# IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

## AT TABORA

### PROBATE AND ADMINISTRATION CAUSE NO. 1 OF 2020

### IN THE MATTER OF ESTATE OF THE LATE

### RAMADHANI MOHAMED KALINGONJI ------------------ DECEASED

### AND

### IN THE MATTER OF APPLICATION FOR LETTERS OF

### ADMINISTRATION BY KALINGONJI RAMADHANI

### KALINGONJI --------------------------------------------- PETITIONER

## RULING

*25/11 & 15/12/2020*

**BAHATI ,J.**

The applicant **Kalingonji Ramadhani Kalingonji** through the services of Mr. Timoth Sichilima the learned advocate petitioned to this Court for the grant of letters of administration of the late Ramadhani Mohamed Kalingonji who died intestate on 18$^{th}$ January, 2020 at Dar es Salaam.

After the matter was lodged in Court, **Miss Zena Omary Kalingonji** through the service of Mr. K. K. Kayaga learned advocate entered a caveat against the application under section 58 (1), (5) of the Probate and Administration of Estates Act Cap. 352 [R.E 2019].

As it has been the cherished procedure of this Court, once a caveat is entered, the matter turns into a civil suit where the petitioner becomes the plaintiff and the Caveator becomes a defendant. Section 52 (2) of the Probate and Administration of Estate Act, Cap. 352 [R.E 2019] provides that,

> *(b) In any case in which there is contention, the proceedings shall take, as nearly as may be the form of a suit in which the petitioner for the grant shall be the plaintiff, and any person who appears to oppose the proceedings shall be the defendant.*

Both Advocates agreed with the position of law that this matter shall turn into a Civil suit but their disagreement is on the manner the suit is going to be conducted hence this ruling.

In his submission,Mr. Kayaga contends that the hearing of caveat shall proceed in the same case file while Mr. Sichilima differs that the matter must be heard in a separate case file. The wording of section 59 (3) of the Probate and Administration of Estates Act, Cap 352 makes it clear that once a caveator enters appearance, the Court shall proceed with the petition in accordance with paragraph (b)of section 52 (cited above).

It is clear without doubt that, the law requires the hearing of contentious probates or administration be heard in a manner similar to

that which is provided for under the Civil Procedure Code, Cap.33 [RE 2019].

Having considered the above-cited provisions of law, this case seems to be controversial. I am of the considered view that there is no need for opening a separate file. That is, the same file should be retained but the subsequent proceedings therefrom should proceed in a form that is as nearly as may be the form of a suit. The import of the cited provision of the law is not to turn the whole matter into a suit which commences with the filing of pleadings, plaint, the written statement of defence, counterclaim, set off, reply to the written statement of defence and attendant mandatory procedures of pre-trial conferences and mediation sessions.

Thus, a contentious matter like the present one is not a suit per se. In my view, only proceedings subsequent to filing the caveat are the ones that need to be conducted as if the matter was a normal suit. Consequently, parties will have to pick it from the stage of hearing by procurement of witnesses, adducing evidence through to final submissions, where necessary, before the court makes its decision.

The philosophy behind this approach, to me, is to, among other things; avoid parties starting all over again. By doing so it serves problems will certainly arise. Among them being loss of coherence in pursuit of the probate and administration matter; administration of

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estates will surely be costly; more time will be wasted, and the whole process will turn out to be unpredictable.

In the upshot, I do hereby agree with Mr. Kayaga, the counsel for the caveator, and hold that the matter shall proceed in the same case file.

It is so ordered.

**A.A BAHATI**

**JUDGE**

**15/12/2020**

Ruling delivered under my hand and seal of the court in the chamber, this 15th day December, 2020 in the presence of the caveator Kelvin Kayaga, advocate.

**A. A. BAHATI**

**JUDGE**

**15/12/2020**