

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

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

**IN THE MATTER OF THE ESTATE OF THE LATE RESPICH BADILI  
NSHUSHI, DECEASED**

**AND**

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

**BY GRACE RESPICH NSHUSHI**

**BETWEEN**

**RESPICH BADILI NSHUSHI ..... DECEASED**

**AND**

**GRACE RESPICH NSHUSHI..... APPLICANT**

**RULING**

*Date of last Order: 17.02.2021*

*Date of Ruling: 18.02.2021*

**A.Z MGEYEKWA, J**

The Application herein is brought under the certificate of urgency under section 38 of the Probate and Administration of Estate Act Cap. 352 [R.E 2019] and Rule 50 of the Probate and Administration of Estate Rules. The

application was accompanied by an affidavit sworn by Grace Respich Nshushi, the petitioner.

At the hearing of this application Mr. Ryoba, learned counsel represented the petitioner. Mr. Ryoba urged this court to adopt the applicant's affidavit to form part of his submissions. He informed the court that, the petitioner filed a probate and administration case before this court, and under the certificate of urgency, he filed this application that the petitioner be appointed as the administrator of the estate of the late Respich Badili Nshushi pending the determination of the main application (*pendente lite*) for the reasons he brought forth.

It was his submission to this court that, the late Respich Badili Nshushi died intestate on 1<sup>st</sup> of February 2021, and attached a copy of the death certificate. He went on that the deceased left behind dependents, properties, and the on-going business which needs supervision and control.

According to the petitioner's Advocate, the deceased left behind five surviving relatives and dependents including a widow who is the petitioner, Grace Respich Nshushi who is 56 years old, Magdalena Yungula, the

deceased mother, two sons; Steven Respich and Alex Respich Nshushi, and one daughter, Fausta Lukundo Nshusho.

The deceased estate subjected to the grant of letters of administration includes immovable properties namely; three petrol stations, one GPM petrol station located at Mabatini in Mwanza, and two others located at Makambako trading as Puma and Oryx with an estimated value of Tshs.600,000,000/=, three Residential Houses, one located at Mwanza, one located at Rungwe Kigoma and one located at Makambako with estimates value of Tshs. 201,000,000/= and four plots; three plotas are situated at Kiseke in Mwanza, and one plot is located at Bangwe in Kigoma with an approximate value of Tshs.40,000,000/=. The petitioner went on to submit that the deceased also left eight lorries.

He enlightens this court that, the deceased business needs immediate supervision to include managing the business accounts which includes NBC account No. 035201028970 with the name of the deceased and other accounts with NMB, CRDB, and Mkombozi Bank which were managed by the deceased and bears the names of Lukundo Enterprises. He further enlightens this court that, all the monies from the business after the sale of the fuel were deposited to the deceased accounts. It is only when the administrator

is appointed that the accounts can be managed to assure and safeguards the on-going business operations.

It was his further submissions that, on 04<sup>th</sup> February, 2021 after the burial of the deceased, the clan convened a meeting that appointed the petitioner to be the administrator of the estate of the late Respich Badil Nshushi to be assisted by the deceased children. For those reasons, he prays this court to appoint the petitioner as the administrator of the estate of the deceased pending the determination of the main application.

I have given due consideration to the submission of the learned counsel for the applicant and the issue for determination is whether the applicant has adduced sufficient reasons to warrant this court to grant his application. I have revisited section 38 and Rule 50 of the Probate and Administration of Estate Cap.352 [R.E 2019], it is with no doubt that an administrator may be appointed to administer the estate of the deceased pending the determination of the main application (*pendente lite*) where the special circumstances so require. Section 38 of the Probate and Administration of Estate Act, Cap. 352 clearly state that:-

***" Pending the determination of any proceedings touching the validity of the will of a deceased person or for obtaining or revoking any***

***probate or any grant of letters of administration, the court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the court and shall act under its direction. [Emphases added].***

Equally, the law specifies that on the application by the petitioner for the court to grant the application, the petitioner must comply with Rule 50 of the Probate and Administration of Estate Cap.352 [R.E 2019]. Rule 50 provides that:-

***"An application for appointment of an administrator under section 38 pending the determination of any proceedings shall be by chamber summons supported by an affidavit in the form prescribed in Form 35 set out in the First Schedule, setting out the particulars of the proceedings, the gross value and nature of the estate of the deceased, the date of the death of the deceased and a statement as to the fitness of the proposed administrator and shall, subject to the provisions of these Rules, be accompanied by the proposed administrator's oath in the form prescribed in Form 36 set out in the First Schedule and administration bond in the form prescribed in Form 37 set out in the First Schedule". [Emphases added].***

I have to scrutinize the petitioner's application before considering the existence of exceptional circumstances that this court can rely on granting interim orders in appointing the administrator pending the determination of the main application as prayed by the petitioner. The following are the criteria which the petitioner in *pendent lite* application must adhere to:-

First, the petitioner's application for the appointment of the administrator of the estate of the deceased pending the determination of the main application (*pendente lite*) must cite and refer to the main application which is already before the court. Revisiting this application at hand, the petitioner did not cite or otherwise refer this court to the pending suit which is the base of this application as per the requirement under Rule 50 of the Probate and Administration of Estate Cap.352 [R.E 2019], and as specifically expressly provided by form number 35 an Affidavit to lead to grant *pendent lite*, form number 36 titled Oath of Administrator *pendent lite* and form number 37 titled Bond of Administrator *pendent lite*.

Secondly, the law requires that a petitioner is required to accompany the application with all necessary documents for the court to safeguard the estate of the deceased. The records reveal that the petitioner did not comply

with the mandatory requirement of attaching documents to include Forms number 35, 36, and 37. The same renders the application fatal defective.

For the aforementioned defects, this application before me is incompetent and consequently is hereby struck out.

The applicant to be supplied with a copy of this ruling early as possible for him to take the necessary step (s) if she so desires.


Order accordingly.

Dated at Mwanza this 18<sup>th</sup> February, 2021.



  
A.Z.MGEYEKWA  
**JUDGE**  
18.02.2021

Ruling delivered on 18<sup>th</sup> February, 2021 via audio teleconference whereas Mr. Ryoba, learned counsel for the petitioner.

  
A.Z.MGEYEKWA  
**JUDGE**  
18.02.2021