

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 178 OF 2020

KALOKOLA BWESHA.....1ST PLAINTIFF

CECILIA BONIFACE SHIYO.....2ND PLAINTIFF

AND

JALLIYA FELIX RUTAIHWA.....DEFENDANT

RULING

29th June, 2022 & 12th July, 2022.

E. E. KAKOLAKI J

Before this Court in Probate and Administration Cause No. 9 of 2020, the plaintiffs **Kalokola Bwasha** and **Cecilia Boniface Shiyo**, under section 55(1) of the Probate and administration of Estates Act, [Cap. 352 R.E 2002] and Rule 33(1) of the Probate Rules, petitioned for grant of probate of the will of the late **Ali Abdul Mufuruki** who died testate at Morningside Hospital, Johannesburg, South Africa on the 8th day of December, 2019. The petition was accompanied with affidavit as to domicile, executors' oaths and verification of petition for probate as the prerequisite documents, annexed

with death certificate of the late Ali Abdul Mufuruki annexure A and list and estimates of assets left by the deceased as estate annexure B among others.

As the law provides citation was made by the plaintiff the result of which the defendant emerged as the caveator challenging among others inclusion of the property in Plot No. 48 Block F in Geita Urban, in the will, hence questioned the legality of said will as well. Following that contest this matter turned into a suit and assigned a civil case number cited above as law provides under section 52(b) of the Probate and Administration of Estates Act, [Cap. 352 R.E 2002]. Prior to the turning of this matter into a normal civil suit, the plaintiffs had filed the application and dully appointed on 05/06/2020 as executor and executrix in pedente lite under section 38 of the Probate and Administration of Estates Act, in Misc. Civil Application No. 196 of 2020, pending determination of the then Probate and Administration Cause No. 9 of 2020. Hearing of the suit proceeded and the plaintiffs successfully paraded five (5) witnesses while tendering four (4) exhibits before closing their case. On 29/06/2022, the date set for defence hearing after several adjournment at the defendant's instance, parties agreed that the property in Plot No. 48 Block F in Geita Urban (exhibit PE4), under contest mentioned in the will be excluded from the listed properties in the

estate pending determination of its ownership, the result of which was for the defendant to withdraw her caveat without costs. Hence the present ruling as now the petition remains unchallenged.

It is worth mentioning that, the deceased who died testate survived with a widow one Ms. **Saada Ibrahim** and four children namely **Leila Mufuruki**, **Zahra Mufuruki**, **Sophia Turunesh Mufuruki** and **Abdulrazak Tegnagne Mufuruki**. Further to that, the will (exhibit PE2) mentions Jalliya Felix Rutahiwa (defendant/caveator and deceased's mother), Hussein Abdul Mufuruki (deceased's young brother) and Abdulkarim Hussein Mufuruki (deceased's nephew and Hussein Mufuruki's son) as the deceased's dependants. He also left some properties forming part of the estates which the plaintiffs are seeking to administer in accordance with the will. In summary the known and disclosed estate as per annexure B are companies such as Equities in Infotech Investment Group Ltd (IIG) companies and Equity Holdings, Equity and Stocks Investments in thirteen companies, loans and debts, six motor vehicles, jewelleries, two firearms, cash instruments in Norwich Union Fund, Volks bank, Standard Chartered Bank and HSBC Capital China Bonus Fund, more than nine (9) family landed properties and various projects such as two projects under Infotech Place Project and three under

IIG Properties. This estate was placed under the plaintiffs for collection and preservation after grant of the application for probate in pedente lite pending determination of this case.

This Court has powers to determine and grant the plaintiff's prayer for probating the deceased will as provided under section 53(1) Probate and administration of Estates Act, [Cap. 352 R.E 2002]. As alluded to above the plaintiffs herein testified in Court as PW1 and PW3 respectively and tendered some documentary exhibits the deceased's will (exhibit PE2) inclusive. It is noted from their evidence that the 1st plaintiff was the deceased close friend and the 2nd plaintiff, an advocate who owns a law firm, worked as a company secretary of the deceased's companies for more than sixteen (16) years, hence close to the deceased. It is also gathered from the will (exhibit PE2) that the two were nominated, ordained and appointed by the late **Ali Abdul Mufuruki** jointly and collectively as executors of his will. It is also a plain fact that, there is no evidence to prove to the contrary that, the plaintiffs neither beneficiaries nor do they possess any interest in the estate. Further to that, apart from the withdrawn caveat by the defendant, this Court is unaware of any other caveat pending either in this Court or any other Court subordinate to, challenging the plaintiffs' appointment. All the above facts

and evidence considered, I am satisfied and therefore left with no doubt that if the will of the late **Ali Abdul Mufuruki** is probated and the petitioners/plaintiffs are appointed as executor and executrix the said estate will truthfully and faithfully be administered to the best interest of all heirs and beneficiaries of the estate.

In the circumstances and for the foregoing reasons the petition is granted. I do hereby probate the will of the late **Ali Abdul Mufuruki** by appointing **Kalokola Bwasha** and **Cecilia Boniface Shiyo** as executor and executrix of the will of the late **Ali Abdul Mufuruki**. Both executor and executrix of estate will be subjected to immediate control of the court and shall act under its directions as required by the law by making sure that the inventory and accounts of the estate are filed in Court within six months from today.

It is so ordered.

No orders as to costs.

DATED at Dar es Salaam this 12th day of July, 2022.

A handwritten signature in blue ink, appearing to be 'E. E. Kakolaki', with a horizontal line drawn through it.

E. E. KAKOLAKI

JUDGE

12/07/2022.

The Ruling has been delivered at Dar es Salaam today 12th day of July, 2022 in the absence of both parties and in the presence of Ms. Rashid Umande, Court clerk.

Right of Appeal explained.

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E. E. KAKOLAKI

JUDGE

12/07/2022.