

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PROBATE AND ADMINISTRATION CAUSE NO. 04 OF 2020

IN THE MATTER OF THE ESTATES OF LATE WINIFRIDA HEMED

AND

**IN THE MATTER OF PETITION FOR GRANT OF LETTERS OF
ADMINISTRATION WITH THE WILL ANNEXED BY SIMON
KEITANGA GEORGE**

EXPARTE RULING

27/04 & 05/05/2021

RUMANYIKA, J

With respect to the Estate (2 houses one on Plot 24 "G" at Muleba and another one on Plot 258) at Kirumba Mwanza plus employment benefits for Winifrida Hemed (the deceased dead in 1986), for the first time the application was brought by Simon Keitanga George (the petitioner), according to records on 14/10/2020. It is supported by his oath and affidavit, a joint consent of William George Kihigwa and Amos George of Dar es salaam and Bunda respectively it appears another survivor sons of the deceased pursuant to my order of 10/2/2021 a citation having had

been made on 10/2/2021 and published in the Citizen and Mwananchi Local News Papers of 13/2/2021.

Through audio teleconferencing I heard the petitioner vide mobile number 0713660327 on 27/4/2021.

Unusually briefly, the petitioner submitted that he was 3rd born (46) of the deceased and two other survivor sons were William George Kihigwa (51) and Amos George Kihigwa (47) and they had a father one George William Kihigwa (the widower). That at Mbezi Luis, Dar es salaam on their clan / family meeting of 27/9/2019 unanimously they proposed him for being appointed administrator of the estate save for a slam /dilapidated house on Plot No. 258 at Kirumba (for that reason no longer fit for being distributed), two sewing machines and a mud walled house in village/Muleba district in their back and against their will already converted to own personal use by their maternal uncle one Cyprian Msemakweli. That the widower had the deceased will dated 26/6/1986 in his possession since also that having had not discharged duty, executor of the will one Ayoub Sued died in 2017.

Upon issuing the citation no caveat was filled/ registered yes, but I would decline to grant letters of administration for seven (7) main reasons:

- **One;** identity of the purported consenting co-heirs wasn't sufficiently disclosed/ shown (no photographs or something) was presented **Two;** there may have been lessor/ licensees or tenants who occupied the estate say for the previous three and a half decades but none of them appeared in court nor was their names disclosed. **Three;** if at all, given lapse of time and for obvious reasons the type written copy of the appended will it was too faint even microscopically to read what a coincidence! **Four;** say for the previous 31 years for reasons the said Ayoub Sued may have had not discharged liability yes, but the petitioner did not assign sufficient reasons for such unusual delay much as according to the petitioner, the deceased was survived with the widower. Without sufficient explanation therefore, possibilities of the said Ayoub Sued having had fully discharged the liability but for reasons only known to him say 34 years later the petitioner now coming back it was not ruled out. **Five;** the petitioner's request in the purported minutes of the clan / family meeting to amend / re align the will not only it was novel and contrary to the law, but the request it left a million questions. The said Cyprian Msemakweli if at all the petitioner's maternal uncle in their back may have had converted and transferred to his name the alleged part of the estate and, wisely so probably they were

done yes, but on that one there was no affidavit of the uncle. I think it is dictates both of law and common knowledge and traditional beliefs I suppose, that whenever one died testate his will needed be whole sale executed **Six;** With regard to an equally supporting affidavit as to Domicile of the deceased, the alleged Lausa Salum may have had been acquainted with the deceased and the estate yes, but the deponent did not tell how. As a relative, a neighbor or work mate? Leave alone how long. **Seven;** as for the respective certificate to surety's financial position, Dauson T. Masilingi did not tell all what was required of him. Was he the petitioner's neighbor? a relative, a business partner or banker? I just could not now.

Before concluding, I would increasingly hold that in order to avoid life time or endless probate and administration of the deceaseds' estates, and more so where dealing with such hopelessly time barred causes, the courts should always warn themselves of such dangers. Now having had warned myself as such, I shall, as hereby do decline to grant the application. For avoidance of doubts I dismiss the application. It is so ordered.

Right of appeal explained.


S. M. RUMANYIKA

JUDGE

02/05/2021

The ruling delivered under my hand and seal of the court in chambers this 05/05/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

05/05/2021