

IN THE HIGH COURT OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CIVIL APPLICATION NO. 60 OF 2019

(Originating from Probate and Administration Cause No. 7 of 2017)

MRS. FRANCISCA JOSEPH CHUWA..... APPLICANT

VERSUS

MR. KENNEDY JOSEPH CHUA..... RESPONDENT

RULING

Date of last order: 2/09/2021

Date of ruling: 22/11/2021

B.K.PHILLIP,J

This application is made under the provisions of section 49(1) (c)(d)(e) and (2) of the Probate and Administration of Estates Act, CAP. 352 R.E 2002, (Henceforth " Cap 352"). The applicant prays for the following orders;

(a) The grant of Probate and letters of administration of the Estate of the late Joseph Sikitu Chuwa alias Joseph Sikitu Chua, granted to the Respondent by this Hon. Court on the 3^d day of November, 2017 be revoked.

(b) The Applicant be granted Probate and Letters of administration of the Estate of her husband Joseph Sikitu Chuwa alias Joseph Sikitu Chua.

(c) The Respondent be ordered by this Court to return Tz Shs. 9,891,992.12 money belonging to the Estate of the late Joseph Sikutu Chuwa alias Joseph sikutu Chua which he withdrew from Arusha Branch of the CRDB Bank Account of the late Joseph Sikutu Chuwa alias Joseph Sikutu Chua Account Number:- 0152277085200 and spend them as their own.

(d) Costs of this application be granted.

The application is supported by an affidavit sworn by the applicant. The respondent filed a Counter Affidavit in opposition to the application and by leave of the Court the applicant filed a reply to the respondent's counter affidavit. In addition, she filed another affidavit sworn by one Rozalia Peter Mwacha.

At the hearing of this application the learned advocates Dr. Ronilick E.K. Mchami and Simon Mbwambo appeared for the applicant and the respondent respectively.

A brief Background to this matter is that, on 3rd November, 2017 this Court appointed the respondent and the late Naftal Joseph Chua as administrators of the estate of the late Joseph Sikutu Chua alias Joseph Sikutu Chuwa, following the petition filed by the respondent and the late Naftal Joseph Chua vide Probate and Administration Cause No. 7

of 2017. This court ordered the appointed Administrators of the deceased estate (the respondent and the late Naftal Joseph Chua) to file inventory within six (6) months and final accounts within twelve (12) months from the date of the order.

The appointed administrators did not file the inventory and final accounts within the time ordered by the Court. There have been a number of Court orders for filing the inventory and final accounts, but up to date the matters pertaining to the administration of the deceased estate have not been closed. That is what moved the applicant herein to lodge this application since she not be satisfied with the way the respondent is handling the administration of the deceased estate.

Back to the application, Dr. Mchami started his submission by adopting the contents of the affidavit sworn by the applicant and Rozalia Peter Mwacha. He further informed this Court that the applicant had to file the affidavit sworn by Rozalia Peter Mwacha, the second wife of the deceased because the respondent mentioned him in his counter affidavit. He went on submitting as follows. One, that the respondent excluded the applicant in the list of the beneficiaries of the deceased estate. He contended that in his petition for appointment as the administrator of the deceased estate the respondent did not state the true affairs of the deceased estate which contravenes the provision

of section 49(1)(c) of Cap. 352 because he did not indicate that the deceased was survived by two wives, who are the applicant and one Rozalia Peter Mwacha. He insisted that the respondent's failure to disclose the true status of the deceased affairs/estate from the very beginning when he lodge his petition in Court to be appointed as the administrator of the deceased estate shows that the respondent is not faithful and that disqualifies him to be the administrator of the deceased estate.

Two, that the respondent did not exhibit inventory as per the dictates of the law. He contended that respondent failed to file the inventory and final accounts as ordered by this Court. The respondent filed an inventory belatedly in contravention of the Court Order. Not only that, Dr Mchami told this court that the inventory that has been filed in Court contains false information since it shows that there was distribution of the money belonging to the deceased estate to the wives of the deceased, whereas the applicant was not given any amount of money. The applicant's children were not bequeathed anything. The deceased land/farms have not been distributed to the heirs instead the respondent is using the same as if they are his personal properties. The purported inventory that has been filed in court does not indicate how the deceased farms /land were distributed to the heirs.

Three, that the respondent misappropriated Tshs. 9,891,992.12 which forms part of the deceased estate. Dr. Mchami contended that aforementioned sum of money (Tshs. 9,891,992.12) was withdrawn by the respondent and his co – administrator (now deceased) from deceased Bank account No. 0152277085200 and spent the same as if they were their own.

Four, the second wife of the deceased, Rozalia Peter Mwacha swore an affidavit in support of this application which proves what is stated by the applicant in her affidavit in support of this application.

In rebuttal, The learned Advocate Saimon Mbwambo started his submission by adopting the contents of the counter affidavit filed in opposition to the application. He went on submitting that the affidavit sworn by Rozalina Peter Mwacha should be expunged from the Court's record on the reason that she is not a party to this matter.

With regard to the merits of the application, Mr. Simon argued that the applicant has not managed to sufficiently prove that the respondent did not discharge his duties. He maintained that upon being appointed as the administrator of the deceased estate, the respondent convened a family meeting which was attended by the applicant among other family members and it was resolved that the sum of Tshs. 8,891,992/= be

distributed equally between the wives of the deceased, and be used to build modern toilets at the premises of each wife.

Mr. Simon further contended that, the delay in completing the procedures for closing the administration the deceased estate was due to frequent complaints and objections raised by the applicant. He insisted that the filing of final reports in respect of the distribution of the land/farms and properties belonging to the deceased estate is going to be effected shortly.

With regard to the applicant's complaint that the respondent did not state that the deceased was survived by two wives including the applicant, Mr. Simon submitted that, applicant was not mentioned because she abandoned the family. But despite the fact that she abandoned the family, she was included in the distribution of the deceased estate. Mr. Simon was of the view that revocation of the appointment of the respondent as the administrator of the deceased estate will cause more delay in closing the administration of the deceased estate. He invited this Court to dismiss this application for lack of merits.

In rejoinder, Dr. Mchami reiterated his submission in chief. He insisted that the respondent has failed to discharge his duties as the administrator of the deceased estate. Four years have lapsed since his

appointment as the administrator of the deceased estate and administration of the deceased estate has not been closed. In addition , he submitted that Mr. Simon's argument that the respondent delayed to complete the task because of the objections and complaints made by the applicant is not true and unfounded. He refuted the respondent's contention that he convened family meetings. Further, he contended that the administrator of the deceased estate is required to distribute the properties to the heirs in accordance with the law not according to the deliberations made at family meetings.

I have dispassionately analyzed the rival arguments made by the learned advocates. The task of this court in this application is make determination of the following issues ; One, Whether or not in the petition for appointment as the administrator of the deceased estate the respondent did not disclose the true and correct information concerning the deceased estate and the heirs. Two, whether or not the respondent has failed to discharge his duties and the letter of administration granted to him should be revoked. Three, whether or not the respondent misappropriated the sum of 9,891,992.12 belonging to the deceased estate. Four, what reliefs are the parties entitled to.

Before embarking on the determination of the issues I have framed herein above, I need to clear Mr. Simon's concern on the affidavit

sworn by Rozalia , that is, the same should to be expunged from the Court's records because Rozalia is not a party to this case. First of all, the above mentioned concern was raised belatedly after Dr Mchami had finished his submission. In my opinion that was not correct because the same is in a form of a point of preliminary objection. Therefore, it was supposed to be raised at the earliest time before the hearing of the matter. Anyway, this concern should not detain me as it has not merits. Mr. Simon did not cite any law which forbids a person who is not a party to case to swear an affidavit in support or against a matter in Court. In addition, as correctly submitted by Dr Mchami the respondent in his counter affidavit mentioned Rozalia. He stated that Rozalia was the only wife of the deceased. In order to counter that deposition, the applicant decided to file an affidavit sworn by Rozalia, in which Rozalia deponed that she was the second wife and the first wife of the deceased was the applicant.

Starting with the first issue, that is, *Whether in the petition for appointment as the administrator of the deceased estate, the respondent did not disclose the true and correct information concerning the deceased estate and the heirs.* The pleadings and the submissions made by the both counsel show clearly that deceased was survived by two wives, that is the applicant, the first wife and Rozalia Peter Mwacha,

the second wife. The applicant being the son of the applicant was aware of the existence of her mother. I have noted that the respondent's argument that he did not mention the applicant in the list of heirs in the petition because she had abandoned the family is contradictory because the respondent claims that he included her in the distribution of the deceased estate. This means that he was aware that she was the deceased wife and in actual fact she is his mother. The law requires the petitioner for appointment of the administration of the deceased estate to state the true affairs of the deceased estate. I am in agreement with Dr Mchami that under the circumstances of this matter, the respondent's failure to indicate that the deceased was survived by two wives, shows that the respondent and his co-administrator were either not conversant with the affairs/ status of the deceased estate or were not trustworthy, and this disqualifies the respondent from being the administrator of the deceased estate. One of the qualifications of the administrator of the deceased estate is that he/she has to be conversant with affairs concerning the properties of the deceased and the heirs for him/her to be able to discharge his/ her duties properly, which includes collection of the deceased properties and distribution of the same among the heirs.

Coming to the second issue that is, *whether or not the respondent has failed to discharge his duties and the letter of administration granted to the respondent should be revoked*, there is no disputed that the law requires the administrator to file in Court inventory and final accounts in order to close the proceedings in probate and administration of estate. Section 107(1) of Cap 352 reads as hereunder;

*(1) An executor or administrator shall, **within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint or require, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and in the manner in which they have been applied or disposed of.***

(Emphasis added)

According to the dictates of the law, it is crystal clear that the respondent was obliged to file in Court an inventory containing a full and true estimate of all the properties that came into his possession by virtue of being an administrator of the deceased estate. As stated earlier in this ruling, upon appointment of the respondent as administrator of the deceased estate, the Court ordered him to file inventory within six (6) months and final accounts within twelve (12) months from the date of the order. The Court's records show that respondent failed to file the inventory and final accounts as ordered by the Court. Thereafter, there have been a number of Court orders directing the administrators of the deceased estate to show cause on the delay in filing the inventory and final accounts. The Court's record further reveals that on 12th April 2019, this Court ordered the respondent to file the inventory by 2nd May 2019 and final accounts to be filed on 26th June 2019, but those Court orders were not complied with, instead on 3rd of May 2019 the respondent and his co-administrator filed in Court a document titled "Accounts of Estate" which shows that the gross value of the estate as Tshs 8,891,992.12 only and the name of the persons entitled to that amount of money as Fransisca Joseph Sikitu (the applicant herein), the 1st wife of the deceased and Rosalia Peter , the 2nd wife of the deceased only. In short the document that has been filed in Court is not

worthy the name "Accounts of estate". It does not specify the value of deceased's assets/properties collected and the expenses and debts/liabilities if any as stipulated in Form 81 to the first schedule to the Probate Rules.

In his counter affidavit the respondent deponed that the properties of the deceased are; A farm measuring 28 hectares and Tshs 8,891,992.12, but there is no any record in Court showing how the 28 hectares of land were distributed to the heirs. It has to be noted that inventories and final accounts are filed in a manner prescribed under Rule 106 and 107 of the Probate Rules and as per Form 80 and 81 of the Probate Forms. Pursuant to these Rules, an inventory filed in Court must show the assets and liabilities of the deceased and their respective value as per Form 80. Similarly, when filing accounts, the administrator or administratrix must specifically show the properties/money collected, the gains or loss if any, the expenditure (which may include funeral expenses, debts and administration expenses), the net estate available for distribution and the distribution thereof or plans for distribution of the estate to the entitled beneficiaries.

Filing of inventory and accounts of the deceased estate is crucial because the administrator of the deceased estate is only entrusted to distribute the deceased properties to the heirs and if it happens that he

is among the heirs then he /she is not supposed to take more than what he/she is entitled. Thus, transparency in everything in the administration of the deceased's estate is of paramount importance. In the case of **Joseph Shumbusho versus Mary Grace Tigerwa and 2 Others**, Civil Appeal No. 183 of 2016 CAT at DSM (unreported) the Court of Appeal had this to say on the duties of the administrator of the deceased estate;

*"In the performance of his duty as a legal representative, the law requires him to act in accordance with his oath. And what does this mean? Section 66 of the Probate and Administration Act requires the grantee of the probate or letters of administration to take an oath that he/she will faithfully administer the estate of the deceased and will account for the same. That is the administrator will faithfully administer the deceased's estates by first paying the just debts of the deceased, distributing the residue according to the law, **making and exhibiting a full and true inventory of the deceased's properties and credits and rendering a true account of the administration. The rationale of exhibiting the inventory and accounts is to keep the beneficiaries informed and to have transparency in the execution/administration of the deceased's estates...."***

(Emphasis added)

From the foregoing, it is the finding of this Court that the respondent failed to discharge his duty as the administrator of the deceased estate

and he is not a fit person to continue holding the title of the administrator of the deceased estate.

With regard to the third issue, that is, *whether or not the respondent misappropriated the sum of Tshs 9,891,992.12/- which forms part of the deceased estate*, the applicant did not produce any document to prove that the respondent did withdraw the sum of Tshs 9,891,992.12 from the deceased Bank account No. 0152277085200, at CRDB Bank-Arusha. The purported inventory filed in court and the Counter affidavit sworn by the respondent shows that the amount which was withdrawn from the deceased Bank account by the respondent and his Co-administrator, (the late Naftal Joseph Chua) is Tshs 8,891,992/= The same is alleged to have been distributed between the wives of the deceased equally, and was used to construct modern toilets at the premise of each widow. To say the least, neither understandable explanations were provided by the respondent on how the said amount was distributed nor proof of the use of that amount in construction of the alleged modern toilets. The wives of the deceased deponed that they have never been given any amount of money and twenty eight (28) hectares of land which belongs to the deceased estate are used by the respondent personally as if are his personal properties.

Be as it may, the respondent concedes that he withdrew a sum of Tshs 8,891,992.12 from the deceased Bank account. However, there is nothing in the Court's record which shows that the said sum of Tshs 8,891,992.12 was distributed to the heirs.

I have taken into consideration the respondent's contention that he convened family meetings which were attended by the applicant. Let me say outright here that no satisfactory proof of such family meetings was brought in Court apart from mere submissions made by the respondent's advocate. For the sake of arguments, even if it is assumed that those family meetings were convened as alleged, proper inventory was required to be filed in Court and proof of distribution of the money withdrawn from the deceased bank account cannot be escaped. According to section 108 of Cap 352, general duties of administering the deceased estate is given to the Administrator of the deceased estate not family members. Thus, family meetings alleged to have been convened by the respondent cannot be of any help to the respondent.

From the foregoing, it goes without saying that the respondent and his co-administrator, (the late Naftal Joseph Chua) misappropriated the sum of Tshs 8,891,992.12 which belongs to the deceased estate. Since the said amount of money have been misappropriated by the

respondent and his Co- administrator, the respondent has to pay half of that amount, that is, a sum of Tshs 4,445,996.06.

In the upshot, I hereby make the following orders;

- i) The letters of administration granted to the respondent and the late Naftal Joseph Joseph Chua by this court dated 3rd November 2017 is hereby revoked.
- ii) Mrs. Francisca Joseph Chuwa is hereby appointed as the administratrix of the estate of the late Joseph Sikitu Chuwa alias Joseph Sikitu Chua who died interstate at Monduli Arusha.
- iii) The administratrix appointed herein is ordered to file an inventory within six (6) months and final accounts within twelve (12) months from the date of this order.
- iv) The respondent shall hand over to the newly appointed administratrix of the deceased estate, Mrs Francisca Joseph Chuwa all documents concern with the estate of the late Joseph Sikitu @ Joseph Sikitu Chua as well as any property and/or money collected by him by virtue of his title as the administrator of the deceased estate, within fourteen (14) days from the date of this order.

- v) The respondent shall pay the sum of Tshs 4,445,996.06 to the administratrix of the deceased estate appointed herein.
- vi) No orders as to costs.

Dated this 22nd day of November 2021



A handwritten signature in black ink, appearing to read "B.K. Phillip", with a horizontal line extending to the right.

B.K.PHILLIP

JUDGE