

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

PROBATE AND ADMINISTRATION CAUSE NO. 01/2021

**IN THE MATTER OF THE ESTATE OF THE LATE PETER GABRIEL
LYIMO**

AND

**IN THE MATTER OF THE APPLICATION FOR APPOINTMENT OF
RECEIVER PENDING GRANT OF LETTERS OF ADMINISTRATION BY
GABRIEL PAUL LYIMO**

28th January & 18th February, 2021

RULING

MKAPA, J.

This application for an Order to appoint the applicant Gabriel Paul Lyimo, as a receiver pending grant of letters of administration of the deceased estate, has been preferred under section 10 of the **Probate and Administration of Estate Act**, Cap 352 R.E 2019, **Rule 24 of the Probate and Administration of Estate Rules**, G.N. No. 369 of 1963 and any other enabling provisions.



The application was brought under certificate of urgency by way of Chamber summons. It is supported by applicant's sworn affidavit who is a nephew of the deceased, the late Peter Gabriel Lyimo. The late deceased passed away on 7th December 2020.

In the chamber summons the applicant prays for this court to appoint the applicant as a receiver pending the appointment of the administrator of the deceased estate.

On the date when this application was set for hearing Mr. Richard Mosha learned advocate and counsel for the applicant prayed that both the affidavit and supplementary affidavit be adopted to form part of the application. The counsel referred this court to paragraphs 4 and 10 of the affidavit and paragraph 2 of the supplementary affidavit. He went on submitting orally the fact that, the deceased died intestate on 7th December, 2020 at Mount Meru hospital in Arusha where he was receiving treatment. He was survived with children most of them are scholars named Maryphile Peter form three student at Anwarite Girls Secondary School; Annaneema Peter Lyimo; a standard four pupil at Good Foundation Schools; Aikambe Peter Lyimo a standard four pupil at Scholastica Primary School; Emmanuel Peter Lyimo a standard two pupil at Good Foundation Schools; Precious Peter Lyimo a standard one pupil at Archangels Primary School. The learned counsel informed

the court that, school fees is required to be paid to all of the children and their upkeep.

Mr. Mosha informed the court further that, the late Peter Gabriel Lyimo left an estate (businesses and properties) with an estimated value of Tanzanian Shillings 1,710,000,000/= located in various places in Tanzania which are likely to be wasted if not placed in the proper hands before the real administrator is appointed by the Court. The properties which are likely to fall in the care and management of the applicant are:-

- i. Kibo Secondary School located at Longuo B within Moshi town; as the late Peter Gabriel Lyimo has invested to run the said school for 15 years from 18th November, 2019.
- ii. Hypolite Engineering Construction Company whose main office is in Arusha.
- iii. Bank Accounts at NBC, NMB, CRDB and KCB in the name of the deceased.
- iv. Shares in various institutions and companies.
- v. Cattle ranches situated in Morogoro Region and Mtonga ward Korogwe district Tanga region.
- vi. Land Plot, Block A. Plot No. 485 located at Pasua in Moshi Municipality.
- vii. A house at Rau in Moshi Municipality, block M, Plot No. 174.

- viii. Two motor vehicles, Toyota Land cruiser registration number T. 718 ADF and Toyota Land cruiser registration number T. 350. ABT
- ix. A House located at Korongoni in Moshi Municipality, block DDD, Plot No. 253
- x. Land Plot at Korongoni in Moshi Municipality, Block HHH, Plot No. 36 HHH (MD)
- xi. A House at Himo Urban area, Moshi block F, Plot No. 1348.
- xii. Land Plot at Magereza, Karanga in Moshi Municipality, block A, with the following boundaries: Peter Temu in the West, Hamza Olomi in the East, Colman Casanova and John Mallya in the South, and a road bordering the North.
- xiii. One storey house in Dar Es Salaam.
- xiv. A Plot at KIA
- xv. A Farm and a house at Makumira, Arumeru within Arusha region.

Mr. Mosha explained that, the above properties are likely to be wasted if not placed in the proper hands before the real administrator is appointed by the Court. Furthering his argument Mr. Mosha explained that, already there are some people intermeddled in the estate without any lawful power or any color of right and acting as executors/administrators while others are

using the estate of the deceased for their own gain and obstructing the process of applying for grant of letters of administration.

The learned counsel informed the court further that, applicant is the nephew of the deceased and was taken care by him as his guardian. Furthermore, he had been working together with the deceased at Kibo Secondary School as teachers and that, the learned counsel had known the applicant for the past three years as a person of respect and integrity, hence fit and proper person to be appointed as a receiver.

To begin with the law is settled on protection of estates pending grant namely, section 10 of the **Probate and administration of Estates Act** as well as **Rule 24 of the Probate Rules**. Section 10 provides that;-

"10 where any person dies leaving property within Tanzania, the court may, if it appears on the application of the Administrator, General or of any person claiming to be interested in such property or having the custody or control thereof at the time of the death of the deceased or being at such time an attorney of the deceased, that there is a danger that such property may be wasted, appoint the



Administrator General or such other person as the Court think fit, to be a receiver of such property pending a grant of probate or letters of administration.

As to how the receiver is being appointed, Rule 24 of the Probate Rules, requires the application for appointment of a receiver under section 10 of the Act to be made by chamber summons supported by an affidavit stating;

- (a) The date of the death of the deceased;
- (b) The domicile of the deceased;
- (c) Whether the deceased died testate or intestate;
- (d) Whether the application for grant of Probate or letters of administration has been made to any court and if so by whom;
- (e) The names and addresses of persons entitled to inherit the estate;
- (f) The estimated gross value of the estate;
- (g) The description and value of the property in respect of which the application is made.
- (h) The reasons for making the application; and
- (i) Except where the proposed receiver is the public Trustee or Administrator General, that person proposed



to be appointed as receiver is a fit and proper person to be so appointed."

Having read the chamber summons as well as the accompanied affidavit, I am satisfied that the application is in compliance with the above mentioned requirement of the law as the applicant has narrated the reasons for the order sought.

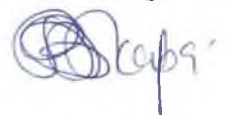
Thus, upon the application of Gabriel Paul Lyimo and upon reading the affidavit of Gabriel Paul Lyimo in support thereof and upon hearing submission of the counsel for the applicant I hereby appoint **GABRIEL PAUL LYIMO** to receive the properties mentioned hereunder;-

- i. Kibo Secondary School located at Longuo B within Moshi town; as the late Peter Gabriel Lyimo has invested to run the said school for 15 years from 18th November, 2019.
- ii. Hypolite Engineering Construction Company, whose main office is in the City of Arusha.
- iii. Shares in various institutions and companies
- iv. Cattle ranches in Morogoro Region and the other one in Mtonga ward, Korogwe district, Tanga region.
- v. A Land Plot, block A Plot No. 485 located at Pasua in Moshi Municipality,



- vi. A House at Rau in Moshi Municipality, Block M, Plot No. 174.
- vii. Two motor vehicles both Toyota make, Land cruiser, with registration numbers T. 718 ADF and T. 350 ABT
- viii. A house located at Block DDD, Plot No. 253 Korongoni area in Moshi Municipality,
- ix. A plot at Korongoni area, Moshi Municipality, Block HHH, Plot No. 36 HHH (MD)
- x. A house at Himo Urban area Moshi, Block F, Plot No. 1348.
- xi. Land Plot at Magereza, Karanga area block A in Moshi Municipality, with the following boundaries: Peter Temu in the West, Hamza Olomi in the East, Colman Casanova and John Mallya in the South, and a road bordering in the North.
- xii. One storey house in Dar Es salaam.
- xiii. A Plot at KIA
- xiv. A Farm and a house at Makumira, Arumeru within Arusha region.

As for the bank accounts in NBC, NMB, CRDB and KCB which are in the name of the deceased, the applicant shall only access the said accounts for the purposes of upkeep of the family and payment of school fees to the deceased's children. The said expenses shall be accounted by the applicant as well as the above mentioned properties when handing



over the estate to the person(s) who will be appointed as the administrator (s) of the deceased estate.

Moreover, the receiver shall not sell, alienate or dispose of in any way the estate of the deceased.

This order shall subsist for a period of three months from the date of this order, during which period it is further ordered that, person (s) interested in the deceased estate to petition for letters of administration.

It is so ordered.

Dated and delivered at Moshi, this 18th day of February 2021.




S.B.MKAPA

JUDGE

18/02/2021