

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

MISCL. CIVIL APPLICATION No. 636 of 2019

(Arising from Probate and Administration Cause No. 24 of 2016)

GABRIEL JUNIOR KAMUKARA.....APPLICANT

Versus

MELINDER SIARRA KAMUKARA (Administratrix of the Estate of the late Gabriel Raphael Kamukara).....**RESPONDENT**

RULING

22nd May-16th June, 2020

J. A. DE-MELLO J;

The Applicant has brought his application under **section 49 (1) (d) (e) and, (2)** of the **Probate and Administration of Estate Act Cap. 352 R.E 2019** and **Rule 29 (1) of Probate and Administration of Estate Rules**, seeking this Court for the following orders;

- i) **Revoking** grant of letter of administration of the Estate of the late Gabriel Raphael Kamukara,
- ii) **Removing** the respondent from the office of Administratrix of the same deceased and, consequently,
- iii) **Appointing** the applicant to be the Administrator of the same deceased, **replacing** the Respondent.

Accompanying the said application is, the Affidavit of the Applicant himself
Opposing the Application is the Counter Affidavit of Respondent, raising the following objections;

- i. **That, the Application is Time Barred**
- ii. **That, the Application is Res Judicata to Miscellaneous Civil Application No. 754 of 2016 (filled for and on behalf of the Applicant) which was filed, opposed and ultimately withdrawn with leave to refile.**
- iii. **That, the verification of paragraph 6 and 7 of the affidavit lack full disclosure of the source of information.**
- iv. **Prayer (b) and, (c) in the Chamber Summons are not supported by the Affidavit of Gabriel Junior Raphael Kamukara.**

In that same vein, but on the reply to the Counter Affidavit, are two more preliminary objections that;

- i. **The statement "put the respondent to strict proof" is contrary to the law, and**
- ii. **The verification of paragraphs 7, 8 and 9 of the affidavit lack full disclosure of the source of information**

In the alternate, she prayed for the Application to be **Dismissed** on account of the **1st** and, **2nd** point of objection or be **Struck Out** on account of the **3rd** and, the **4th objection**. Written submissions were preferred, whereby the Respondent was ordered to file hers, on or before **30th April, 2020**, whereas the Applicant's reply on **15th May, 2020** and, the rejoinder on **22nd May, 2020** hence attracting a Ruling on the **17th June, 2020**.

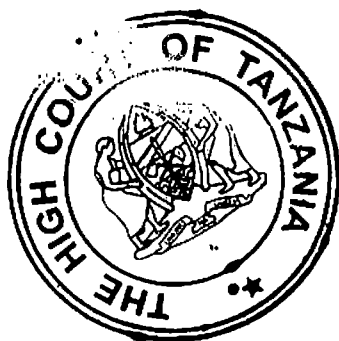
However, up to the time of delivering this Ruling no written submissions has been filed by the Respondent despite the **scheduling order** that this Court ordered on the **16th May, 2019**. It should be borne in mind that, it is the Respondent himself who moved the Court with the said objections whose

failure to submit tantamounts to non-compliance of the Court orders. This remains the position of this Court as what the cases of **Allan T. Materu vs. Akiba Bank, Civil Appeal No. 114 of 2002** at Dar Es Salaam, and, **Saidi Abdallah Kinyantil vs. Fatuma Hassani & Another, Civil Appeal No. 87 of 2002**. In **Saidi Abdallah's** case, this Court held that, failure to file written submissions is equated to a hearing. In the case of **Godfrey Kimbe vs. Peter Ngonyani, Civil Appeal No. 41 of 2014**, the Court of Appeal Cited with Approval the case of **National Insurance Corporation of (T) Ltd.** held;

"The Applicant did not file submissions on due date as ordered. Naturally, the Court could not be made impotent by a party party's inaction. It had to act ...it is a trite law that failure to file submissions is a tantamount to failure to prosecute one's case."

Bearing in mind this being a Probate matter and, which demands timely dispensation of justice, I will even refrain to **Suo Motu** address some of the objections to ascertain their veracity or not but, guided and embraced by the oxygen principle, dismiss them all, as the Application is heard on its original and substantive nature. No orders as to costs, as Parties are family.

Ordered accordingly.




J. A. DE-MELLO

JUDGE

16/6/2020