

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

PROBATE AND ADMINISTRATION CAUSE NO. 64 OF 2016

**IN THE MATTER OF THE ESTATE OF THE LATE
EDWIN SEMZABA (DECEASED)**

AND

LAWRENCE FREDRICK SEMZABA (PETITIONER)

JUDGMENT

Date of last order: 27/01/2020

Date of Judgment: 21/02/2020

NGWALA, J.

This is a Petition for Grant of Letters of Administration of the estate of the late EDWIN SEMZABA (Deceased), who died intestate on the 17th of January, 2016. The Petition was filed in court on 26th September, 2016 by LAWRENCE FREDRICK SEMZABA, the deceased's young brother.

On 4th August, 2017, MAGRETH MDAKI SEMZABA, lodged a Caveat against the petition alleging that the petitioner is not the right person to apply for the grant of letters of administration. In the affidavit in support of the Caveat, the Caveator among other things avers that the deceased had a fixed place of abode at Dar

es salaam. The deceased passed away intestate on the 17th of January, 2016 at Tumaini Hospital, Dar es Salaam and that the deceased left surviving him a widow (Caveator) and two children. The Caveator stated further that the petitioner concealed the existence of the widow (Caveator) and the two children of the deceased. The details of a number of the assets forming the estate of the deceased were concealed. The Caveator also complains that the Petitioner has also started to misuse them.

Owing to the caveat the matter turned into a suit. The petitioner's/plaintiff's case is composed of the testimony given by the petitioner himself **LAWRENCE FREDRICK SEMZABA** who testified as **DW1** whereas that of the Caveator/defendant is made of the evidence adduced to the court by **MARGRETH MDAKI SEMZABA) (PW.1), MWAJUMA SALUMU(PW.2), MAKOLI LUSWETULA (PW.3) and ALLEN JOHN MSINDO (PW.4)**

The Caveators case is as short as that of the Petitioner (DW1) who is the young brother of the deceased. After the death of his brother the petitioner was appointed in the clan meeting held on 21.5.2016 to administer the estate of his late brother. DW1 stated

that his brother married the caveator in 1993 and that their marriage could not survive. They separated and later on divorced officially in 2012 via Matrimonial Cause No. 54 of 2012 at Sinza Primary Court in which, the decree of divorce was issued. Following the decree of divorce, the caveator left the deceased and she was married to another man. DW1 stated further that the deceased had no children.

On the other hand, MARGRETH MDAKI SEMZABA (caveator) who testified as PW1 stated that the deceased was her husband. They got married in 1993. They were blessed with two children who are Mary Edwin Semzaba (16) and Charles Edwin Semzaba (14). During the subsistence of their marriage, they had misunderstandings that resulted into, Divorce Proceedings instituted at the Primary Court of Sinza. In the end of trial, it was decided that properties acquired with the joint efforts, that is, the Motor vehicle, Plot at Kimara Temboni and a shamba with 16 acres at Kigamboni be divided equally at 50%. To date the properties have never been distributed as ordered. A copy of the judgment of the Primary Court was tendered by PW1 and admitted in evidence as "**exhibit P1**". PW1 stated further that in the judgment apart from dividing the properties, Edwin Semzaba

(the deceased) was ordered to take care of his children, Mary Semzaba and Charles Semzaba by providing them education, food, clothes and shelter. The Birth Certificates of the two children, which were produced by PW1 and admitted in evidence collectively and marked as **exhibit P2**. Based on that judgment (**exhibit P1**), PW1 asked the court to consider and grant her shares in the Motor vehicle, Plot at Kimara Temboni and the shamba at Kigamboni and that the rest of the deceased's share be distributed to the said children.

Mwajuma Salumu (PW2), in her testimony told this court that she knew the caveator (PW1) as her neighbour and a wife of the deceased. She said, after the death of the deceased, PW1 was chased from the house by the deceased relatives.

Makoli Luswetula (PW3), the street chairman of Pemba Mnazi, Kigamboni in his testimony explained that he knew the deceased and his wife (PW1). On the first time he met the deceased in 2007 when he went to buy a piece of land in his street. The deceased bought a piece of land from Sudi Hussein and PW3 signed on the sale agreement. That piece of land comprised 16 acres. The deceased used to visit the piece of land on weekends in the company of his wife.

At the commencement of the trial, the following issues were agreed by the parties and framed for determination of the court;

- i. Whether the petitioner is qualified to be appointed the administrator of the estate of the deceased (the late Edwin Semzaba).***
- ii. Who are beneficiaries of the estate of late Edwin Semzaba***
- iii. Which assets comprise the estate of the late Edwin Semzaba***
- iv. To what relief (s) are the parties entitled to.***

In this case, counsels for both the parties had filed their respective final submissions. In his submission, Mr. Charles Lugaila, the learned counsel for the petitioner submitted that the petitioner has all the qualifications to be granted letters of administration because he is the brother of the deceased duly appointed by the deceased's family to apply for letters of administration and that his reputation is unquestionable.

He further submitted that the caveator and her two children were not among the beneficiaries of the estate of the late Edwin Semzaba because the late Edwin Semzaba died on 17/01/2016 whereas the marriage between the deceased and the caveator ended on 26.6.2012, when the decree of divorce was issued. He added that it is clear from the decision in PC Matrimonial Cause

No 52 of 2012 and the subsequent proceedings in Civil Appeal No 43 of 2012, Mary Edwin Semzaba and Charles Edwin Semzaba were found and declared to be not the deceased's children.

As to the issue of assets, the counsel had no problem with the items to which the caveator was awarded 50% in matrimonial cause No 52 of 2012. He said, the award will remain the same, undisturbed. On the deceased's properties listed and attached to the petition, it was submitted that the listed properties were the ones the petitioner and his family were certain with. Other properties if any will have to be collected and realised by the appointed administrator of the estate who will eventually file inventory in court as required by the law.

In conclusion, the learned counsel submitted that the petitioner being a young brother of the deceased duly appointed by the deceased's family to apply for letters of administration has all the qualifications to be granted letters of administration to administer the estate, save for 50% share of what had been declared by the courts' in matrimonial proceedings between the caveator and the deceased. The rest will have to be distributed to the listed

beneficiaries who are Lawrence Fredrick Semzaba, Thomas Semzaba, Catherine Semzaba and Rose Semzaba.

Mr. Ukwonga, the learned advocate, on his part, submitted that, in terms of section 33 of the Probate and Administration of Estates Act, Cap 352 R.E 2002, the persons who qualify to apply for letters of administration are those with interests. In this case the petitioner has not shown or demonstrated that he has interest because the deceased had a family for which therefore, the petitioner, being a young brother of the deceased does not per se qualify to be appointed administrator of the estate in a situation where the family members of the deceased are living and surviving him. He argued that, the ones with interest in the deceased estate are his wife and the children that survive him.

As to the issue of assets, Mr. Ukwonga submitted that the properties listed by the caveator were and are assets of the family of the deceased which, half of them belong to the caveator as per judgment of the primary court in Matrimonial Cause No 52 of 2012, and that the other half belongs to the deceased the subject of this suit.

On that basis, Mr. Ukwonga submitted that the caveator is entitled to half of all the assets put together after valuation. He also submitted that since the caveator and the deceased's children have interest in the half share of the remaining assets, then, the Caveator should be appointed administratrix of the estate of the late Edwin Semzaba.

Having judiciously analysed the Pleadings, the evidence on the record and the submissions of the advocates for the respective parties' and given them the best consideration; it is apparent that the Counsels delved into many other issues that cannot be dealt with at this stage. In determining this case, I will only limit myself to the issues formulated.

The first issue is whether the petitioner is qualified to be appointed the administrator of the estate of the deceased (the late Edwin Semzaba).

In this case the complaints by the caveator is that the petitioner in his petition concealed the existence of the widow and the two children of the deceased and details of a number of the assets forming the estate of the deceased and that he has also started

to misuse them. The petitioner on his part, denied the same. He insisted and made references to Matrimonial Cause No 52 of 2012 and the subsequent proceedings in Civil Appeal No 43 of 2012 and Civil Appeal No. 56 of 2014 to which, the trial court and the appellate High Court, the High Court of Tanzania (Dar es Salaam Registry) held that Mary Edwin Semzaba and Charles Edwin Semzaba were not the deceased's children. Further that at the time of his death on 17.01.2016, the caveator was not the deceased's wife. He maintained that the deceased divorced her (the caveator) sometime in 2012. That was a reason why he did not name them in the Petition.

I have followed the arguments on the point. I have also gone through the proceedings in Matrimonial Cause No 52 of 2012 and the subsequent proceedings in Civil Appeal No 43 of 2012. In Matrimonial Cause No 52 of 2012 of the Sinza Primary Court at page 12, the trial court said and I quote;

"AMRI

- *Ndoa imevunjika chini ya fungu la 99 sheria ya ndoa No 5/71 R.E 2002.*

- *Mdai ambae ni baba wa watoto Mary na Charles awatunze watoto hao kwa chakula, mavazi, elimu, malazi na mahitaji mengine.*

- nyumba iliyojengwa si ya mdai, mali ambazo ni kiwanja, shamba na gari vigawanywe kila mmoja apate asilimia 50."

It appears that the caveator was not happy with the decision of the trial court. She lodged Civil Appeal No 43 of 2012 in the District Court of Kinondoni to challenge the decision of the Sinza Primary Court. The District Court upheld the decision of the Primary Court. Still agrieved, the caveator filed Civil Appeal No. 56 of 2014 to this court. This court among other things discussed in detail the issue of children. At the end, it concluded that Mary Edwin Semzaba and Charles Edwin Semzaba were not the children of the deceased. For easy of reference , in that Appeal which was filed by the Caveator, in **Magreth Mdaki v. Edwin Semzaba PC. Civil Appeal No. 56 of 2014 (High Court of Tanzania Dar es Salaam – Registry) unreported, Mkasimogwa, J. Held:-**

"Where it is proved that a person mentioned in a certificate is not a biological father of the child it will remain a suit. In this matter the respondent is **not proved to have adopted the children. Since the Respondent is not a biological father of the two children, and the fact that the respondent has not adopted them as his children, he is neither**

responsible to have the custody of the children nor maintain them. The second ground of appeal lacks merit. It is therefore, dismissed”.

There is no appeal that was filed to challenge the decision. Since Mary Semzaba and Charles Semzaba were declared not to be the children of the deceased, it follows therefore that they are not entitled to benefit from the estate of the late Edwin Semzaba.

As the courts found Mary Semzaba and Charles Semzaba were not children of the deceased and the caveator was divorced sometime in 2012, it goes without saying that no spouse or children survived the deceased. Since the petitioner was proposed by the clan members and majority of the 1st Degree relatives (who are full simblings, that is blood brothers and sisters of the deceased) of the deceased to administer the deceased estate, that in my view qualifies him to be appointed the administrator of the estate of the deceased, the late Edwin Semzaba.

The second issue is, who are beneficiaries of the estate of the late Edwin Semzaba. As alluded before when determining the first issue, it was noted as a fact that Mary Semzaba and Charles Semzaba are not the deceased's children, and that the deceased had no children surviving him. Further that the Caveator was divorced long time ago by the deceased. From the foregoing, it

goes without saying that, they are not entitled to benefit from the estate of deceased of the late Edwin Semzaba.

As to the issue of assets comprising the estate of the late Edwin Semzaba, this will not detain me much. It is not in dispute that the caveator is entitled to half of all the assets awarded in Matrimonial Cause No 52 of 2012. With that in mind, the assets forming the estate of the deceased will now include, half share in the Motor vehicle, and a shamba comprising 16 acres at Kigamboni and others that will be collected and realised by the appointed administrator of the estate of the late Edwin Semzaba. For avoidance of doubt, the claims by Caveator of the Plot at Kimara Temboni had also been determined by the courts. It is in the records of the courts that, in the case of **Magreth Mdaki v. Edwin Semzaba (supra)** that the same does not belong to the late Edwin Semzaba. The appellate court held:-

“On balance of probabilities of the evidence adduced the the trial court found, from the documents produced in evidence, the house in question does not belong to the respondent. It belongs to Laurence Fredrick Semzaba. The District Court confirmed the finding by the trial court. It is my view that the adduced evidence amply shows that the disputed belongs to Lawrence Fredrick

Semzaba. Since it is not proved that the house in dispute was acquired by spouses, it is not a matrimonial property, as such, it cannot be considered to be divided, and or divided among the spouses. The first grounded, is devoid of merit”.

In totality, as hinted earlier, in the circumstances of this Probate matter the petitioner can be granted Letters of Administration to administer the estate of the late Edwin Semzaba despite the fact that he is not ranked higher than the children of the deceased as far as Law of Succession is concerned. This is because there are no children surviving the deceased. Equally the same, the caveator cannot be appointed an administratrix to administer the deceased’ estate for obvious reasons that She had already been divorced at the death of the deceased. There is a clear evidence on record that the marriage between the deceased and the caveator ended on 26.6.2012, on the date the decree of divorce was issued while the deceased passed away on 17.01.2016. On that basis, the Caveator cannot inherit from the estate of the deceased, but is entitled to that 50% of what was declared by the court in the Matrimonial Proceedings.

In the upshot for the foregoing reasons, the court makes the following orders:

- a. Lawrence Fredrick Semzaba is hereby appointed the administrator of the estate of the late Edwin Semzaba.**
- b. A grant of letters of administration intestate shall be accordingly issued to him.**
- c. The estate of the late Edwin Semzaba includes, half share in the Motor vehicle and shamba comprising 16 acres at Kigamboni and other properties that will be collected and realised by the appointed administrator to administer his estate.**
- d. The petitioner should collect and file inventory of the true account of the deceased properties with their true approved values by the recognised Government valuer within six months from the date of appointment in accordance with the law.**
- e. In the circumstances of the suit, each party shall bear its own costs.**



A. F. NGWALA

JUDGE

21/02/2020

21/02/2020

Coram: A. F. Ngwala

For Petitioner - Mr. Alfred Swai (Advocate)

For Caveator - Present in person

B/C: Mrs. Manumbu

Court: Judgment delivered in court in the presence of Mr. Alfred Swai advocate for Petitioner and Caveator in person.

Court: Right of Appeal to Court of Appeal of Tanzania explained.


A. F. Ngwala

JUDGE

21/02/2020