

IN THE HIGH COURT OF TANZANIA

AT TABORA

PROBATE AND ADMINISTRATION CAUSE NO. 1 OF 2021

**IN THE MATTER OF THE ESTATE OF THE LATE
JOSEPH ALOYCE NDAMCHO
AND**

**IN THE MATTER OF APPLICATION PROBATE BY
AURELIA JOSEPH NDAMCHO**

.....
JUDGEMENT
.....

Final Date of Trial: 6/07/2022

Date of Delivery: 8/07/2022

AMOUR S. KHAMIS, J

Joseph Aloyce Ndamcho was an accomplished entrepreneur in Tabora Region.

As a man of substantial means, he owned various landed properties, in Tabora and Moshi Municipalities, shares in some companies, bank accounts and some businesses.

He was a father of four children: Anna Joseph, Aloyce Joseph, Gasper Joseph and Benedict Joseph.

The evidence on record show that he professed a Christianity faith and married one wife, Aurelia Joseph Ndamcho, the petitioner herein.

Aloyce Ndamcho died on 27th day of July 2021 leaving behind him a well detailed Will dated 15th September 2009.

The Will named his wife, Aurelia Joseph Ndamcho as an executor hence the present petition.

Pursuant to Rule 73 of the Probate Rules, G.N. No. 10/1963 as amended by G.N No. 107/1963 and 369/1963, a general citation was published in Mwananchi Newspaper dated 17/11/2021 (ISSN 0856 – 7573 No. 7772) at page 24.

No caveat or objection was lodged against the petition as per Rule 76 of the Probate Rules and Section 58 of the Probate and Administration of Estates Act, Cap 352, R.E. 2019.

Exercising its mandate under Section 61(1) of the Probate and Administration of Estates Act, Cap 352 R.E 2019, this Court found it prudent to examine the petitioner and witnesses to the Will under oath.

To that end, four (4) witnesses were lined up, namely: PW1 Aurelia Joseph Ndamcho, PW2 George Aloyce Ndamcho, PW3 Gerald Aloyce Ndamcho, and PW4 Mugaya Kaitila Mtaki.

PW1, Aurelia Joseph Ndamcho told this Court that she was a lawful wife of the late Joseph Aloyce Ndamcho and the marriage lasted for thirty (30) years.

She said her marriage was blessed with four issues: Anna Joseph, Aloyce Joseph, Gasper Joseph and Benedict Joseph.



Examined by Mr. Gervas Beatus, learned advocate, PW1 said prior to his death, the deceased executed a Will in which she was named an executor.

The witness produced in evidence the Last Will dated 15/9/2009 (Exhibit P.1), death certificate (Exhibit P2.), minutes of a family (clan) meeting dated 29/07/2021 (Exhibit P.3) and on strength of the said documents, she prayed to be appointed as executrix of the estate.

PW2 George Aloyce Ndamcho, an elder brother to Joseph Aloyce Ndamcho, said apart from blood relations, the deceased was his partner in business.

On examination by Mr. Gervas Beatus, the witness said the deceased died in Dar es Salaam and buried in Kitandu Village, Moshi Rural District, Kilimanjaro Region.

On further examination, the witness said he attended the burial and a subsequent clan meeting held in Kitandu Village.

George Ndamcho said the clan meeting was chaired by him and among others, resolved to appoint Aurelia Joseph Ndamcho as executor of the will.

PW2 testified that he personally witnessed the deceased execute a Will in favour of the petitioner and her children around the year 2009.

On further questioning, the deceased elder brother said that:



“The deceased involved us in his intention to make a Will and we supported him. He involved me and one of other siblings, Gerald Aloyce Ndamcho. “

PW3 Gerald Aloyce Ndamcho, a young brother to the deceased, told this Court that he worked with his late brother throughout his life.

He recalled that the deceased died at Agakhan Hospital, Dar es Salaam on 27/7/2021 and buried in Kitandu Village, Moshi Rural District.

As regards to the Will, PW3 said:

“.....He wrote a Will in the year 2009. The will was made and signed here in Tabora Region. I witnessed the deceased sign the will which was prepared by an advocate. The deceased’s advocate who prepared the Will was Mr. Mtaki of Tabora.

On further examination, the witness said after the burial, a clan meeting was convened in Kibosho, Kitandu Village, Moshi Rural District on 29/7/2021.

As to what transpired in the meeting, PW3 said.

“The family meeting considered that the deceased left a Will and appointed his wife, Aurelia Joseph Ndamcho as the executor.”

On further questioning, the witness said Exhibit P.3 reflected a true proceedings of the deceased’s clan meeting.

PW4 Mugaya Kaitila Mtaki, learned advocate based in Tabora, said the deceased was well known to him for many years.

He identified him as a famous businessman, brother to George and Gerald Ndamcho who stayed near his residence and subsequently, the deceased became his client in various legal issues.

Among the assignments given to PW4 by the deceased, was preparation of his last Will on 15th September 2009.

Mr. Mtaki named other witnesses to the Will as George Aloyce Ndamcho and Gerald Aloyce Ndamcho.

Examined by Mr. Gervas Beatus, PW4 said:

“According to the Will, the deceased appointed his wife Aurelia Joseph Ndamcho as executor of the will.

I therefore recognize this Will as valid and was signed or executed in my presence”.

The issue in this matter is whether the petitioner is entitled to grant of the probate.

Section 24 of the Probate and Administration of Estates Act (Supra) provides that probate may be granted only to an executor appointed by the Will.

The law provides that such appointment may either be express or by necessary implications (Section 24 of Cap. 252 R.E 2019).

In the present case, there is Exhibit P.1, a Will of the late Ndamcho Stanley Charles t/a Wadadu Boys Enterprises who is also known as Joseph Aloyce Ndamcho.

In item 1 of the Will, the deceased expressly appointed his wife, Aurelia Joseph Ndamcho as an executor.

The four witnesses who testified in this case were in agreement that the Will was genuine, valid and reflected wishes of the deceased.

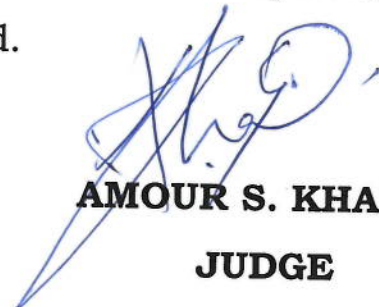
Upon examination of the petition, the exhibits on record and analysis of the testimonies by PW1, PW2, PW3, and PW4, I am satisfied that the petition was properly instituted and meets the legal threshold for its grant.

Consequently, and for the above stated reasons, this probate is granted and the petitioner is thus appointed an executor of the estate of the late Joseph Aloyce Ndamcho.

Since this matter was not disputed, I make no order as to costs.

It is so ordered.




AMOUR S. KHAMIS
JUDGE
8/7/2022