IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT RGISTRY

AT ARUSHA

MISC. CIVIL APPLICATION NO. 34 OF 2018

(Arising out of Probate and Administration cause No. 5 of 2017, High Court of Tanzania District Registry of Arusha at Arusha before Hon. S. Maghimbi, J)

IN THE MATTER OF THE ESTATE OF THE LATE ALFRED TUMAINI LEO OF P.O.BOX 999 ARUSHA

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION AND ANNULMENT OF LETTERS OF ADMINISTRATION GRANTED TO KAREN KINDONDECHI LEO OF P.O.BOX 999 ARUSHA

BY ALLAN ALFRED LEO OF ARUSHA TANZANIA and NEMES LEO OF MOSHI KILIMANJARO, TANZANIA

ALLAN ALFRED LEO ..... 1ST APPLICANT

NEMES LEO ..... 2ND APPLICANT

VERSUS

KAREN KINDONDECHI LEO ..... RESPONDENT

RULING

29/10/2021 & 26/11/2021

ROBERT, J:-

This is an application for revocation and annulment of letters of administration of estate of the late Alfred Tumaini Leo granted to the Respondent, Karen Kindondechi Leo, in Probate Cause No. 05/2017. The application is lodged under section 49 (1) (a), (b) and (c) of the Probate and Administration Act, Cap. 352 (R.E 2002) and Rule 29 (1) and 14 (1) of the Probate Rules and supported by the joint sworn affidavit of both Applicants, Allan Alfred Leo and Nemes Leo.

This application was lodged by two applicants, Allan Alred Leo and Nemes Leo who were caveators/objectors in Probate Cause No.5 of 2017 but their caveat was struck out for being incompetent and letters of administration of the estate were granted to Karen Kindondechi Leo, the Respondent herein. The Respondent filed her counter-affidavit to oppose this application.

In the course of this matter the second Applicant, Nemes Leo, died. Thus, this court made a finding and decided that the right to sue cannot survive to his legal representative but to the surviving Applicant alone under Order XXII Rule 2 of the Civil Procedure Code, Cap. 33 (R.E. 2019).

At the hearing of this matter, the applicant, Allan Alfred Leo was represented by Messrs. Median Mwale, George Mnzava and Vincent Stewart, learned counsel, whereas the Respondent was represented by Messrs. Salim Mushi and Ngereka Miraji, learned counsel.

Submitting in support of this application, Mr. George Mnzava gave a brief introduction to the effect that, the deceased Alfred Tumaini Leo, was once a Tanzanian Citizen but later on changed his citizenship and acquired USA citizenship, however, prior to his death he was residing in Tanzania where he was issued a residence permit No. RPA 1002738 (annexure Leo 5 in the supporting Affidavit) which was valid until his death on 19/12/2014 (annexure Leo 6, Death Certificate). The deceased was blessed with five (5) issues but was survived with only four (4) as one child passed away on 2004 (Paragraph 10 of the Joint affidavit).

He submitted further that, in 2015 one Kevin Jude Leo, the deceased's first son, who is American citizen, petitioned for letters of administration via Mirathi No. 182 of 2015 and the same was granted. However, it was nullified and revoked by this court via Civil Revision No. 1 of 2016 (annexure Leo 8). On 2016 Kevin filed another petition for probate before this court which was later withdrawn after the family

meeting (annexure Leo 9 and 10). After the petition was withdrawn, the respondent petitioned successfully for letters of administration vide Probate Cause No. 05/2017 which the applicants sought to be revoked and annulled in this application.

On his part, Counsel for the respondent opposed the application and maintained that the applicant's chamber summons do not have grounds for revocation and annulment as required under Rule 29(1) of the Probate Rules which requires every application for revocation and annulment under section 49 of the Act to be made by way of chamber summons supported by affidavit setting out the grounds for such application.

He opposed the assertion that the deceased Alfred Tumaini Leo was blessed with 5 children but survived with four children only and maintained that this assertion is not supported by any proof as the supporting affidavit is silent on who the mothers of the said children are and whether the said mothers were married to the deceased. He referred the Court to the persuasive case of **Gachigi vs Kamau** (2003) EALR I page 70 to support his position. He maintained that, the applicant had a duty to establish that he is the child of the deceased before complaining that he is entitled to be listed as one of the beneficiaries of the estate of the deceased Alfred Tumaini Leo.

He observed that, this court in petition No. 5 of 2017 had the duty of appointing the administratrix only not to determine who the rightful heir of the deceased is and it has no jurisdiction over that matter. He cited the case of **Sewe vs Sewe and Another (1991) KLR page 105** and **Monica Nyamakane Jigamba vs Mugeta Bwire Bhakome and Another**, Civil Application No. 199/01 of 2019, the CAT referring to the case of **Mariam Juma vs. Tabea Robert Makange**, Civil Appeal No. 38/2009 to buttress his argument.

He argued that, the fact that the respondent was granted the letters of administration is a proof that the she had satisfied all the requirements for appointment. Since the applicant did not object the grant it was expected of him to approach the appointed administrator and raise his concern and not raise it as a ground for revocation (See **Monica Nyamakane's case Supra**). He referred the Court to the holding of yet another persuasive decision from Kenya in **Re Estate of Gitau (Deceased) (2002)2 KLR No. 430** and argued that, the applicants could have challenged the distribution in other ways not by filing an application for revocation or annulment. He stated that the applicant has never approached the administratrix of estate to establish his relationship with the deceased or approach the Court for the purpose of establishing

their connection with the deceased and to compel the administratrix to include him in the list of beneficiaries instead of using it as a ground for revocation.

Submitting on the reasons for seeking annulment and revocation of letters of administration of estate against the respondent, Mr. Mnzava, the learned counsel for the applicant listed the following reasons:-

First, the proceedings to obtain grant were defective in substance as the Respondent failed to adhere to the procedure provided for under Rule 39 (8) (f) of the Probate Rules at the time of filing his petition. The Respondent left other children of the deceased, applicants herein, for reasons best known to herself. He argued that, since Rule 39 (f) requires consent of heirs, then the proceedings were defective for lack of consent of some heirs.

He maintained that, the untrue statement by the Respondent that the deceased left only two surviving children who are Kevin Jude Leo and the Respondent herein resulted into a defective consent of heirs since the applicant and other children of the deceased were left out or did not consent on the appointment or suggesting of the Respondent herein to be the administratrix of the estate of the deceased. Since the law demand

the consent of heirs under Rule 39(f) then the proceedings were defective in substance.

Further to that, he argued that the Respondent did not file the notice to creditors contrary to Rule 111 of the Probate Rules.

Responding to this ground, Mr. Mushi maintained that the respondent had complied with the required procedure at the time of filing his petition. He argued that, consent of heirs was obtained from one Kevin Alfred Leo who by the time of filing Probate Cause No. 05/2017 was established by the petitioner to be the sole beneficiary of the estate of the deceased. There is no evidence that the applicants were also the beneficiaries to the properties of one Alfred Tumaini Leo to which consent was required.

Secondly, Mr. Mnzava maintained that, the grant was obtained fraudulently by making a false suggestion or by concealing from the court something to the case. As stated in the supporting affidavit, he explained that, the respondent concealed the fact that the deceased left five children, the surviving ones are only four including the first Applicant. Another thing concealed is that the respondent and Kevin Leo are citizens of USA while the applicants are citizens of United Republic of Tanzania.

Thirdly, he argued that, the grant was obtained by means of untrue allegation of a fact essential in the point of law to justify the grant. The procedures of obtaining letters of administration for non-citizen was not followed contrary to section 34 of the Probate and Administration Act as the respondent submitted false allegation that the address of the respondent was P.O. Box 999 Arusha which suggest that she has a place of aboard in the United Republic of Tanzania. He alleged that, the said address (P.O. Box 999 Arusha) belonged to Lion Safaris International Limited which was owned by the deceased and it was never mentioned in the court nor inventory.

Responding to the second and third grounds together, counsel for the respondent denied the allegation that the grant was obtained by making false suggestion or by means of untrue allegation. He argued that, the respondent never mentioned that the deceased was blessed with five issues and survived with four (Neither in Probate Cause No. 5 of 2017 nor in this application). On allegation that the respondent is a citizen of USA, he maintained that, the respondent has stated at paragraph 27 of her counter-affidavit that she has a place of aboard in Arusha and annexture KL4 proves her residential home to be at Njiro, Arusha despite being a USA citizen same as the deceased.

He argued further that, in the case of **Joseph Shumbuso vs Mary Grace Tigerwa and 2 Others**, Civil Appeal No. 183 of 2016 at page 28, the Court of Appeal of Tanzania held that being a Tanzanian is not a qualification for one to be appointed as the administrator of estate. He maintained that, there is nothing which disqualifies a non-citizen from being an administrator. He maintained that, Section 34 of the Act cited by the applicants was misplaced as it doesn't provide for citizenship it provides for residence of the petitioner.

On the issue of the address (P.O.BOX 999 Arusha), he stated that there is no proof that the said address belongs to Lion Safaris Ltd as it is the same address appearing in annexure KL4 which is Respondent's certificate of Occupancy and she is also the shareholder in Lion International Safaris Ltd.

Fourthly, the learned counsel argued that, the Respondent failed to perform her general duties as provided for in the Act. The respondent neglected to distribute the estate of the deceased to other children including the first applicant herein contrary to section 108 (1) of the Act. He maintained that, the neglect can be seen in the account and inventory filed by the Respondent where only the Respondent and Kevin Leo were

given distribution of the estate of the deceased (See the inventory and account filed herein).

He noted that, at paragraph 3 of the Counter affidavit, the respondent submitted that the deceased had a fixed place of residence in Tanzania on Plot No. 128 Block GG with certificate of title No. 15699 the property which did not appear in the inventory filed by the respondent. The respondent also did not account for two plots No. 46 Engira road, Corridor area Arusha and Plot No. 12 Block "ii" together with 18 cars including T 403 AES, T461 AES, T 506 AES, T 519 AES, T538 AES, T 543 AES, T 548 AES, T 918 AGJ, T 927 AGJ, T 929 AGJ, T324 AQM, T 333 AQM, T 857 DQH, T873 BQH, T 887 BQH AND T 388 CKD together with money in Lion Safaris a/c and shares in Momela Safari Lodge.

Mr. Mnzava argued further that, section 49(1) of the Act allows revocation and annulment of letters of administration which means the act of filing an inventory of account cannot be used as hindrance for the person who want to file a petition for revocation. He made reference to the case of **Safiniel Cleopa vs John Kadeghe** (1984) TLR 198 where this court stated that:

> *"failure to account the whereabouts of other properties in the custody of the administratrix amounts to misapplication of the estate also, an*

administratrix who misapplies the estate of the deceased or subjects it to loss or damage is liable to make good such loss or damage"

He maintained that, the Respondent's failure to exhibit the inventory containing true statement of the deceased properties amounts to a sufficient ground for her to be annulled by the court. The Court may be at the liberty to appoint any other person who may be fit to discharge the said duties. He referred the Court to the case of **Sekunda Mbwambo vs Rose Ramadhani** (2004) TLR at page 439 where the Court held that:

"an administrator may be a widow/widows, parent or child of the deceased or any other close relative; if such people are not available or if they are found to be unfit in one way or another, the court has the power to appoint any other fit person or authority to discharge this duty".

The applicants' counsel also challenged the respondent's counter affidavit. He argued that, the said counter affidavit contains defective affidavit annexed to it under paragraph 7 as annexure KL2. He maintained that, the said affidavits are denying some of the facts that were deposed in the affidavit of Abdul Issa Bano and Kennedy Names Mrina which are annexure Leo II to the affidavit in support of this application. He pointed out the defects in the annexed affidavit that: some of the names in the said affidavits do not resemble the names listed in the meeting minutes attached to the applicants' joint affidavit, they contain alterations which appears to have been corrected by correction

fluid without any signature of the maker to prove that the correction was valid contrary to the law of pleadings; they do not have verification clause in each of them; they do not show whether the deponent was in the presence of the commissioner for oaths contrary to section 8 of the Notary Public and Commissioner for Oath Act, Cap 12 R.E 2019. Further to that, the deponents also deposed on things that happened in September, 2018 while they deponed on July, 2018 (See paragraph 7 of each attached affidavit). Thus, he prayed for the said affidavits to be disregarded and expunged from the records.

Responding to the fourth ground, Mr. Mushi submitted that there is no evidence submitted by the applicants to establish that the mentioned properties belong to the late Alfred Tumaini Leo. He maintained that, the applicants failed to bring evidence from the Registrar of Motor vehicles and Registrar of Land to establish ownership of the said properties. He argued that the law requires whoever alleges to prove which the applicants have failed to do. On the alleged shares at Momela Safaris, he maintained that, the applicants could have brought an inventory from the Business Registration and Licensing Agency (BRELA) to establish ownership of the said shares or even provide a proof that such a company exists.

He argued that the case of Sifaniel cited by the applicants is highly distinguishable from this case because in Sifaniel's case the court made a finding that the administrator failed to account for some property while in the present case there is no proof of existence of some property which the applicant did not account for.

Distinguishing Sekunda's case from the present application, he argued that while in Sekunda's case it was decided that the court may appoint any other person to be the administrator of estate, in the instant case the appointed administrator has fully discharged his duties by filing an inventory and account which were never challenged in court.

Regarding the issue of affidavits, he argued that there is a distinction between affidavits to use in court in the form of judicial declarations and other forms of oaths and statutory declarations. He maintained that the affidavits for use in court are governed under Cap. 12 whereas other forms of affidavits are governed under Cap. 34. He maintained that a jurat is not a requirement under Cap. 34 that's why the affidavits in question do not have a jurat and they are attached as annextures to the counter affidavit.

On the argument that the Respondent was appointed by the clan meeting, he responded that, there is no need for the respondent to be

appointed by clan meeting. He referred the Court to the case of **Halima Khalid Fara vs Daudi Khalid Farah**, PC Civil Appeal No. 13 of 2012 in support of his argument.

He submitted further that, the applicants' chamber summons does not have a prayer for consequential orders in case the annulment is granted apart from the submissions from the bench which is against the principles of pleadings.

He prayed that the application has no merit and it should be dismissed with costs. The applicant to be advised to follow proper procedures in order to be included as beneficiaries of the estate of the deceased.

In his rejoinder, responding to the argument that the applicant's chamber summons is not supported with grounds for application, Mr. Mnzava submitted that, Rule 29 (1) of the Probate Rules requires that the grounds for revocation have to be made in the affidavit and not in chamber summons and that is why the applicants' grounds for revocation were placed in the affidavit.

Regarding the argument that proof of birth certificate or affidavit of the mother is required to establish that the five children were children of the deceased, he argued that this is not a requirement of the law. He maintained that, the answer to whether the five children belong to the

deceased is answered in the affidavits sworn by Abdul Issa Bano and Kenedy Names Mrina who are deceased's brother and the brother of the wife of the deceased. He argued that, in the Kenyan case of Gachigi vs Kamau the affidavits were attached to prove that the applicants were children of the deceased.

Further to that, on the duty of the children to approach the deceased and the Court in order to be included in the list of beneficiaries, he argued that, the applicants did approach the administratrix as evidenced by annexture Leo 10 which is the minutes of the meeting held at Mount Meru Hotel on 29/1/2016 and the Respondent was present in the meeting.

Regarding the procedures of objecting a petition before grant of the letters of administration, he submitted that they filed a caveat but they were not heard on merit due to legal technicalities. Therefore, the cited case of Gachogi is distinguishable from this matter.

On the argument that it was not the duty of this Court in Probate Cause No. 5/2012 to decide on inheritance but to appoint administrator, he argued that the applicants have applied for revocation under section 49 of the Act. He maintained that, the question for determination by the

court is whether the estate of the deceased was misapplied and misappropriated and the question can only be given by this Court.

He submitted that the Respondent failed to counter their argument on the properties stated at paragraph 3 of the respondent's counter-affidavit i.e. plot No. 128, Block GG under certificate of title No. 15699 which was never mentioned in the account or inventory filed in this court.

Regarding the issue of vehicles allegedly owned by Lion Safaris where the deceased had shares, he maintained that they should have been accounted for in the same way as the bank accounts.

On the affidavits attached to the counter-affidavit, he argued that even other forms of affidavit under Cap. 34 of the Laws of Tanzania are required to follow the requirements of affidavit under Cap. 12 of the Laws. He argued further that, the learned counsel for the Respondent didn't respond to the issue of alterations in the said affidavits. He proceeded to pray for the said affidavits to be expunged. He referred the court to the case of **Uganda vs Commissioner for Prisons ex-parte Matomvu** (1966) EA at page 514 where the court held that an affidavit for use in court should not contain matters of law and arguments.

He argued that, the cited case of **Joseph Shumbusi** (supra) is distinguishable since there was a consent from the respondent while in the present case there is no such consent.

On the argument that the applicants' application has no consequential orders prayed for, he argued that the applicants prayed for three orders under section 49 (2) of the Act which is annulment, costs and any other orders in the court's power.

Having considered the rival submissions of both parties and examined the records of this matter, this Court will now make a determination on the merit of this application.

However, prior to looking at the grounds for this application, I find it convenient to address an issue raised by the learned counsel for the respondent, which I honestly find unnecessary and need not detain this court, to the effect that the applicant's chamber summons do not have grounds for revocation and annulment contrary to Rule 29(1) of the Probate Rules. Indeed, the cited provision requires every application for revocation and annulment under section 49 of the Act to be made by way of chamber summons supported by affidavit setting out the grounds for such application. The learned counsel is faulting the applicant for setting the grounds for application in the affidavit and maintains that the grounds

should have been in the chamber summons. Apparently, this Court finds the wording of Rule 29 (1) of the Probate Rules to be very plain that, the affidavit in support of the application should set out the grounds for application not otherwise. As rightly argued by the learned counsel for the applicant, it is a matter of law and general practice that an affidavit cannot contain matters of law. Matters of law can be stated in the chamber summons. That said, I find no merit on this point of law and it is hereby overruled.

Coming to the merit of this application, Section 49 (1) of the Probate and Administration of Estate Act, Cap. 352 R.E. 2002 provides the reasons upon which a Court may revoke or annul the grant of probate or letters of administration. It reads as follows:

> *"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."

Considering the grounds submitted in support of this application in light of the cited provision, the question for determination is whether this application meets the requirement of section 49 of the Act for this application to be granted.

The first ground adduced by the applicant is couched in the wording of section 49 (1)(a) of the Act. It alleges that since the applicant and other children of the deceased were left out or did not consent on the appointment of the Respondent as the administratrix of the estate of the deceased, then the proceedings to obtain grant were defective in substance as they failed to adhere to the procedure provided for under Rule 39(f) of the Probate Rules which requires consent of heirs.

Counsel for the respondent maintained that consent of heirs was obtained from one Kevin Alfred Leo who by the time of filing Probate Cause No. 05/2017 was established by the petitioner to be the sole beneficiary of the estate of the deceased. He maintained further that, there is no evidence to prove that the applicant and other persons were

also the beneficiaries to the properties of the deceased to which consent was required.

While this would be a good reason for the applicants to file an objection to the making of a grant in favour of the respondent on the ground that that the respondent had excluded them from the petition and thereby disinherited them as other children of the deceased, this Court agrees that consent of heirs is a substantive procedural requirement for grant of letters of administration under rule 39(f) of the Probate Rules. However, to make a determination on whether the said requirement was not adhered to on grounds that the applicant and other children of the deceased did not consent on the appointment of respondent, the applicant has to establish that he and the other persons said to be the children of the deceased are indeed the children of the deceased so as to qualify as dependents and beneficiaries of the deceased's estate.

Counsel for the applicant argued that, paragraph 25 of the affidavit in support of this application listed five children of the deceased and in paragraph 17 of the said affidavit the applicant attached the affidavit of Abdul Issa Bano and Kennedy Names Mrina (annexture 11) which provides an answer to the question whether the said five children belonged to the deceased. He also maintained that, in the Kenyan case

of Gachigi vs Kamau (2003)1 EA 65 (CAK), the affidavits were attached to prove that the applicants were children of the deceased.

I have looked at the attached affidavits of Abdul Issa Bano and Kennedy Names Mrina who alleged to be the brother in law and nephew to the late Alfred Tumaini Leo. In the former affidavit it is stated that the deceased and the deponent's sister were blessed with three issues namely Kavikuta Alfred Leo, Conrad Alfred Leo and Allan Alfred Leo and in the latter affidavit the deponent stated that the deceased was blessed with five children who are Karen Kindondechi Leo, Kevin Jude Leo, Kavikuta Alfred Leo, Conrad Alfred Leo and Allan Alfred Leo. Apart from this there is no any evidence proving that the said persons were children of the deceased.

I have looked at the Kenyan case of **Gachigi vs Kamau** referred to by counsel for the applicant to establish that evidence of affidavit is sufficient to prove that the applicants were children of the deceased. It is apparent that, in that case the petitioner and the objector were co-wives and the objection was heard by way of *viva voce* evidence. Both the High Court and Court of Appeal of Kenya rejected the evidence adduced by the appellant and her mother in law that she was the deceased's wife and they had three children together. The only evidence produced to establish

that the appellant's children were indeed children of the deceased were the children's birth certificates and hospital cards both set of documents were obtained after the deceased's death. The court made a finding that the documents appeared to be new, they were made by the same hand which shows that they were prepared specifically for that case.

Similarly, in the present case, the applicant did not produce any evidence apart from the two affidavits attached at paragraph 17 of the affidavit in support of this application. The two affidavits were affirmed and sworn by the two deponents respectively before the same commissioner for oaths on the same month of filing this application which implies that they were obtained for the purpose of this application. There is no evidence to support the statements made by the deponents. Thus, this court finds that, the applicant has failed to adduce sufficient evidence to establish that he and the other persons who were not mentioned in the Probate No. 5 of 2017 are the children of the deceased to whom consent was required under Rule 39(f) of the Probate Rules. That said, the Court holds that there is no proof that the proceedings to obtain grant were defective by reason of failure to adhere to Rule 39(f) of the Probate Rules which requires consent of heirs.

In the second ground the applicant alleges that the grant was obtained fraudulently by making a false suggestion or by concealing from the court something to the case. This ground is divided into two prongs, the first one alleging that the respondent concealed to the Court that the deceased left five children and the surviving ones are only four including the first Applicant. The second prong alleges that another thing concealed is the fact that the respondent and Kevin Leo are citizens of USA while the applicants are citizens of United Republic of Tanzania.

Considering the findings on the first ground that the applicant failed to adduce sufficient evidence to establish the existence of other children of the deceased apart from the ones mentioned in Probate Cause No. 5 of 2017, this Court finds no merit on the first prong of this ground.

As for the second prong of this ground, the requirements for an application for letters of administration are stated under section 56 of the Probate and Administration of Estates Act, Cap. 352 R.E. 2002. The said section does not impose a requirement for a petitioner to disclose his citizenship or that of the beneficiaries. Thus, by not disclosing that she is the citizen of the United States of America, the respondent in Probate and Administration Cause No. 5 of 2017 the respondent herein did not conceal anything that is required to by law to be disclosed. Further to that, she

indicated in her Affidavit as to Domicile that her address in Tanzania is P.O BOX 999 Arusha. The law does not prohibit a foreigner from being appointed as administrator of the estate.

Coming to the third ground, the applicant alleged that the respondent submitted false address of P.O. Box 999 Arusha which suggest that she has a place of aboard in the United Republic of Tanzania. As a consequence, the procedures of obtaining letters of administration for non-citizen was not followed contrary to section 34 of the Probate and Administration of Estate Act. He alleged that, the said address (P.O. Box 999 Arusha) belonged to Lion Safaris International Limited which was owned by the deceased and it was never mentioned in the court nor inventory.

It appears to this Court that counsel for the applicant misinterpreted the provision of section 34 of the Probate and Administration of Estate Act. The section does not set the procedures for obtaining letters of administration for non-citizen, it allows letters of administration to be granted to lawfully constituted attorney who is resident in Tanzania in case a person entitled to letters of administration is absent in Tanzania and no person equally entitled is willing to act.

In the present case, the respondent stated that she is the resident of Tanzania and attached at paragraph 27 of her counter-affidavit a copy of the title deed for plot no. 93, Block A, Njiro area, Arusha which shows the respondent as the owner with address of P.OBOX 999, Arusha. Counsel for the applicant did not provide evidence to prove that P.O BOX 999, Arusha used by the respondent belongs to Lion Safaris International and not to the respondent. In the absence of evidence to the contrary, and in the light of evidence presented by the respondent, this court finds no evidence to establish that the respondent presented false address. Thus, I find no merit in this ground.

In the fourth and last ground, this Court is of the firm view that the alleged neglect by the respondent to distribute the estate of the deceased to other children of the deceased is equally affected by the fact that the applicant failed to prove to this Court that the said other children of the deceased, including the applicant, were indeed children of the deceased to whom the account and inventory filed by the Respondent should have shown that were given distribution of the estate of the deceased.

Similarly, while it is true that where the administrator of estate wilfully and without reasonable cause omits to exhibit an inventory or account which is untrue in a material respect, the court may use this as a

ground to revoke or annul the appointment, in the present case the applicant failed to bring reliable evidence to establish that the properties alleged to be omitted from the inventory or account filed by the respondent such as Plot No. 128 Block GG with certificate of title No. 15699, Plots No. 46 Engira road, Corridor area Arusha, Plot No. 12 Block "ii" Arusha, 18 cars together with money in Lion Safaris account and shares in Momela Safaris Lodge were properties of the deceased. The Court cannot annul or revoke an appointment based on unproven allegations of omission to exhibit an inventory or account in accordance with the law.

As for the alleged defects in the affidavits attached as annexure KL2 at paragraph 7 of the respondent's counter-affidavit, this Court has noted that the attached affidavits were not made in the prescribed form as required under section 10 of Cap. 34 which requires any statutory declaration to be made in the form prescribed in the schedule to the Act. However, section 9 of Cap. 34 provides that irregularity in the administration of or the taking of an oath or affirmation may not affect the validity of an oath. Nevertheless, based on the contradictions in the contents of the said affidavit such as the fact that all deponents deposed on 3rd July, 2018 on things which they alleged that happened in

September, 2018 the Court finds the attached affidavits unreliable and disregards them accordingly.

On the argument that the proceedings to obtain grant were defective because the respondent did not have the minutes of the clan meeting, I wish to join hands in the decision of **Angela Philemon Ngunge Vs. PhilemonNgunge**, Probate and Administration Appeal No. 45 of 2009, H.C (unreported), where this Court had this to say:

> "*Therefore, the need to have the clan minutes as supportive documents to the application for appointment of an administrator, is a matter of practice and not law. This is why clan minutes, will only propose a candidate. The appointment is court's duty. A candidate therefore cannot rely on the clan meetings' minutes as authority for him to function as the administrator. Administrator appointed by the Primary Court shall possess form No. IV issued under paragraph 2 of the Schedule to the Magistrate Court Act. What happens is the necessity of the dan meeting's minutes legally none. The relevancy or rationale to me is merely to involve the deceased's relatives in the process of appointment.*"

Precisely and as indicated above, the appointment of the administrator of the deceased's estate cannot be vitiated due to the

absence of the clan/family meeting. What is considered by the court, and of course the position of the law, is to give regard to the interest the person had with the deceased's estate. See the case of **Naftary Petro Vs. Mary Protas**, Civil Appeal No. 103 of 2018 (unreported).

On the foregoing, I find no merit in this application, as a consequence, I hereby dismiss it for want of merit. I give no order as to costs.

It is so ordered.

K.N.ROBERT
JUDGE
3/12/2021