IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 344 OF 2021

(Arising from Probate and Administration Cause No. 52 of 2000)

PRISCA RASHID KIZOKA ..... APPLICANT

VERSUS

SINDANO RASHID KIZOKA ..... RESPONDENT

RULING

2nd, & 25th March, 2022

ISMAIL, J.

This application has been taken at the instance of the applicant who is one of the beneficiaries of the estate of Colonel Rashidi Rajabu Kizoka, the deceased. Upon the latter's demise, a petition for issuance of letters of administration of his estate was filed and, on 26th February, 2001, this Court granted letters of administration to Sindano Rashid Kizoka, the respondent herein.

The applicant's complaint, as gleaned from the supporting affidavit, is that, since his appointment as an administrator - 20 years ago - the respondent has failed to exhibit any inventory or accounts of the estate to

the Court. This, in the applicant's view, is a violation of the terms of the grant.

The respondent has rebutted the applicant's averments through a counter-affidavit in which he admitted that performance of his duties as an administrator of the deceased's estate has been underwhelming. He attributes that to his inability to what is stated in paragraphs 7 and 8 of his counter-affidavit, the substance of which is as reproduced hereunder:

> *"7. That, the contents of paragraph (sic) 7, 8, 9 and 10 of the affidavit are denied. In further response, I state that, by the time the said* ***RASHID RAJAB KIZOKA*** *died, I discovered that, all the properties mentioned in the Will have passed and were owned by our Mother* ***ELIADA MASAU KIZOKA*** *who is also died (sic) and left behind a Will which distribute (sic) the properties fairly and for that reason, I had nothing to distribute to the beneficiaries of the deceased father as he died without leaving as fair will as did our Mother (****ELIADA MASAU KIZOKA****).*
>
> *8. That, I swear this Counter Affidavit proving that, the Will left by our Mother and the appointment of our brother (****LUWAGA RASHID KIZOKA****) as an executor of the estate of our mother has rendered my appointment as an Administrator of the estate*

of our late father ***RASHID RAJABU KIZOKA*** *redundant."*

Disposal of the application took the form of written submissions, filed by counsel for the respective parties, in conformity with the schedule drawn by the Court.

Mr. George Mwiga, learned counsel for the applicant, began by imploring the Court to invoke the provisions of section 49 (2) of the Probate and Administration of Estates Act, Cap. 352 R.E. 2019, and revoke the appointment of the respondent as an administrator. He submitted that the respondent has failed to perform the duties imposed on him by the provisions of section 107 (1) of Cap. 352.

Mr. Mwiga contended that during his 21 year-old tenure as an administrator, he has not taken any steps required of him in the administration of the estate. Learned counsel took the view that the respondent's duties have been meddled into by his brother, a stranger who is alleged to have falsified some of the documents, making the tenure of the respondent into the office untenable. He held the view that, in view of the alleged failure, this Court is empowered to order revocation of the letters of administration. Mr. Mwiga urged the Court to be persuaded by its own decisions in ***Daudi Mahende Kichonge v. Joseph Mniko & Others***, HC-

Probate and Administration Cause No. 48 of 1996; and ***Ndeshukurwa Elisaria Msuya v. Miriam Steven Mrita***, HC-Misc. Civil Application No. 66 of 2019 (both unreported). In both of the decisions, appointments were revoked pursuant to the Court's powers under section 49 (2) of Cap. 352. He also urged the Court to go ahead and appoint the applicant to be the administrator of the estate of the late Colonel Rashid Rajabu Kizoka.

The respondent has urged the Court to dismiss the application. The contention by the respondent is that, subsequent to his appointment and before her demise, the widow of the late Kizoka wrote a will in which one of her sons was appointed to administer the deceased's estate in a manner that is reflected in the will. One of the conditions was that the house in Mikocheni be bequeathed to her children, that includes the respondent and two other siblings who do not include the applicant. It was the respondent's contention that the applicant and his brother were handed a guest house located in Kilosa Twonship.

On the failure to administer the estate, the respondent threw the blemishes at the applicant and her brother, who are accused of having ex-communicated themselves from the family. This, he contended, has delayed implementation of the duties of the administrator. The respondent further contended that the executor of the will of the late Eiiada Kizoka, who is

Luwaga Rashidi Kizoka, has embarked on the distribution of the deceased's estate consistent with the will, and that the applicant and his brother Ibrahim have been allocated a Guest House situated in Kilosa Township.

On the appointment of another administrator of the estate, the contention by the respondent is that Mr. Luwaga Rashid Kizoka should be left to finalize what he has already started because the estate he is administering is the same as that of the late Colonel Rashid Kizoka. This, the respondent contended, will avoid multiplicity of administrators and stem any possible chaos that is likely to happen if administration is done by multiple administrators. On this, the respondent urged the Court to be persuaded by the decision in ***Sekunda Mbwambo v. Rose Ramadhani*** [2004] TLR 439. In his view, Luwaga Kizoka is that fit person described in the cited decision.

On whether the applicant should be appointed to administer the estate, the respondent's argument is that the applicant does not pass the test, and this is on account of her 21-year absence which was mischievously intended to await the demise of the late Eliada Kizoka. The respondent argued that the applicant had a choice to apply for administration if she desired to be one. He took the view that her application for such role at this point in time is in bad faith. In any case, the respondent argued, the prayer for

administration was not raised in the chamber application. this rendered it untenable.

The respondent urged the Court to dismiss the application.

The parties' rival arguments distil one crucial question. This is as to whether the applicant has demonstrated any good cause for revocation of the letters of administration granted to the respondent.

The law is quite settled, that an administrator can have his powers of administration stripped off or have his appointment annulled if one of several of the events enumerated in section 49 (1) of Cap. 352 happen. The said provision postulates as hereunder:

> *"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 contention raised by the applicant is that the respondent has not done what he was set out to do when he was appointed to administer the estate of the deceased. This, in the applicant's contention, is manifested by the failure to exhibit inventory and accounts of the estate. The contention by the respondent is that, appointment of Luwaga to administer the estate of their late mother, and existence of the will left by their mother on the estate, made her officer redundant. In his submission, the respondent has apportioned part of the blemish to the applicant and her brother.

The appointment of the respondent as an administrator of the deceased's estate handed him the letters of administration that contained terms and conditions which governed execution of his duties. One of such terms is item 1 which is a reproduction of section 107 (1). It reads as follows:

"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."

Significantly, the timelines set out in the quoted provision may be extended upon an application by the administrator of the estate. This is consistent with section 107 (2). The respondent has neither denied that he failed to conform to the requirement of exhibiting inventory and accounts of the estate, nor has he demonstrated any proof that he, at any point in time, applied for an extension of time to comply with section 107 (1) quoted above. In fact, he admits, in so many words, that this requirement was not fulfilled, blaming it on the applicant and his brother. The other reason is that appointment of Luwaga has ostensibly rendered his office redundant. With respect, this contention is specious and failing to resonate. It amounts to no reasonable cause which would spare the respondent from the blushes that come with failure to fulfil the mandatory requirements of the law.

The respondent has contended that the will left by their deceased mother, and the subsequent appointment of Luwaga to administer the estate left by their deceased's mother rendered his officer redundant. This contention is stranger than fiction when one considers the fact that the will that is cited as the basis for inaction was allegedly written in 2014, a whopping 13 years since the respondent took office, while Luwaga's appointment came seven years later. Nothing prevented the respondent from doing what he was set out to do before the said will was drawn or before the appointment of the executor of the will. More surprising, is the tying down of the respondent's duties to what third parties did. I find the respondent's arguments destitute of any fruits, at e best, and I reject them out of hand.

Consequently, and following in the footsteps set out in the decisions of ***Daudi Mahende Kichonge v. Joseph Mniko & Other*** (supra); and ***Ndeshukurwa Elisaria Msuya v. Miriam Steven Mrita*** (supra), I accede to the prayer for revocation of the letters of administration issued to the respondent, with effect from the date of this decision. As I do that, I decline an invitation extended by the applicant for her appointment instead of the respondent. I take the view that, as the respondent contended, such appointment, was not part of the prayers in the application and the

supporting affidavit has not stated anything on the applicant's suitability to take up the position. Instead, I order that a fresh process for the appointment of a new administrator of the estate be commenced, consistent with the requirements of the law.

Parties to bear their own costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 25th day of March, 2022.

M.K. ISMAIL

JUDGE