IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 231 OF 2021

(Arising from the decision of the High Court of Tanzania at Dar es salaam in Probate and Administration Cause no. 31 of 2019 by Mlyambina, J)

IN THE MATTER OF THE ESTATE OF THE LATE CELCIUS SALVATORY SADDA

AND

IN THE MATTER OF APPLICATION FOR REVOCATION OF LETTERS OF ADMNISTRATION ISSUED TO VERONICA CLARA ESSANGA

MICHAEL CELSIUS SADDA.....APPLICANT

VERSUS

VERONICA CLARA ESSANGA

(The admnistratix of the late Celcius Salvatory Sadda)**...RESPONDENT**

RULING

Date of Last Order: ***30/09/2021***

Date of Judgment: ***28/10/2021***

ITEMBA, J;

The applicant Michael Celsius Sadda has filed this application under the provisions of section 49 (1) (b) of the Probate and Administration of Estate Act, Cap 352 R.E. 2002, Rule 29 (1) of the Probate Rules and Section 95 of the Civil Procedure Code [Cap 33 R.E: 2019]. The orders sought are:-

(i) That, this Honourable Court be pleased to revoke the letters of administration granted to Veronica Clara Essanga (the respondent)

(ii) Any other relief (s) this Honourable Court deems fit and just to grant thereof.

The application is supported by the affidavit deposed by the applicant himself.

In paragraph 8 of the affidavit, the applicants averred that the respondent was issued with letters of administration of the estate of the late CELCIUS SALVATORY SADDA on 26th November, 2020. That, in such application the applicant was excluded in the list of the heirs despite the fact that there was a clan meeting held on 20/04/2018 and the decision by the Primary Court in Probate Cause No. 100/2018 which ordered the respondent to join the applicant as a rightful heir of the deceased estate.

Under paragraph 9 and 10 of the affidavit the applicant states that the respondent did file the petition with intent to exclude him as a heir. The applicant means that, at the time of lodging the application in Court, the respondent did not take the trouble to inform the applicant or his relatives as by then the applicant was a form 6 student at the time attending at Bagamoyo Secondary School. Thus the respondent concealed this information from the Court with intention to gain more from the estate she ought to administer.

In general, the deponent has averred that the respondent had filed the petition for letters of administration with ill will seeking fraudulently to exclude him as a rightful heir of the late CELCIUS SALVATORY SADDA.

On the other side, the respondent's counter affidavit specific under paragraphs 9 and 10 averred that the applicant was unknown to her and she did not petition for letters of administration for purpose of excluding him and she was not aware that that the applicant was a form VI student. That she was neither obliged to inform the applicant personally nor his relatives of the application, thus she conveyed the information in respect of her petition of letters of administration through advertisement in the newspaper.

When the application came for hearing, both parties were represented. Mr. Trofmo Tarimo, learned advocate represented the applicant whilst Mr. Bakari Juma, learned advocate appeared for the respondent. The matter was argued orally but I will try to pick some points that I find to have substance connected to the application as submitted by the respective counsels.

Mr. Tarimo for the applicant in the essence of his submission accentuated that the applicant is the biological son of the late CELCIUS SALVATORY SADDA and the respondent is her step mother. He added that the respondent has concealed to the court a fact that the applicant is the son of her deceased husband. To bolster this fact, he referred the Court to a DNA report conducted in 11/01/2008 and the applicants' birth certificate.

Mr. Tarimo argued that the respondent filed a petition for letters of administration but she did not join the applicant as the heir of the late CELCIUS SALVATORY SADDA and that was done intentionally to fraudulently deny the applicant's right to have his share from the estate of his deceased father.

The learned advocate vehemently insisted that the respondent knew that the applicant is the son of the deceased as there was a clan meeting held on 20th April, 2018 which was also attended by the respondent and it was agreed that the applicant is among the children of the late CELCIUS SALVATORY SADDA.

Mr. Tarimo contended that the respondent being the administrator, she has a duty of loyalty as enshrined under section 103 (1) of the Probate and Administration of Estate Act. Thus, she did not comply with the same as she failed to join the applicant as the heir while she knew that he is the son of the deceased. To buttress his arguments, he referred the decision of this Court in **Judith Patrick Kyamba vs. Tunsume Mwimbe and 3 others**, Probate and Administration Cause No. 50 /2016 (Unreported) in which the Court held that a child of the deceased should not be discriminated because of being illegitimate. He also cited the case of **Martina Martin Silayo and another vs. Godfrey Martin Silayo and 2 others**, Misc. Civil Application no. 7/2021, HCT at Moshi (Unreported).

In finality, the learned brother prayed for this Court to adopt the position in **Sekwa Sambo (the admnistrator of the Estate of the late Josiah Methusela Mzuri) and another vs. Methusela Josiah Mzuri and another,** Misc. Civil Application No. 06/2020, HCT at Mwanza (Unreported) to appoint a neutral administrator to administer the estate of the deceased.

On the other hand, Mr. Juma replied that the respondent did not conceal any information to the Court in obtaining letters of administration warranting this Court to revoke the same. He contended that the only clan

meeting that was conducted and attended by the respondent is the one which sat on 8th April 2017 as appearing under annexure VC 1 on which the applicant was never mentioned among the heirs. He insisted that the purported meeting of 20th April 2018 (Annexure M2 of the applicant's affidavit) if at all it was conducted, it was obvious in the absence of the respondent since her name does not appear in the minutes. For that fact, Mr. Juma stressed that the respondent was not aware of the existence of the applicant. It was Mr. Jumas's contention that the applicant was not even aware of the DNA report done by the applicant and that she came to saw it after being served with the instant application.

The counsel for the respondent further submitted that the **Probate and administration Cause No. 100/2019** which the applicant averred in his affidavit that it ordered the respondent to include him among the heirs, is no longer in force as it was quashed by the decision of the **District Court of Kigamboni in Civil Appeal no. 2/2019**.

Regarding the cited cases by the applicant's counsel, Mr. Juma contended that all the cases are distinguishable in the present case as the case of **Judith Patrick Kyamba *(Supra)*** the matter was contested by way of caveat and parties were afforded opportunity to adduce evidence while the instant matter is on revocation. The learned brother also explicated that the case of **Martina Martin Silayo *(Supra)*** unlike the circumstance of our case, the administrator therein was benefiting himself from the estate. Also the case of **Sekwa Sambo *(Supra)*** there was misunderstanding between the 4 administrators where neutral administrator was appointed.

Mr. Juma then concluded that, if the applicant wished to challenge the fact that he was excluded from the list of heirs, he ought to have filed a caveat in form of a civil suit as per section 58 of the Probate and Administration of Estate Act (PAEA).

In his rejoinder, the applicant's counsel persistently supplemented that the respondent in fact, attended the 20th Sept 2018 meeting but denied to sign the minutes. He insisted that the cases which he has cited are relevant to be relied by the Court and proceeded to pray the Court to invoke section 95 of the CPC to grant the prayers encompassed in the chamber summons.

I have examined the court record and the rival submissions by the parties, the central issue of determination is *whether the applicant has given a sufficient ground to warrant revocation of grant of letters of administration which was issued to the respondent.*

Without wasting time, I am convinced to enlighten the following observations which will assist me to easily determine the raised issue.

One, I will begin with section 49 (1) of the PAEA which provides for circumstances under which a person may file for revocation of grants and removal of executors. That section states that:-

> *(1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons–*
>
> *(a)that the proceedings to obtain the grant were defective in substance;*

(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

(d) that the grant has become useless and inoperative;

(e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or has exhibited under that Part an inventory or account which is untrue in a material respect." (Emphasis is here).

The court's power to revoke any grant on the grounds listed above is enacted under sub section (2) of that section. The Court of Appeal of Tanzania in **Ahmed Mohamed Al Lamaar vs. Fatuma Bakari and Another**, Civil Appeal No. 71/2021 (Unreported), at **page 15** *inter alia* made it clear that;

> *"...In deed the High Court is vested with powers to revoke or annul the grant of probate and/or letters of administration for reasons stated under section 49 (1) (a) to (e) of the Act. The word "revoke" has it's origin in a Latin word "revocare"*

which meant "to call again or back." In both legal and ordinary English language, the word means to cancel, withdraw, reverse, repeal, vacate, put to an end etc..."

Two, this application is predicated under the provisions of section 49 (1) (b) specifically on which the applicant's claims that the respondent had petitioned for letters of administration in *Probate and Administration Cause no. 31 of 2019* with ill will seeking fraudulently to exclude him as a rightful heir of the late CELCIUS SALVATORY SADDA by concealing the information from the Court that he is one of the heirs. However, the respondent counsel has contended that the respondent has not concealed any information in respect of the applicant being the heir as she never knew him before and she came to be aware of his DNA report upon service of the instant application. The respondent's counsel went further to submit that the respondent only recognizes the clan meeting which was convened on 8th April 2017 which never mentioned the applicant as the heir. From the records, the minutes of the respective meeting were the ones encompassed in the respondent's petition in ***Probate and Administration Cause no. 31 of 2019.***

In the light of the above evidence and submissions of both parties, It is prudent to state at this juncture that the provision of section 49 (1) (b) is concise and, in my view, not supportive of the inference made by Mr. Tarimo since the presented arguments are not correlative with the nature of application itself. This is because, all what have been submitted by the applicant's advocate solely intends to elucidate and justify on how the applicant is a rightful heir of the late CELCIUS SALVATORY SADDA

and thus he should have been included in the list of heirs by the admnistratix.

It should be noted that the grant made in *Probate and Administration Cause no. 31 of 2019*, so far, takes precedent. I must add that, even if the said petition was not properly filed, once granted, it remains a lawful order of the Court untill when set aside by the competent Court.

It is apparent from the records that the applicant upon recognition on the existence of the respondent's petition in *Probate and Administration Cause no. 31 of 2019*, did lodge two caveats; the first one was struck out on technical point of law that it was not attested as required by the law and the second one was filed thereafter and was dismissed for being time barred. If the applicant had grievances on the minutes attached on the said petition, or on the ground that the respondent excluded him as a rightful heir, he would have exhausted the possible available statutory avenues.

The law under the provision of section 58 of the PAEA and Rule 82 of the Probate Rules, entitles any interested party to enter an objection inform of caveat earlier before the grant is made.

It is my opinion that, the claims in the instant application do not fall within the ambit of section 49 (1) (b) of the PAEA since the applicant's arguments are solely on the claims which were ought to have been predicated under the caveat when the petition was yet to be determined. In other words, the arguments herein are mainly to challenge the application for letters of administration while actually, the application had already been disposed and the respondent has been appointed as an

administratix of the respective estate of the deceased. The appointment was made in reliance to the contested minutes which do not mention the applicant as one among the heirs. In simple terms, the arguments in support of the application have been overtaken by the event.

For purposes of clarity, the Court at this stage, as far as section 49 of the PAEA is concerned, has no power to order that the applicant be included as the heir. This could only be possible at the stage when probate and administration cause no 31/2019 was under determination upon the applicant lodging a caveat. The applicant's counsel has submitted that this Court can make any order as empowered by section 95 of the CPC, I wish not subscribe to such contention as the Principle of ***Lex speciallis derogant legi generali*** entails that where there is specific law dealing with a specific matter, in case there is a controverse with the general law, the specific law takes precedence. [See the case of **The Permanent Secretary (Establishments) & AG vs. Hilal Hamed Rashid** [2005] TLR 123]

It is prudent to state *inter alia* that the present application amounts to taking legal recourse under the wrong track. The applicant ought to have opted the proper avenue at a point as explained above. The Court at this point cannot entertain the prayers by interested personnel which are mainly in form of objection by the interested personnel. For that reason, I join hands with Mr. Juma learned advocate that the cases of **Judith Patrick Kyamba *(Supra)***, **Martina Martin Silayo *(Supra)*** and **Sekwa Sambo *(Supra)*** are distinguishable.

A similar situation to the matter at hand had occurred in the case of **Monica Nyamakare V Mugeta Bwire Bhakome (**as administrator of

the estate of **Musiba Reni Jigabha) and Hawa Salum Mengele** Civil Application No. 199/01 of 2019, CAT, Dar es salaam. In this case, the applicant who claimed to be one of the beneficiaries was not made a party to an application and an adverse decision was made against her. The appellate court, relying on its own decision in ***Nuru Hussein v. Abdul Ghani Ismail Hussein*** [2000] TLR 217) provided a guidance at pages 14 and 17 and I humbly quote:

> *"Since the 2nd respondent missed the first boat and there is already in place an administrator of the deceased assets, it was expected of her to approach the appointed administrator, the 1st respondent, and raise her concern to him".*

The Court went ahead and stated that:

> *"In our respective opinion, both common sense and logic dictate that, the 2nd respondent ought to have traced the title from the administrator for a gentleman's agreement with the administrator. In case, the administrator refused to recognize her then she ought to have filed a suit against him where the applicant could also have a chance to be impleaded as a party therein."*

In this matter therefore, the applicant has an option to approach an administrator (the respondent) for an agreement or to file a suit against her.

Before, I pen off, I have found it apposite to preface and conclude with the illuminating quotation by Lord Penzance in **Wyteherley vs. Andrews',** (1871) L. R. 2 P. 327, he said that:

> *"if a person, knowing what was passing, was content to stand by ...he should be bound by the result, and not be allowed to re-open the case. That principle is founded on justice and common sense, and is acted upon in courts of equity..."*

Basing on the reasons which I have expounded above, I find this application non meritorious and the issue is disposed negatively. This application is hereby dismissed in it's entirely as it is devoid of merit. I make no order as to costs since the application is a probate related matter.

It is so ordered.

Rights of the parties have been explained.

L. J. Itemba

JUDGE

28/10/2021