

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION No. 107 OF 2019

(Originating from Probate and Administration Cause No.38 of 2017 Dar es Salaam High Court District Registry).

**IN THE MATTER OF ESTATE OF THE LATE CLEMENT GEORGE
KAHAMA**

**IN THE MATTER OF APPLICATION FOR REVOCATION OF GRANT
OF PROBATE BY**

GRACE KAHAMA1st APPLICANT

GEORGINA KAHAMA2nd APPLICANT

PATRICIA KAHAMA.....3rd APPLICANT

RICHARD KAHAMA.....4th APPLICANT

Versus

JANET BINA KAHAMARESPONDENT

RULING

13th October, 2019 - 30th February, 2020.

J. A. DE-MELLO J;

The Applicants has moved the court vide **Chamber Summons** under **section 49 (1) (b) (d) (e), (2)** and, ~~section 51~~ **section 51 (1)** of the **Probate**

Administration of the Estates Act (Cap. 352 R.E 2002] for the following prayers;

- 1. The Honorable Court be pleased to Revoke the Grant of the late Clement George Kahama.**
- 2. Compelling the Respondent to surrender the said Grant of Probate and an order for Appointment of another fit person including Administrator general to administer the estate of the late Clement George Kahama.**
- 3. A permanent Injunction restraining the Respondent from undertaking any further dealings with the estate of Clement George Kahama.**
- 4. Costs for Application.**
- 5. Any other relief this Honorable Court may deem fit to grant.**

Affidavit, sworn by Advocate as well as counter Affidavit for the Respondent are on record, as hearing was conducted by way of oral submissions.

Represented by **Mudhihiri Magee**, learned Advocate, three main grounds for Revocation have been submitted, praying for adoption of the Affidavit sworn by himself on behalf of the said Applicants.

Accounting for the merits of this application Counsel, in addressing the first ground for Revocation asserts that, notwithstanding Deed of Settlement dated the **4th of May 2018**, jointly filed by the parties before **Hon. Mruke J**; to-date, as we speak no inventory has been filed in accordance with **section 107** of the **Probate and, Administration of the Estates Act**

(Cap. 352 R.E 2002]. That the law makes it mandatory for the Administrator or Executor to file Inventory within six months (6) from the date of Grant which the Court ordered on the **6th of June 2018**. This alone Counsel submits is sufficient ground to Revoke the Grant. On the second ground, Counsel alleges and, with proof that search conducted by the Applicants to Brela following the Respondent submission before the Court on the before **Hon. Mruke J**; that no shares were allotted to the deceased with regard to **Seacom Tanzania Ltd**, revealed the presence of **three hundred and fifty shares (350)** contrary to the position stated. This was evidenced by the report for search dated the **20th of April 2018**. Further that, and, against the **Deed of Settlement**, the Respondent and being the Administrator, has been defiant to transfer ownership to property on **Plot No. 34 Block 'K' Mlimwa East Area, D** within the **City of Dodoma** for reasons unknown, notwithstanding it to be one of the assets that the Appellants were distributed as per the deceased's will.

It is with the above that, the Applicants believe that, the Administrator has deliberately failed to discharge her duties and which ultimately renders her appointment illegal and, thus inoperative, highly violative of section **107** of the **Probate and Administration of the Estates Act (Cap. 352 R.E 2002]**. As this was ongoing, it is until the **4th September, 2019** that, the Applicants were served with **Inventory** accompanying the Counter Affidavit, purported to be filed in Court since the **13th August 2019**. This, is not the case, as at the time of perusal, none was in the Court file. Sadly, even itself is not in conformity with the law of the **Probate and Administration of the Estates Act (Cap. 352 R.E 2002]** and, its

Governing Rules as provided by **form No. 80 and 81 Rule 106, 107** of the **Probate Rules**, for non-disclosure of the description and value of the Estate full of all properties in possession and, in the manner in which were applied and, disposed off. **Section 107** of the **Probate and Administration of the Estates Act (CAP 352 R.E 2002]** requires inventory to be true but, as observed it misses the **SEACOM** shares. It is even shown from the Inventory that the said **Plot No 34 Block K Mlimwa East Area "D"** Dodoma City has been bequeathed to the Applicants but, not a reality on the ground and, as per the requirement of **Form 67** and, **68** of **Land Registration Act Cap. 113 RE 2002**.

In his Counter Affidavit, Counsel **Thomas Eustace Rwebangira**, vigorously opposed the said Application basing his position from **section 49 (1) (b)** of the **Probate and Administration of the Estates Act (Cap. 352 R.E 2002]**, that, unless proved fraudulent, the grant of letters of Administration can not be Revoked. Allegations of fraud are serious ones, which require ingredients and particulars to that effect. **Section 49 (1) (d)** of the **Probate and Administration of the Estates Act (Cap. 352 R.E 2002]** referred above is highly speculative, as no particulars rather facts, have been exhibited in that endeavour, hence the allegations are baseless and, uncooperative. In the Affidavit, both the inventory as well as the accounts as annexed in e (D) and (E) are in place listing all the properties as depicted from the filed on **13th August, 2018** and, within the time that has been prescribed by law. Exchequer receipt appended also evidenced this, he submitted. The allegations are bare and lame and an afterthought too, as no proof whatsoever is evidenced in support thereof.

Unless substantiated, **forms 80** and **81** are in compliance as indicated. With regard to value of the property(ies) as per **section 107** of the **Probate and Administration of the Estates Act (Cap. 352 R.E 2002]** and certain. The true and, full estimates are not value as suggested but, that all property is within the Administrator possession or knowledge, for her execution. Thus the prayers are baseless. Regarding with **SEACOM** shares and, much as the search revelation dated the **20th April 2018**, the Settlement Deed amicably that was reached between and among Parties on **8th May, 2018**, following **Hon. Mruke J**; struggle to bring parties at consensus, observed the extent on which the Respondent surrendered some of her rights for the sake of maintaining peace. **Paragraph 7** has it clear that, some of the heirs from the Respondent had nothing left for them. The Settlement Deed clearly stipulates that, **no further claim** by the Applicants as opposed to what is stated under paragraph two. To bring this point home, Counsel reminded how **Plot No. 903 Msasani Peninsular** was bequeathed to the Applicants, disregarding the truth that, it was registered in the Respondent's name, but heartfully, did so for the sake of peace. The **Will** which was registered as **No. 4 of 2018**, attracts a process, which was barres the **Applicants** to forcefully demand submission of the Tittles. It was until the 23/5/2018 when they were ready and, eventually bequethed to the Applicants as per annexure (e) of Counter Affidavit, with **Title deed No. 22670/ DLR for Plot No. 34 Dodoma** and **Title 186234/30, Plot No. 903 Msasani Peninsular** respectively. It is undisputed fact that the Respondent has all along been cooperative and, willing to act with due diligence but, not the Applicants, who had to

break into the **Msasani House** despite the availability of keys that, were still in possession of the Respondent. The decree from the settlement is on reserve for enforcement of Execution. With regard to the **SEACOM Company** and, its shares, it has nothing to do with the division, based from what the **Settlement Deed** clearly stipulated and, bound the parties. In the event the Applicants have it now into their knowledge and which is vivid prior to the said Settlement, then let them prove otherwise. This Application is therefore misplaced, misconceived at this juncture unless the Settlement Deed is Reviewed. **The Respondent**, Prays for dismissal and, with costs.

In a rejoinder, Counsel for the Applicants asserts not to be aware with the pending **Probate No. 38 of 2017**, categorically opposing a Review as suggested, reasons being that no one is challenging the **WILL** but, Revocation of the grant under **Section 49** of the **Probate and Administration of the Estates Act (Cap. 352 R.E 2002]**. It is even not true that, the **SEACOM** shares had not been disclosed earlier on and, prior to the Settlement, of which the Respondent denied but, later it is the search that has brought to light. That, the signing of the Settlement had expected the Inventory to reflect the full and true picture of the estate of the deceased, the shares more so. The enforcement of the Decree is non-issue, whatsoever, so long as it remains factual that, for the two occasion, an attempt to collect the Title has been difficult and with no keys availed at all. With or without the Settlement Deed, didn't change much from the **Will**. The properties as shown under paragraph 2 of the Settlement Deed and as per the prescribed forms the inventory ought to depict the true

estimate and, not otherwise. With regard to allegations of fraud within **section 49 (1) (d)** of the **Probate and Administration of the Estates Act (Cap. 352 R.E 2002]**, it is clear on the Affidavit that there is no requirement under this law for ingredients of fraud. He conclusively prayed for grant his Application.

I am grateful with the submissions brought forward by both Counsels but, am also akin and, very much alive of the sensitivity and, fragility of Probate matters. I therefore undertake to, not only base my findings from the above submissions but, make reference to what is actually on record ,since this matter landed in this Court. My careful, careful perusal of the file **Probate Cause No. 38 of 2017, derived from High Court Dar Es Salaam Zone**, I discovered existence of the Inventory filed on the **13th August, 2018** appended with the **Exchequer Receipt No. 24490048** of the same date and, in conformity of the **WILL** that the deceased left behind. Without much further ado and, considering the allegation that it was not there, my perusal of the Court file by the Applicants on the ..., the allegation seems baseless. Again, and a keen perusal of the Settlement Deed filed on the **8th of May 2018**, much as the **SEACOM** was alerted on the **20th April, 2018**, Parties had agreed on a win to win situation, upon which and as observed, the Respondent had to surrender some of her rights for the sake of peace, with some of the heirs walking out empty handed. In **paragraph 7** of the Deed it is certain that, no further claim by the Applicants. It is even true that, **Plot No. 903 Msasani Peninsular** registered in the Respondent 's name had to be bequeathed to the

Applicants. In all, the **WILL** itself had nine of them as heirs, but, yet it had to change for the sake of peace.

With due respect to the Applicants and the presence of the Inventory and Accounts in Court record, no justifiable reasons has been advanced to revoke her appointment. Revocation under **section 49(1) (e)** of Cap. can only occur under the following circumstances and, which are missing here;

e) That a person to whom the grant was made has wilfully and without reasonable probable cause omitted to exhibit an inventory or account in accordance with provision of Part XI or has exhibited under that Part an inventory or account which is untrue in material respect.

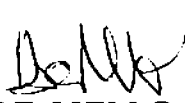
This has been the stance in several cases but in my case I share with the case of **Safiniel Cleopa vs. John Kadaghe [1984] TLR** and that of **Ahmed Mohamed Allaamar vs. Fatuma Bakari and Another Civil Appeal No. 71 of 2012, CAT (Unreported)**. Reasons may include;

- 1. That, the proceedings in obtaining the grant were defective in substance.**
- 2. That, the grant was obtained fraudulently by making false suggestions or by concealing from Court something material to the case.**

Let us be sincere that nothing of the above has been exhibited.

With the foregoing above observations, the entire grounds of Revocation are unmerited and, given the nature of the case. with Parties being related,

each party should bear its own costs. Let the Probate adopt its process to a sane and sober finality and, in accordance with the law and rules governing Probates.



J. A. DE-MELLO

JUDGE

13th February , 2020