

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT -REGISTRY)
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 220 OF 2019

In the matter of the estate of the late

HAPU A. N. SUMANAWEERA.....DECEASED

BETWEEN

In the matter of application for revocation of the letters of administration by Speight Mbaga & Gracious Mbaga as co-administrators of the estate of the late

MARTHA BASIL DISMAS @ HAFSA SUMANAWEERA.....APPLICANT

AND

In the matter of the letters of administration granted to

DAMARANJANI SUMANAWEERA.....
HIRAN KAUSHALYA SUMANAWEERA..... ADMINISTRATORS

RULING

19/05/2022 & 16/06/2022

I.C. MUGETA, J

The late Martha Basil Dismas @ Hafsa Sumanaweera claims to have married the deceased and wants her fair share in his estate. For reasons to be disclosed later, she has applied for revocation of the letters of administration granted to the administrators. Unfortunately, as her application was pending, she also passed on. In this decision, therefore, the word "applicant" refers to Martha Dismas. The administrators of her estate Speight Mbaga and Gracious Mbaga have stepped into her shoes to further pursue her rights.

The applicant avers in her affidavit that the late Hapu Arachchige Nimal Sumanaweera died on 27/11/2003 following their marriage on 07/08/2003. That the marriage was contracted in Islamic rites after the deceased converted from Buddhism to Islam. Their marriage, therefore, lasted for four months. Both administrators have filed counter affidavits and several other people's counter affidavit denying the fact that the deceased married the applicant and that he converted to Islam.

The reasons for the application as found in the affidavit of Martha Dismas are firstly, that the amount of the estate stated in the petition is false. Secondly, that the administrators have not exhibited any inventory and thirdly, that the administrators are enriching themselves against the interests of the other heirs including the applicant. In the counter affidavit of Paschal Kamala, he states that the inventory was filed. Paschal is an advocate who was employee of Keseria & Co. Advocates between 2006 - 2016. This law firm handled the probate cause in which the administrators were so appointed. He has stated that the record of that case cannot be found in that office as it was destroyed in 2016 pursuant to their document retention policy. Closed files are destroyed after ten years.

There are several affidavits, supplementary affidavit counter affidavits and reply to counter affidavits in this case. A lot of issues have been raised therein but I shall cut short the long story by addressing the relevant ones only. The application was argued by way of filing written submissions. The applicant is represented by James Bwana, learned advocate while the respondent is served by Evodius Rutabingwa, learned counsel. I thank the learned counsel for their focused and concise submissions.

Counsel for the applicant has argued that as the administrators have not filed inventory per section 107 of the Probate and Administration of Estates Act [Cap 352 R.E 2002] this is enough a reason for revoking their letters of administration under section 49 (1) (d) (e) and 49 (2) of Cap. 352. He cited, among others, the case of **May Mgaya V. Salimu Said (as administrator of the estate of Said Salehe) & Another**, Civil Appeal, No. 264/2017, Court of Appeal -Tanga (unreported) to support that a court has a discretion to revoke the letters of administration on account of failure to file inventory.

Counsel for the administrators has submitted that the administrators closed the file by filing inventory and accounts per the affidavit of Paschal Kamala. That the Budhists are monogamous, therefore, the deceased could not have married the applicant and never converted to Islam and the name Haleem

S. Sumanaweera is not his. In his view, according to the marriage certificate of the applicant, she married Haleem S. Sumanaweera and not the deceased. He distinguished the case law on revocation of letters of administration for failure to file inventory cited by counsel for the applicant on the ground that in this case the applicant is a stranger to the deceased's estate.

In rejoinder, counsel for the applicant submitted that the deceased converted to Islam and changed his name to Haleem. That the agreement for payment of Tshs. 50,000,000/= is void because no estoppel can be raised against rights conferred by a statute. He cited **Mr. Balden Norataram Varma & Others V. Mr. Robert Scheltens & Another**, commercial case No. 26 of 2004, Commercial Court – Dar es Salaam (unreported).

I have reviewed the evidence on record it is undisputed that in 2014 the administrators paid Tshs. 50,000,000/= to the applicant following her claim that she married the deceased. A contract executed to that effect is clear that the applicant agreed by receipt of the said amount she shall have no further claim against the deceased's estate. However, the parties are at loggerhead on the purpose of the payment. According to paragraph 8 of the counter affidavit of Hiran Kaushalya Hapu Arachchige Sumanaweera, the deceased's family entered the agreement "in order to make the deceased have an honourable rest in peace" not because they conceded that he

married the applicant. On her part the applicant alleges that she believed it was for her maintenance not an incentive to forego her rights in the estate as a wife.

In the petition for letters of administration which is probate cause No. 44 of 2004 the applicant is not listed as one of the beneficiaries. The petition was published by general citation in the Government Gazette of 21/01/2005 and the letters of administration were granted to the administrators of 18/04/2005. No party objected the petition, therefore, as the applicant did not file a caveat, I agree with counsel for the administrators that her claim on account of being a wife of the deceased was not established. I am not convinced by the applicant's averment in paragraph 7 of the affidavit that she was unaware of the probate cause. If she had filed probate caused No. 43 of 2004 at the Resident Magistrates of Dar es salaam at Kisutu which she withdrew after threats from the deceased's family as alleged in paragraph 6 of the affidavit, reasonably, she would not have failed to follow up on the opening of a probate cause by any other person.

In this case since the rights or interests of the applicant to inherit from the deceased's estate are disputed and were not established by caveat, they cannot be asserted by filing an application for revocation of the letters of

administration. In **Monica Nyamakare V. Mugeta Bhakome**, Civil Application No. 199/2001 of 2019, Court of Appeal – Dar es salaam it was held that he who misses to file a caveat can only assert his right by trying to enter into a gentlemen’s agreement with the administrator not otherwise.

The applicant missed the boat. She executed an agreement with the administrators. This contract is binding as was freely entered into. Her allegation in paragraph 8 of the affidavit that she acted under a misrepresentation that the same was just maintenance costs is unsubstantiated. The agreement (annexture MBD3) is clear that the money so paid is full and final settlement and satisfaction of her claim against the deceased’s estate. Based on the principle of sanctity of contract, the applicant is bound by the terms of that contract. I have seen nothing in it to at least implicate that it was procured by fraud or misrepresentation to make it void in terms of section 19 (1) of the Law of Contract [Cap. 345 R.E 2019]. The argument by counsel for the applicant that inheritance rights is statutory and cannot be barred by estoppel is misconceived. Inheritance right is limited that is why a person can be disinherited by a will. The authority in the case of Mr. Balden Novataram (supra) has been misapplied.

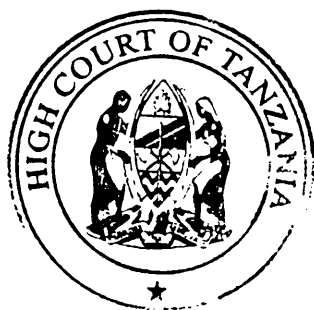
Regarding the filing of inventory and accounts, I had the privilege to get the original court file of probate cause No. 44 of 2004, indeed, no inventory or accounts can be found therein. Therefore, as submitted by counsel for the applicant there is no evidence that the administrators filed inventory nor accounts of the estate. They are, therefore, in violation of section 107 of Cap 352. The alleged fact that the same were filed but cannot be traced in advocate's office is improbable. Such records are kept in court files where they don't exist. I am settled in my mind that where there is no evidence that the court file has been tempered with, the allegation that the records in the office of the advocate was destroyed can never prove that inventory and accounts were filed in court. Consequently, the administrators letters of administration can be revoke on that account. I further agree with counsel for the applicant that an application for revocation on this ground cannot be time barred. However, there is a condition for this rule to apply. The applicant must be a person with interests in the estate.

In this case, as the applicant is not listed as beneficiary in the petition and she did not prove her interests by caveat, she is a stranger to the deceased's estate. It is my view that where the administrator is in breach of section 107 of the Probate and Administration of the Estate Act [Cap. 352 R.E 2002] for failure to file inventory or accounts, the court in terms of section 49 of the

Act can revoke the letters of administration either suo motu or upon application by a beneficiary. The applicant is in neither of the two categories. The cases cited by the counsel for the applicant are, indeed, distinguishable because the applicants in those cases were the beneficiaries. At this point, the argument whether the applicant married the deceased is rendered nugatory. I refrain from discussing it.

In the event, I find the application without merits. I dismiss it with costs.

As the administrator have not filed inventory or accounts, I order them to do so within twenty one days from the date of this order.




I.C. MUGETA

JUDGE

16/06/2022

Court: - Ruling delivered in chambers in the presence of Emmanuel Ally, advocate for the applicant and Evodius Rutabingwa, advocate for the respondent and in the absence of the parties.

Sgd: I.C. MUGETA

JUDGE

16/06/2022