondent who brought before the court evidence of his allegation through the joint affidavit of other siblings that the efforts to find the Appellant herein was done in several occasions, in vain. I can't ignore this kind of evidence under the circumstances. Further to that, it is the fact that out of the situation, the Respondent decided to proceed with filing of inventory and accounts before the court, the fact which is evidenced through the 23rd January, 2019 - **Exchequer Receipt No. 24632279** in respect of filing inventory which is said to be served to the Applicant and his then Advocate. Further is **Exchequer Receipt No. 24644796** in respect of filing Accounts of Estate on the 13th August, 2019.

It is from the joint affidavit mentioned above, I find the allegation by the Respondent that it is the Applicant who was not cooperating has been proved accordingly. Further the fact that the Respondent proceeded with the filing of the inventory and accounts before the court to finalize the administration process, has been established. However, let me see what the law demands under this situation.

Straightaway, in the situation where there are co-administrators, the question is whether a single Administrator can dispose and distribute the deceased's estates in exclusion

of the other joint Administrator? In answering this matter, let me refer to the case of ***MAY MGAYA V. SALIMU SAIDI & SALEHE SAIDI, Civil Appeal No. 264 of 2017, Court of Appeal of Tanzania (unreported)*** where the Court held that:

"Co-administrators are all jointly and together responsible for everything in respect of the administration of the estate including exhibition in Court an inventory containing a full and true estimates of all the properties, debts and credits as well as distributing to the rightful heirs the residue after paying all the debts and liabilities. Any default, including the delay in exhibiting the inventory and statement of account is taken to have been committed by them all".

In the case at hand, there is no controversy that the Applicant and the Respondent were all duly appointed joint or co-administrators of the estate of the **late Simon Ngatola Woisso**.

This situation is permissive under **Rule 2(a) of the fifth schedule of the Magistrates Courts Act, Cap. 11 [R.E. 2002]** which gives power to the Primary Court either on its own motion or upon application by any interested person, to appoint one or more persons interested in the estate of the deceased to be administrator or administrators thereof.

At this juncture, let me state the legal Status of Co-Executors or rather answer the question as what happens when there are several executors? Or can one executor act on the behalf of others? The answer to these questions were described in ***UNION BANK OF AUSTRALIA V. HARRISON, JONES AND DEVLIN*** (1910) 11 CLR 492 AT 516 - 17, see also Thomas Wentworth, *Office and Duty of Executors*, 9th Edition London, page 751) where Isaac, J. held that:

*"The Office is one and indivisible, no matter whether it is executable by one or several. When it is said that co-executors are to be regarded as an individual person, **it is no meant that aii must unite in the performance of each act, but that their official personality is not divisible or distinguishable, and that they have individually and collectively all the rights and duties of the office they undertake.**"*

In our jurisdiction, the powers of the co-executors are provided for under **section 104 of the Probate and Administration of Estates Act**, which states that, the powers of the co-executors may be exercised by one of them. For ease of reference let me quote the same:

*"When there are or administrators, the powers of all may, in executors the absence of any direction to the contrary in the will or grant of letters of administration, **be***

exercised by any one of them who has proved the will or taken out administration."

That being the position of the law, the Applicant and the Respondent being co-administrators, they are jointly and together responsible in everything in respect with the administration of the estate of the deceased. They are jointly and together responsible in collecting the deceased's properties, finding a true estimation of all the properties, disposing those properties if necessary for the best interest of the beneficiaries, paying the debts and credits as well as distributing the residue after paying the debts and liabilities to the rightful heirs in accordance with the applicable law. That is not disputed.

However, under the circumstances of this matter where it seems Parties are not having one stand and aim to finalize the work that they have been entrusted with, the law cannot be used as a bush to hide and hinder the progress of work that is expected by heirs. Here is where the exception under **section 104 applies**. One of the utmost important condition that I see it should be observed is the evidence that one of the Administrators was not responding. Taking the wording of the Judge who granted the letters, that the main focus is to finalize the exercise to prohibit the waste of the estate, as well stated in his judgment by the following words; I quote:

“My verdict is supported by the fact that since the demise of the deceased on 02/11/2011 being more than five years elapsed, the estate remains unadministered to date. And there is eminent danger of waste and squander the same by unscrupulous heirs.”

Now, having seen the above position, and after I have been satisfied that it was the Applicant who did not cooperate, and in the event where the Respondent herein has already filed the inventory and accounts of this probate before this very same court as well stated in Respondent’s Counter Affidavit the fact which was neither objected by the Applicant, the prayer before the court cannot be granted as by doing so, it will pull down all the efforts that have been done so far. Under this situation, as well stated by Luanda J. while granting the letters, it is also my wish that this matter come to an end to prevent wastage of the estate.

My above stand is supported with the directives given by the Highest Court of the Land, the Court of Appeal of Tanzania in the case of ***AHMED MOHAMED AL LAAMAR VS. FATUMA BAKARI AND ASHA BAKARI, Civil Appeal No. 71 of 2012***, at Tanga where the court had this to say:

“Furthermore, we have discovered from the High Court record, that as consistently claimed by the appellant, he did exhibit the requisite inventory and account in the High

*Court on 25th February, 1987. This fact is proved beyond any reasonable doubt by Exchequer Receipts No. 643059 and 643058 respectively both dated 26th February 1987. **In law the probate proceedings were effectively closed from that day.***

*Given the fact that the Appellant had already discharged his duties of executing the will, whether honestly or otherwise, and had already exhibited the inventory and accounts in the High Court, **there was no granted probate which could have been revoked or annulled in terms of section 49 of the Act.***

From the above precedent, indeed, the matter at hand cannot in any way revoke the parties' letters of administration and grant the same to Administrator General as in law, the probate proceedings were effectively closed from the day the inventory and accounts were filed before the court, on **23rd January 2019** and **13th August 2019** respectively. Further, the prayer to revoke the parties' letters of administration and vest those power to Administrator General is inevitable as the probate proceedings has already came to an end as observed above.

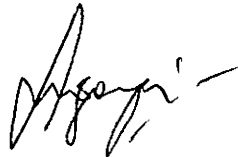
From the above explanation and legal reasoning, I cannot hesitate to state that the Application before the court is both **misconceived** and also **overtaken by events** under the circumstances.

That being the case, **the Application before the court is hereby dismissed in its entirety.**

I make no order as to costs.

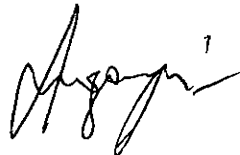
It is so ordered.

Right of Appeal explained.



L. E. MGONYA
JUDGE
15/05/2020

Court: Ruling delivered before Hon. R. B. Massam, Deputy Registrar in chambers in the presence of Mr. Frank Chundu, Advocate for the Respondent, the Applicant in person and Ms. Janet RMA, this 15th day of May, 2020.



L. E. MGONYA
JUDGE
15/05/2020