

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

AT DAR ES SALAAM

MISC. APPLICATION No.338 of 2021

(Arising from Probate and Administration Cause No. 72 of 2020)

**IN THE MATTER OF THE ESTATE OF THE LATE STANLEY
PHILEMONY KIPUYO**

AND

**IN THE MATTER OF AN APPLICATION BY CATHBET STANLEY
KIPUYO, SENDEU STANLEY KIPUYO, SAITOTI STANLEY KIPUYO
AND MICHAEL STANLEY KIPUYO FOR REVOCATION OF
PROBATE GRANTED TO SUZAN BONIFACE MDESA**

**CATHBET STANLEY KIPUYO.....1st APPLICANT
SENDEU STANLEY KIPUYO2nd APPLICANT
SAITOTI STANLEY KIPUYO.....3rd APPLICANT
MICHAEL STANLEY KIPUYO.....4th APPLICANT**

VERSUS

**SUZAN BONIFACE MDESA (Administratrix of the estate of the
late Stanley Philemony Kipuyo).....RESPONDENT**

2/11/2021 & 13/12/2021

RULING

N.R. MWASEBA, J.

The applicants herein have filed this application under Section 49 (1) (b) (c) (2) of the Probate and Administration of the Estate Act, Cap 352 R.E. 2002 and rule 21 of the Probate Rules seeking for the following orders:

- i. That, this honourable court may be pleased to revoke the appointment of Suzan Boniface Mdesa as administratrix of the estate of the late Stanley Philemony Kipuyo.
- ii. Cost of this application be provided for.
- iii. Any other relief that this court may deem fit.

The application is supported by an affidavit jointly sworn by all four applicants stating the reasons for their application. It is pleaded therein that the applicants are biological children of the deceased and the respondent was a legal wife of the same. That, since the demise of their father the respondent has abandoned them. They claim that after the demise of their father the clan meeting was conducted on 24/08/2019 and appointed **Bryson P. Kivuyo** to be the administrator of the deceased's estate. Since then, the family had never appointed any other member of the family for that purpose.

Under paragraph 9 of the affidavit, they allege that sometimes in 2020 the respondent instituted the Probate Cause No. 6 of 2020 at Manzese/Sinza Primary Court claiming for a copy of clan meeting

minutes which was under the custody of Bryton P. Kivuyo so the court ordered the family meeting to be reconducted.

On 28/03/2021 the second applicant being a beneficiary of the estate of the late Stanley P. Kipuyo was arrested at Morogoro being reported by the respondent that he stole the car belonging to the deceased. Through the interrogation at police, he became aware that there was a pending probate case at the High Court. It is alleged that the applicants were not notified about the case and among the documents attached to the petition for grant was a copy of the clan meeting in which their names are listed to have participated in the meeting while they never attended. Thus, the respondent gave false information. The applicants emphasize that their family had never conducted a family meeting appointing Suzan to be the administrator of the deceased's estate.

In this court Mr Edward Mkongano appeared for the applicants while Ms Uti Mwangámba and Ms J. Kapufi appeared for the respondent. Through the pleadings and the submissions from both sides, the issue to be determined is whether the applicants have given reasonable grounds to revoke the grant.

The grounds for revoking the grant are listed under **Section 49 (1) of Probate and Administration of Estates Act**, Cap 352 R.E 2002

which stipulates that 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."

The applicants have brought their application based on **Section 49 (1) (b) (c) of Probate and administration of Estates Act** which applies

when the grant was obtained fraudulently by making false allegation. It should be noted that revocation is the remedy which the applicant can be granted when the court is satisfied that any of the conditions set under the above provision have been met. Additionally, for revocation to be granted as prayed there must be evidence that the probate was obtained by means of fraud or that the grant was obtained through fallacious information.

The applicants allege that the respondent brought in court the meeting minutes which show that she was appointed at the family meeting in which the names of the applicants appear while then fact is that they had never conducted such a meeting. To find out the truth of this allegation, I have carefully gone through the petition for grant of letters of administration in which the petitioners allege that their names appear while it is not true that they were present at the meeting. I have glanced at the minutes and found that it is only the first applicant, one Cathbeth Stanley Kipuyo whose name appears in the list of participants, but he did not sign to substantiate his attendance. The rest of applicants do not appear in the list. I do not understand why the applicants allege that they were listed. Moreover, I do not agree that by mere listing the first petitioner who did not sign the minutes amounts to making false

information. Consequently, this allegation does not hold water at all. It should also be noted that this application is not based on application for grant but for revocation of which the court has to stick on the conditions specified under **Section 49 of the Probate and Administration of Estates Act**. Having failed to prove the allegation of giving false information I see that the application has no merit.

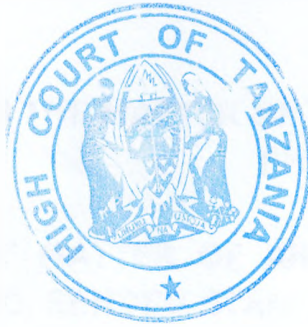
The applicants further claim that they were not informed of the petition being filed herein. I have gone through the records, and established that the petition for grant of letters of administration was granted by this court after the respondent having complied with all legal requirements including compliance with the citation order. There was no caveat that's why the grant was issued. So, their allegation has no merit.

The records show clearly that the respondent has administered the estate and filed her final account. All heirs have been listed including the applicants. Revoking the grant at this juncture with no sufficient cause will not be in the interest of the beneficiaries as it will change nothing but rather keep them continue waiting for their rights emanating from the deceased's estate .

In the upshot, this application has no merit. Therefore, I dismiss it with no order as to costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 13th Day of December, 2021.



N.R. Mwaseba

N.R. MWASEBA

JUDGE

13/12/2021