

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 144 OF 2017**

*(Originating from Probate and Administration Cause No. 43 of 2014)*

**IN THE MATTER OF THE ESTATE OF THE LATE ANGELINA VINCENT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION**

**BETWEEN**

**SUZANA KASMIRI KIMARIO.....APPLICANT**

**AND**

- 1. CASMIRI LUCAS KIMARIO.....1<sup>st</sup> Respondent**
- 2. DIONISIA DONATH TAIRO.....2<sup>nd</sup> Respondent**
- 3. Jenista Focus Tesha .....3<sup>rd</sup> Respondent**

**RULING**

*Date of Last Order: 21.02.2020*

*Date of Ruling: 31.03.2020*

**Ebrahim, J.:**

The applicant has made the present application seeking for the following orders:

1. This honourable court may be pleased to issue notices to the Respondents requiring them to give an account of the rent due from them in respect of the properties at Mwananyamala and

Mabibo respectively belonging to the estate of the late Angelina Vincent Shao;

2. This honourable Court may be pleased to make an order that all monies due as rent in respect of the said properties be paid to the Applicant forthwith;
3. This honourable Court may be pleased to make an order that the Respondents forthwith give vacant possession of the said premises to the Applicant.
4. Costs
5. Any other relief deem fit by the court.

The application has been brought under **sections 44, 71, 99, 101, 108(1) of the Probate and Administration of the Estates Act Cap 352 RE 2002** and **Rule 14(1) of the Probate Rules**. The application is supported by an affidavit of **Suzana Kasmiri Kimario**,

As it could be discerned from her averments in her affidavit she is the administratrix of the estate of the late Angelina Vincent Shao having been granted letters of administration vide **Probate and Administration Cause No. 43 of 2014** and following the revocation of the letters of administration similarly granted to the 1<sup>st</sup> respondent on 16<sup>th</sup> December 2016. However, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have refused to recognize

the applicant and are not paying rent in respect of the properties belonging to the estate. More so the 1<sup>st</sup> respondent has also refused to give an account of any monies he collected while being the administrator of the estate.

All three Respondents vigorously challenged the application on the basis that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are not tenants in the said properties but owners.

This application was argued by way of written submission. The applicant was represented by Ms. Jacqueline Masawè and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were represented by Mr. Jamal Makala. The 1<sup>st</sup> Respondent was recorded by the court to be deceased.

In her written submission Counsel for the applicant while citing and quoting all provisions of the law cited in support of the application argued that having being granted letters of administration, she stepped into the shoes of the deceased hence entitled to collect rent due from the 2<sup>nd</sup> and 3<sup>rd</sup> respondent-**Section 44 of Cap 352**. She confirmed to the court that now that the 1<sup>st</sup> respondent has died, she is only claiming against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and anything due to the 1<sup>st</sup> respondent shall be dealt within his estate. She also insisted on her powers as an administratrix to sue or prosecute any suit as a

representative of the deceased (**Section 71 of Cap 352**) and diligently collect the properties of the deceased (**section 108(1) of Cap 352**). She is however seeking the intervention of the court so that she can perform her duties to collect the properties of the deceased and distribute them accordingly.

Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents has strongly refuted the assertion by the Applicant that they are tenants. He submitted at length that the respondents are not tenants as they have not been paying rent because they are also descendants of the deceased. While giving a simple interpretation of the term tenant as a person who pays rent to the house or building or use of land one occupies; he faulted the applicant for failure to evidence that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in one way or another have never paid rent. He recapitulated on the duties of the Administrator in terms of **Section 108(1) and (2) of CAP 352** and insisted powers of collecting the properties and distributing to the heirs but not evicting them. He contended therefore that the Applicant before seeking for the rent she ought to establish that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are tenants and should have a separate application under the Land Rent Restriction Act. He finally prayed for the application to be dismissed.

Indeed I must state out-rightly that what the Applicant is seeking this court to do is not canvassed on any of the provisions of the law she has cited in support of the application. The cited provisions have clearly stated all the powers she has in managing and administering the estate of the deceased after being granted the letters of the administration.

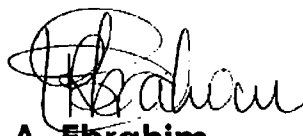
The applicant has verily cited in her submission the provisions of **Sections 44, 71 and 108(1) of CAP 352** which vest her with powers to step in the shoes of the deceased and perform all the duties in respect of her estate including collecting the properties, sue or be sued and distributing the same to the legal heirs and pay all the debts and collect the monies due to the estate. More so all those defined powers read together with powers vested under **Sections 99 and 101 of Cap 352** as a legal representative of the deceased and having powers to dispose of the properties; do not state anywhere that it would be the duty of the court to enforce those powers on behalf of the administrator. Rather the court has availed those powers to the administrator to perform those duties on behalf of the deceased. Certainly, with this application what the applicant seeks for the court that granted letters of administration to do is to perform her duties that

she has been specifically granted powers to do. The duties of the court that granted letters of administration after the same have been granted have been well canvassed and articulated by law and do not include eviction of tenants or ordering them to pay rent. Considering those obligations/acts could be subject to proof in court.

Since the respondents are challenging their status as tenants and refusing to pay rent, the Applicant is required to seek appropriate legal remedies by invoking relevant tribunals to establish their status and enforce them to perform what they are required to do but not through this application. Without uttering many words this application is misplaced and I accordingly dismiss it.

Being an application emanating from a probate matter, I give no order as to costs.

Accordingly ordered.

  
**R.A. Ebrahim**  
**Judge**

**Dar Es Salaam**  
**31.03.2020**