

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 431 OF 2018

*(Arising from Probate and Administration Cause No. 18 of 1995
and Misc. Civil Cause No. 525 of 2016)*

NEEMA ADELA MBONELAAPPLICANT

VERSUS

THERESIA MBONELA KUYANGANA.....1st RESPONDENT

LT. COL. JOSEPH LEON SIMBAKALIA....2nd RESPONDENT

EMMANUEL MANTHEAKIS.....3rd RESPONDENT

RULING

Date of last order: 29/10/2019

Date of Ruling: 31/03/2020

S.M. KULITA, J.

This application is made under sections 107(5), 108, 134, and 139, of the Probate and Administration of Estate Act [Cap 352 R.E.2002] The application is accompanied with a chamber summons and the affidavit deposed by **NEEMA MBONELA, Applicant**. The said applicant seeks for the following orders;

- i. That, this court direct the appointed administrators of the estate of the late Mathias Sibamana Mbonela to

bequeath all the properties of the late Mathias Sibomana Mbonela to the rightful heir.

- ii. That, this court direct the administratrix to bequeath and give vacant possession to the rightful heir of the house located on Plot No. 288, Block C Kinondoni.
- iii. That, this court order the administratrix to exhibit a true and full inventory
- iv. That, this court hold the administratrix liable for misappropriation of the deceased's properties.
- v. Costs of this application.

In the affidavit the reasons for those prayers have been stated from paragraph 5 to 14, and paragraphs 1 to 6 of the supplementary affidavit. The application was heard by way of written submissions.

The applicant through her Advocate, Ms. Nakazael Tenga prayed for the reasons stated in the applicant's affidavit and supplementary affidavit to be adopted as part of her submission.

In her written submission the applicant's advocate stated that under section 108 of the Probate and Administration of Estate Act the administrator of estate is duty bound to collect the assets of the deceased, pay the debts and distribute to the rightful heirs but to date the administrators have not

distributed anything to the applicant who is the sole heir of the said deceased estate.

The applicant's advocate went on to state that the respondent's purported inventory (annexture 8 of the affidavit) does not show assets collected and how they were distributed to the sole heir thus the respondent has wilfully and without reasonable cause omitted exhibited the true and full inventory of the deceased's estate. She also submitted that the deceased's estate is governed by the law and by the wishes of the family meeting.

The applicant's advocate further stated that the basis of this application is the purported inventory filed in this court on the 13th April, 2018 as ordered by this court but the inventory does not reflect true properties of the deceased as stated under paragraph 12 of the affidavit because it does not reveal some of the deceased's properties, debts and pension.

The applicant's advocate concluded her submission by praying for the court to grant the orders sought in the chamber summons.

In reply the respondent through her advocate James Marenga submitted by praying for the contents of counter affidavit and reply to supplementary affidavit to be adopted as a part of the respondent's submissions. The respondent's advocate Mr.

Marenga submitted that the applicant is not the sole beneficiary of the deceased's estates as she claims because the deceased established strong bond with his family members. He submitted that the respondent filled the inventory as required by the court's order in Misc. Civil Application no. 525 of 2016 as indicated in the applicant's affidavit annexure.

Mr. Marenga further stated that the applicant's list of the deceased properties as per paragraph 12 of the affidavit are only hearsay and she has not filed any evidence to prove that. The applicant has failed to bring before the court the person who was appointed to make follow up of the deceased's moneys.

He concluded by praying for this court to dismiss the application.

In the rejoinder the applicant's advocate Ms. Nakazael Tenga submitted that the applicant is the only child hence entitled to the entire estate of his late father. The act of one of the administrators, Theresia Mbonela Kuyangana to take possession in the name of the family is contrary to section 99(a) and section 103(1) and (2) of the Act.

Upon going through the submissions of both parties I find that the applicant is challenging the inventory filed by the respondents as ordered by the court in the Misc. Civil

Application 525 of 2016. The respondents filed the inventory on the 13/04/2018 which shows that the House located at plot number 288, block C at Kijitonyama Dar es Salaam was the only property left by the deceased. In her affidavit under paragraph 12, the applicant listed a number of properties believed to be belonging to her late father. She attached the list of annexures therein including the correspondences from different banks in and outside the country, however the said correspondences bear no account numbers, nor bank statements indicating the moneys left claiming to be her late father's nor official seal of the said banks.

The applicant also claims that the inventory filed is not true because it does not disclose all properties belonging to the deceased but again there is no proof of the title deeds or any document showing that the said properties really belonged to her late father. In that regard I so agree with the respondents' submission under paragraph 9 of the counter affidavit that the allegations have no legal weight. I therefore find that the said allegations under paragraph 12 of the affidavit with no legal weight except for the only immovable property as indicated in the inventory located at plot no. 288, block C at Kijitonyama within the district of Kinondoni in Dar es Salaam, and that of plot no. 22, block A area at Korogwe, Tanga. The applicant, under paragraph 11 of the affidavit have annexed the court

drawn order dated 19/07/1998, which gave the directives on how the deceased estate should be administered, among other things it is the property on plot number 288, Block C, Kijitonyama Dar es Salaam which was ordered to remain as part of the family property. However, summary of the said family meeting no minutes was tendered to the court to prove that it was held. However the records show that the said meeting excluded the applicant who is also part of the family members with the right to participate, and made decision on that property.

I am of the view that as the applicant has attained the age of majority the said property is subject to the distribution to rightful heir in which the court named to be the applicant as per the Probate and Administration Cause No. 18 of 1995. According to the said decision the said property was declared the family property but it was for that time the beneficiary was still a minor. Therefore claims by one of the respondents, Theresia Kuyangana that the said house is a family property has no legal weight. As the administrators of the estates of the late Mathias Sidomana Mbonela the respondents were ought to prepare Inventory within 6 months period since they were granted with the probate and letters of administration as per the mandatory requirement of section 107 of the Probate and

Administration of Estates Act [Cap 352 RE 2002]. That was to be followed by filing Accounts within the next 6 months period.

The inventory seems to have been filed but it does not exhibit the account in the name of the applicant which was supposed to be opened and operated jointly by administrators until she reaches the age of majority as ordered by this court when granting letters of administration to the respondents. Also there is no accounts which indicates how the moneys left behind have been used or allocated as per the provision of section 107(1) of the Probate and Administration of Estates Act. I am of the settled view that the administrators were supposed to comply with the court order and it was expected to be shown in the inventory that they have actually exhibited true and full inventory of the deceased's estate. In the case of **MAY MGAYA V. SALIM SAID AND SALEHE SAIDI, CIVIL APPEAL NO.264 OF 2017, CAT AT TANGA**, the court stated that;

"as co-administrators the respondents were jointly and together responsible for everything including exhibiting in court an inventory containing a full and true estimates of all the properties, debts and credits as well as distributing to the rightful heirs the residue after paying all debts and liabilities..."

From the foregoing analysis it is clear that the respondents have failed to comply with court's order in the Misc. Civil Application no. 525 of 2016 of filing to the court the true and full inventory of the deceased's estate.

As this court is granted powers under section 107(1) of the Probate and Administration of Estates Act, I hereby order the respondents to file true and full inventory of the Late Mathias Sibomana Mbonela within three months from the date of this ruling. The application is partly allowed.



S.M. KULITA

JUDGE

31/3/2020