

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
[ARUSHA DISTRICT REGISTRY]**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO.64 OF 2022**

*(Originating from Probate Cause No. 08 of 2022)*

**IN THE MATTER OF THE ESTATE OF THE LATE ZAKARIA KINYALA TESHA:  
THE DECEASED**

**AND**

**IN THE MATTER OF APPLICATION OF THE LETTER OF ADMINISTRATION  
OF THE ESTATE OF THE DECESED BY EVANCE ZAKARIA TESHA: THE  
APPLICANT**

**RULING**

06<sup>th</sup> & 11<sup>th</sup> July, 2022

**TIGANGA, J.**

This is an application for appointment of the Administrator of the estate *pendente lite*, made by the applicant who is also a petitioner in **Probate Cause No. 08 of 2022** relating to the estate of the same deceased.

This application has been preferred under certificate of a urgency through a chamber summons made under section 38 of the Probate and Administration of the Estate Act [Cap 352 RE. 2002], and rule 50 of the Probate Rules GN No. 10 of 1963.

From the affidavit filed by the applicant in support of the application, the applicant deposed that the deceased was a sole bread earner of his family, and he left a wife and four children who are still undergoing academic studies in various colleges and schools. Not only that but also, the deceased was leasing some business premises which have the date of rent payment due, some of which being claimed even in arrears.

That being the case, according to him, there are some necessary activities which cannot wait for the appointment of Administrator of the estate in the main case. He mentioned for example the issue of paying school fees for the children who are still undergoing studies cannot wait for the appointment of the Administrator and so is the requirement of paying rent. That is why the family members and other beneficiaries have appointed and recommended him to apply for appointment *pendente lite* so that he can access the accounts of the deceased and settle these very important bills.

At the hearing of the application, the applicant who was in person reiterated the content of the affidavit filed in support of the application and submitted further that, totaling the money claimed and which is supposed to be paid as both, school fees and rent, about 13,200,000/=

(thirteen million and two hundred thousand only) is required to settle the bills.

For that matter, he asked to be appointed *pendete lite* and be allowed to access the personal account of the deceased to withdraw the amount indicated herein above for paying rent and school fees. He substantiated that, by tendering the two invoices from NHC and CCM, who are land lords claiming the unpaid rents.

The evidence by the applicant was supported by Anastazia Zakaria Tesha, who introduced herself as a wife of the deceased and a mother of the applicant. She said, the applicant has all the blessings of the family members to be appointed as the administrator *pendent lite*.

That being a summary of the pleadings and the evidence given in support of the application, it should be noted that, application for grant of probate or latter of Administration is governed by section 38 of the Probate and Administration of the Estate Act (Supra) read together with rule 50 of Probate Rules GN 10 of 1963.

Starting with the provision of section 38 of the Act, it provides that,

*"Pending the determination of any proceedings touching the validity of the will of a deceased person or for obtaining or revoking any Probate of any grant*

*of letters of administration, the court may appoint an administrator of the estate of such deceased person who shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the court and shall act under its direction."*

With rule 50 of the Probate Rules (supra) provides that;

*"An application for appointment of an administrator under section 38 pending the determination of any proceedings shall be by chamber summons supported by an affidavit in the form prescribed in Form 35 set out in the First Schedule, setting out the particulars of the proceedings, the gross value and nature of the estate of the deceased, the date of the death of the deceased and a statement as to the fitness of the proposed administrator and shall, subject to the provisions of these Rules, be accompanied by the proposed administrator's oath in the form prescribed in Form 36 set out in the First Schedule and administration bond in the form prescribed in Form 37 set out in the First Schedule."*

In this application the applicant has complied with the requirement of rule 50 of the rules. The issue remains whether he has met the required threshold provided under section 38 of the Act.

While in the process of resolving that issue, I am alive of the intention of the law, that it intended to take care of the matters which by their nature cannot await for the main administrator to be appointed, and the power of the administrator appointed under this provision intends to take care of the interim matters which includes the protection of the estate of the deceased.

That being the case, after assessing the situation in this case basing on the pleadings and the evidence given here in court, I find it to be in the interest of justice to grant the application and appoint the applicant **Evance Zakaria Tesha**, as an administrator *pendente lite* of the estate of the deceased **Zakaria Kinyala Tesha**. His powers as a temporary Administrator is to protect the estate of the deceased from being wasted, but specifically is to pay the bills of rent to NHC and CCM of the rented business premises, and to pay the school fees the total amount which is currently Tshs 13,200,000/= (Thirteen million and two hundred thousand) only. The amount be paid from the personal account of the deceased.

It is accordingly ordered

**DATED** at **ARUSHA**, this 11<sup>th</sup> day of July, 2022.



  
**J. C. TIGANGA**

**JUDGE**