

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

**PROBATE AND ADMINISTRATION CAUSE NO 12 OF 2021**

**IN THE MATTER OF THE ESTATE OF THE LATE FERDINAND**

**DONALT TEMBA ..... DECEASED**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION BY  
SIMFOROSA CASMIRY TEMBA.....PETITIONER**

**AND**

**CHRISTINA S. MASSAWE.....1<sup>ST</sup> CAVEATOR**  
**JOACHIM MATERU.....2<sup>ND</sup> CAVEATOR**  
**AGAPITY TEMBA.....3<sup>RD</sup> CAVEATOR**  
**NICOLOUS TEMBA.....4<sup>TH</sup> CAVEATOR**  
**PETER MATERU.....5<sup>TH</sup> CAVEATOR**

**JUDGMENT**

*15/11/2021& 02/12/2021*

**I.C. MUGETA, J**

One major fact in this case is undisputed. This is that the deceased and the petitioner solemnized a Christian marriage in 1992. Their marriage certificate was tendered as exhibit P2. This marriage subsisted up to the death of the deceased on 24/10/2020. There was a time when the petitioner petitioned for divorce but no decree of divorce was ever issued. Upon death of deceased, who died intestate, the petitioner has applied for a grant of letters of administration. Christina Massawe, Joachim Materu, Agapity Temba, Peter

*M. M. M. M. M.*

Materu and Nicolous Temba have filed a caveat to oppose the petition. Christina claims to be a second wife of the deceased having solemnized a customary marriage in 2012. This is the reason one of the issues for my determination is who is the lawful wife of the deceased between the petitioner and Christina Massawe?

The evidence shows, and it is undisputed by both parties, that the deceased was a Christian. Section 15 (1) of the Law Marriage Act [Cap 29 R.E 2019] (the Act) provides: -

*"No man, while married by a monogamous marriage shall contract another marriage"*

Section 10 (2) of the Act declares all Christian marriage to be monogamous. Therefore, since the deceased married Christina customarily while his Christian marriage subsisted, that marriage was void ab initio. This finding answers the above issue. The lawful wife of the deceased was the petitioner. The second issue framed is who is suitable to administer the deceased's estate between the petitioner and the caveators.

The petitioner has applied in his capacity as wife. She can be appointed as administratrix in terms of section 33 (1) of the Probate and administration of estates Act because she has interests in the estate.

*Mgeta*

The caveators has objected in various capacities and they have assigned several reasons for the objection. Christina has objected as a second wife.

The other caveators are relative of the deceased. In terms of section 33 (2) of the Probate and Administration of the Estate administration Act, they can be appointed in the sole discretion of the court after taking into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interest. Their basis of objection is founded on several factors. These includes that the clan meeting decided how the estate should be managed but the petitioner has disrespected the decision. Secondly, that the petitioner is discriminatory in that she has already withdrawn the support the deceased company gave to his needy relatives. One on them is Richard Donald Temba (DW2). Thirdly, that she is causing difficulties in managing the company left by the deceased as she has started to suspend employees before she is even appointed to administer the estate. Fourthly, that she has not the required capacity to manage the estate and the will to have harmony among family members.

The petitioner is represented by Deogratius Sawere, learned advocate while the caveators are served by Ambrose Nkwera, learned counsel.

Meeta



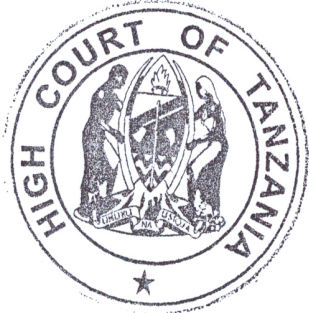
From the facts of the case the pertinent question is: What interests do the caveators have in the deceased's estate to entitle them or any one of them the appointment as administrator of the deceased's estate? I ask this question because it is now settled that fit persons to administer estates of the deceased are those holding beneficial interest. This is a requirement under section 33 (1) of the Probate and Administration of Estate Act [Cap 352 R.E 2002]. It is also the holding in **Naftary Petro V Mary Protas**, Civil Appeal No. 103/2018, Court of Appeal – Tabora (unreported) at Page 9 -10 where the court interpreted the meaning of paragraph 2 (a) of the 5<sup>th</sup> schedule of the MCA which is more or less framed like section 33 (1) of the Probate and Administration of Estate Act. In this case it was further held at page 10 that proved beneficial interests in the estate is preemptory of other considerations like wishes of the deceased and remote interests in the appointment of the administrators of the estate where the deceased died intestate.

It is my view and finding that in this case the petitioner has beneficial interests in the estate as a wife. The caveators interests are remote as they relate to it for being either relatives or concubine to the deceased. According to the evidence of all caveators, the first caveator (Christina) lived and took care of the deceased since when they married in 2012. However, since the



monogamous marriage between the deceased and the petitioner subsisted, that relationship was a mere concubinage. For the reason that I have declared her marriage as void, I disqualify her as a fit person to be appointed administratrix. Her relationship with the deceased assets terminated with his death. The other caveators are cousin brothers of the deceased who cannot inherit from the deceased's estate. Their interests, therefore, is limited and remote. They cannot be appointed to administer it. In view of the foregoing, I dismiss the caveat.

It follows, therefore, that the petitioner is the suitable person to administer the deceased's estate.



*Mugeta*  
**I.C. MUGETA**  
**JUDGE**

**08/12/2021**

**Court:** Judgment delivered in chambers in the presence of Deogratius  
**Lawyer** advocate for the petitioner who also hold brief of Ambroce Nkwera  
**Lawyer** advocate of the caveators.

**Sgd: I.C. MUGETA**

**JUDGE**

**08/12/2021**