

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

AT DAR ES SALAAM

CIVIL REVISION NO. 15 OF 2021

(Originating Probate Cause No. 15 of 2006, Miscellaneous Application No. 33 of 2017, Miscellaneous Civil Application No. 140 of 2018 and Miscellaneous Civil Application No. 279 of 2017 from District Court of Ilala)

MARY DANDU ----- APPLICANT

VERSUS

DAVID PETER DANDU ----- RESPONDENT

Date of Last Order: 08/06/2021

Date of Judgment: 16/07/2021

RULING

L. M. MLACHA, J.

This is a ruling on an application for revision. It was opened suo moto by the court following a complaint by the applicant, Mary Dandu that the respondent, David Peter Dandu, the administrator of the estate of the late Peter James Dandu was acting against the interests of the heirs. She was also bitter that she had been removed from the administration of the estate of her late husband in favour of the respondent who is her step son illegally and at the great disadvantage of heirs. She is the wife of the deceased but

not the mother of the respondent who comes from the deceased's earlier wife.

The court ordered the opening of a revision to consider the propriety of proceedings and decisions of the lower court and possibilities of shifting the administration of the estate to RITA. The revision file was opened and a calling for records was issued. The court received Miscellaneous Application No. 33 of 2017, Miscellaneous Civil Application No. 140 of 2018 and Miscellaneous Civil Application No. 279 of 2017 from the district court of Ilala. The parties were called to appear and address the court before the revision was done. They appeared. All the heirs of the deceased except one appeared as well and had a chance to speak.

It was the submission of the applicant that the respondent did not file the Inventory and Accounts of Estate for no apparent reason. They called a meeting but he said that he did not favour distribution of the estate. He was opposed to the idea of selling the assets and distributing the money to the heirs. She went on to say that there are seven heirs of the deceased, she as wife and 6 children. She named them as Anjela Peter Dandu, Silvia Peter Dandu, David Peter Dandu, Adlina Peter Dandu, Caroline Peter Dandu and Michael Peter Dandu. She added that the children come from 4 different

mothers. One of the women is dead. The rest (2) have been married by other people and have no issues in the probate. She argued the court to allow them to sell the assets jointly and distribute the money to the 7 heirs. She was not in favour of sending the administration to RITA.

Submitting in reply, the respondent said that the delay in filling the Inventory and Accounts of the Estates was contributed by the applicant. That, she used to say that he had plans to kill her causing him to go to the police station regularly. He had to avoid her. Caroline used to attack her also. He went on to say that the assets in issue are (1) An apartment in a house on Plot No. 2312/33 CT 172598/2, house No. TB2, Block B, (2) Plot No. 8, Block B Kisesa and (3) a house in Plot No. 81, Block B Kinyerezi Dar es Salaam. He could not recall its number correctly but added that its title had been deposited with the bank on a loan of the applicant. It has no tenant but a watchman. He agreed that the solution to the problem is to sell the assets and distribute the money to heirs. He proposed to act with Caroline to sell the assets and distribute the money to the heirs. He was not prepared to act jointly with the applicant. He proceeded to say that he has spent some money in defending the case in Mwanza but was not in favour of any refund save that if he will lose the case the bill of costs should be taxed against the assets of the deceased not him.

The rest of the children who attended, Silvia, Caroline, Adeline and Michael supported the idea of selling the assets. They preferred that the sale should be conducted by them jointly, not the respondent alone. Caroline agreed to act as a second administrator as proposed by the respondent.

Submitting in rejoinder, the applicant did not favour the idea of appointing Caroline as a second administrator. She said that she is the fit person to act as an administratrix because she is the mother and the one who was pushing issues. She went on to say that she used Tshs. 12,945,000 to pay the debts for the house an amount which was 82% of the Purchase Price. She also changed the windows to Aluminium at a price of Tshs. 27,000,000. That was done in 2006. That was her own money. They did not come from the decease. She proceeded to stress that the respondent has plans to kill her. Giving explanation, she said that she was followed by a car which had people with guns one day as she was walking alone the road. She stressed that Caroline cannot control the respondent. All of them should act jointly.

I will start by examining the Law. The powers of revision of this court are contained under section 44 (1) of the Magistrates Courts Act 1984. It gives general powers of revision and supervision of subordinate courts. It touches both civil and criminal cases. It extends to probate matters. The power can

be exercised by the court after receiving an application for revision or on its own motion suo motu. Subsection (1)(a) and (1)(b) carry different scenarios.

While interpreting the provisions of section 44(1) (a) and (b), the Court of Appeal had this to say in **Abdallah Hassan V. Juma Hamisi Sekiboko**, Civil Appeal No. 22 of 2007 at Page 3;

*"... we are of the settled view that the mode by which a matter comes to the High court and the type of powers to be exercised under one subsection differ from the other. Under subsection 1 (a) the court acts suo motu, of course this can be ignited by a complaint, a tip – off from a law abiding citizen or a discovery of underserving element the decision of the Court of Appeal in **Mwanahawa Muya vs. Mwanaidi Maro** [1992] TLR 78 where it was held that in a proper case, the High Court can invoke its powers of revision in a grant to letters of Administration by the district court. **Powers of revision are however exercised by the High Court suo motu when exercising its supervisory powers of subordinate courts.**"*
(Emphasis added)

One can thus see that what was done by this court is in line with the Law for it acted after receiving a complaint. Based on the complaint, a revision file was opened and the parties were summoned to address the court as was said above.

What then are the findings of this court? It appears that the matter started with Probate Cause No. 15 of 2006 whereby the applicant was appointed the administratrix of the estate. Her appointment was later revoked. The administration shifted to the respondent, the step son. It appears that she was not fully engaged in the revocation proceedings. She came to know this fact at a later stage. She then filed Miscellaneous Application No. 33 of 2017 seeking extension of time within which to file an application to set aside the orders. S.W. Luhwago RM granted it. She then filed Miscellaneous Application No. 279 of 2017 seeking to set aside the revocation orders. This application was dismissed on a ruling on preliminary objections. She filed an application for review, Miscellaneous Application No. 140 of 2018. It was seeking review of the orders of the court made in Miscellaneous Application No. 279 of 2017. This application could not proceed. It was withdrawn. So, the position as of now is that the respondent is the administrator of the estate having taken over from the applicant, her step mother, whose

appointment was revoked. So, to say the obvious, there is an ill feeling between the two.

Looking at the matter critically one can see the obvious enmity between the parties and a continued straggle of the applicant to go back to her position, a move which is resisted by the respondent. There is also the obvious fact that no inventory has been filed from 2007 when the revocation was done to date, contrary to the law. The respondent is accusing the applicant as being the reason why he could not file the Inventory and Accounts of Estate. The applicant is accusing him of failure to take steps. She is also accusing him as having a plan to kill her.

All the heirs agree that the solution to the problem is to sell the assets and distribute the money to them. The issue now is who should do so. It appears that the respondent lacks the support the heirs who have lost confidence in him. The applicant does not trust him completely.

I have considered the matter closely. I have found that, much as there is a clear mistake on the part of the respondent for failing to file the Inventory and Accounts of estate in time, but I think that the delay was caused by the underlying disputes at the family not him alone. He is not the only person to be blamed. But again, it is obvious that he cannot perform the work alone

successfully without being given guidance and assistance. Initially I had an idea of taking the matter to RITA, but this idea is opposed by the heirs who might end up refusing to give co-operation to RITA. I think the solution is not to take the matter to RITA something which may complicate the matter given the underlying disputes. Now that all the heirs agree to the idea of selling the assets themselves, I think the solution is to make a combination which can cause things to go ahead.

Of all the heirs, Silvia appeared to be very cool. She is a sister of the respondent from the same mother. Caroline was suggested by the respondent. She is a daughter of the applicant from her own blood. All things considered and measured; I think I should add them to act with the parties, making a total of four (4) administrators and make some orders to safeguard the process.

In the exercise of revision powers of this court contained under section 44 (1) of the Magistrates Court Act, I make the following orders;

1. I appoint the applicant, Mary Dandu, Silvia Peter Dandu and Caroline Peter Dandu to act with the respondent as joint Administrators in the administration of the estates. That means that, the estate shall now shall have four (4) administrators.

2. The administrators should sit immediately and make a decision to sell the assets as suggested by themselves and distribute the money to the heirs on equal basis.
3. The applicant must be given an additional share, over and above her ordinary share, on account of her contribution in the acquisition of the assets as wife of the deceased.

It is ordered so. No order for costs.



A handwritten signature in blue ink, appearing to read "L. M. Mlacha", written over a horizontal line.

L. M. MLACHA

JUDGE

16/07/2021