

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

AT DAR ES SALAAM

PROBATE AND ADMINISTRATION CAUSE NO. 26 OF 2020

(Made under section 55(1) of the Probate and Administration of Estates Act, [Cap. 352 R.E 2019] and Rule 33(1) of the Probate Rules)

In the matter of the Estate of the late **Dr. Cyprian Gervas Mpemba**
(Deceased).

AND

In the matter of Application for Probate of the will of the late **Dr. Cyprian Gervas Mpemba** by **Scolastica Dominic Lyuvale** and **Cecilia Cyprian Mpemba**.

RULING

16th June & 19th June, 2020.

E. E. KAKOLAKI J

This is a petition for probate of the will of the late of **Dr. Cyprian Gervas Mpemba** by **Scolastica Dominic Lyuvale** and **Cecilia Cyprian Mpemba** who died testate at his residence at Makoka – Ubungo District within Dar es salaam Region on the 14th day of January, 2020. It is preferred under S. 55(1) of the **Probate and Administration of Estates Act**, [Cap. 352 R.E 2019] hereinto referred as Act and rule 33(1) of the Probate Rules herein referred to as Rules. As per the requirement of Rule of 33(1)(a),(b) and (c)

of the Probate Rules the petition is accompanied by death certificate issued by Registrar General of births and deaths, will of the late Dr. Cyprian Gervas Mpemba duly executed on the 18/10/2018 and executors' oaths of both **Scolastica Dominic Lyuvale** and **Cecilia Cyprian Mpemba**. Other documents accompanying the petition are affidavit as to domicile of the deceased sworn by Scolastica Dominic Lyuvale proving that the deceased was at the time of death domiciled at Makoka – Ubungo Municipality in Dar es salaam in compliance with rules 64 of the Probate Rules, Administration bond with sureties for the sum of one billion shillings presented by both petitioners in compliance with section 67 of the Act and rule 66 of the Rules promising to make sure that the executors of the will are fully and truly making inventory of the properties and credits and exhibit them before this court within six months from the date of probating the will, Verification of Petition for Probate under section 57(2) of the Act and Rule 34 of the Rules and affidavit of consent sworn by Mary Cyprian Mpemba in compliance with rule 71 of Probate Rules giving consent of two petitioner to proceed with the petition for probating the will.

What is discerned from the petition is that the deceased who died intestate is survived with a widow one Ms. **Scolastica Dominic Lyuvale** and four children namely **Cecilia Cyprian Mpemba**, **Mary Cyprian Mpemba**, **Jane Cyprian Mpemba** and **Theresia Cyprian Mpemba**. He also left some properties forming part of the estates which the petitioners are seeking to administer. These includes a matrimonial house situated at Makoka, Kimara – Ubungo District, Dar es salaam estimated to be worth Tshs. Sixty Million (Tshs. 60,000,000/=), a house situated at Makoka, Kimara – Ubungo District, Dar es salaam in unsurveyed plot estimated to be worth Tshs. Forty

Million (Tshs. 40,000,000/=), a surveyed land with plot No. 407 Block A and CBD area in Kibaha township with 1527 square meters, estimated to be worth Tshs. Fifty Million (Tshs. 50,000,000/=), Unsurveyed farm of eight acres at Kidenge Msangani, Kibaha District in Coastal Region, estimated to be worth Tshs. Seventy Million (Tshs. 70,000,000/=), Motor Vehicle with Registration No. T808 BCP, estimated to be worth TShs. Twenty Million (Tshs. 20,000,000/=), unclaimed retirement benefits, estimated to be worth Tshs. 20,000,000/=, unclaimed pension upon retirement, estimated to be worth Tshs. 50,000,000/=, Funds in CRDB Bank Ltd Account No. 01J2018730000 estimated to have no funds, Funds in CRDB Bank Ltd Account No. 02J2018730000 estimated to have US Dollar 100, Funds in a joint account with Scolastica Dominic Lyuvale at CRDB Bank Account No. 01FD253415105, estimated to have Tshs. Two Hundred Million (Tshs. 200,000,000/=), Funds in NBC Bank Account No. 080201075679, estimated to have no funds and funds in NMB Bank Account No. 2018001525, estimated to have Tshs. Twenty Million (Tshs. 20,000,000/=). It is from all those deceased's properties and assets the petitioners are seeking to administer them. Upon this petition being filed the Court ordered the petitioners to make citation in a newspaper widely circulated in the country as well as in the Government Gazette. The matter was set to come for mention before the court on 10th of June 2020 for necessary orders and later on 16th June, 2020 for hearing.

When the application was called for hearing before me on 16th day of June, 2020 the petitioners were represented by Miss **Gloria Kalabamu** learned advocate. Arguing the petition Miss Kalabamu prayed to adopt the petition and its attachments. She informed the court that the petitioners complied

with the court's orders and requirements of the law under rule 33(1) of the Probate Rules by doing citation in newspaper namely Mwananchi dated on the 19/05/2020 and the Government Gazette dated on the 29/05/2020. And that there was no any caveat served to them up to that date something which proved that the petition is not contested. She informed the court that the petitioners were appointed as executors of the will by the late Dr. Cyprian Gervas Mpemba in his last will executed on the 18/10/2018. She tendered the original will in court which was admitted as Exh. P1. She went on to stated that in total the estate that is likely to fall in the administration of the petitioners is estimated at Tshs. Five Hundred Million (Tshs. 500,000,000/=) which includes landed properties and money in the bank accounts. And thet the deceased professed Christianity. She was therefore of the prayer that, there being nobody contesting the petitioners' appointment as executrix of estates of the late **Dr. Cyprian Gervas Mpemba**, this court to grant the petition.

I have considered the learned counsel's submission and the fact that the petitioners have complied with the requirements of the law under rule 33(1) of the Probate Rules. I have also considered the fact that the petitioners are the wife and daughter of the deceased the late **Dr. Cyprian Gervas Mpemba** and therefore the heirs and interested parties in the estates sought to be administered. Further to that I have considered the fact that more than nineteen days have passed since the last advertisement or citation by the petitioners and that no caveat has been filed to challenge their appointment. I am satisfied and left with no doubt that if the will of the late **Dr. Cyprian Gervas Mpemba** is probated and the petitioners are

appointed executrix the said estates will truthfully and faithfully be administered to the best interest of all heirs and beneficiaries of the estates.

In the circumstances and for the foregoing reasons, I do hereby probate the will of the late Dr, Cyprian Gervas Mpemba by appointing **Scolastica Dominic Lyuvale** and **Cecilia Cyprian Mpemba** as executrix of the will of the late **Dr. Cyprian Gervas Mpemba**. Both executrix of estates will be subjected to immediate control of the court and shall act under its directions as required by the law by making sure that the inventory is filed within six months from today.

It is so ordered.

DATED at DAR ES SALAAM this 19th day of June, 2020.



E. E. KAKOLAKI

JUDGE

19/06/2020

Delivered at Dar es Salaam this 19th day of June, 2020 in the presence of petitioners **Scolastica Dominic Lyuvale** and **Cecilia Cyprian Mpemba** and Ms **Lulu Masasi**, Court clerk.



E. E. Kakolaki

JUDGE

19/06/2020