

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION No. 73/2021

(Arising from Probate and Administration Cause No. 07/2020)

In the Matter of the Estate of the Late DR. DAVID FELIX BWOGI

AND

**In the Matter of Application for Revocation by MKAMI BEDA KYANYARI (as
the Parent/Guardian of TANDY CLEO DAVID)APPLICANT**

VERSUS

HENRY JONATHAN BWOGI RESPONDENT

Last Order: 16th May 2022
Ruling date: 20th July 2022

R U L I N G

MANGO, J

The Respondent petitioned and was granted letters of administration of the estate of the late Dr. David Felix Bwogi on 18th August 2020 via Probate and Administration Cause No. 07 of 2020 filed before this Court. The Applicant is a mother of one of the heirs of the deceased estate, the deceased son namely, Tandy Cleo David. She filed this Application under Rule 29(1),(2),(3) and (4) of the Probate Rules G.N NO. 10 of 1963 and section 49 (1)(a), (b), (c), (d), (e) and (2) of the Probate and Administration of Estates Act, Cap.

352 R.E 2002 and section 5 and 6 of the Administrator General (Powers and Functions) Act, [Cap. 27 R.E 2010] praying for the following orders.

- (i) An order to remove one Henry Jonathan Bwogi administrator of the Estate of the late Dr. David Felix Bwogi and Revoke letters of administration which was granted through probate and Administration Cause No. 7/2020.
- (ii) An order to restrain the Respondent and, or interested parties from disposing of or distribution of the estate or use/occupation of the said estate and other properties pending determination of this application.
- (iii) An order to appoint and grant letters of administration to the administrator General in place of the Respondent.
- (iv) This court may be pleased to order the Respondent to distribute the estate and other benefits of the deceased to the deceased heirs in equal proportions.

The Application is supported by the affidavit sworn by Mkami Beda Kyanyari. According to the affidavit the ground upon which the orders are sought is failure of the Respondent to file final accounts of the estate, Form 81 of the Probate Rules and non-involvement of the Applicant in the process of distribution of the deceased's estate. Para 10 of the affidavit indicates that the deceased heir namely, Tandy Cleo David (minor) has not received any property arising from the estate of the deceased who is his biological father.

The Respondent contested the Application and he filed a counter affidavit to that effect. Among the document that the Respondent annexed to his affidavit, is Final Accounts which was filed before the Court on 15th July 2022. Upon being served with the counter affidavit, the Applicant filed a reply thereto in which she raised the issue of unequal division of the deceased estate among the heirs.

On 16th May 2022 when the matter was called for hearing, the Applicant was represented by Johnson Msangi, learned advocate while the Respondent was represented by Philemon Mujumba, learned Advocate.

During hearing, the Applicant's counsel submitted on the non-involvement of the Applicant in the process of distribution of the deceased estate despite the fact that the Applicant is a guardian of one of the heirs of the deceased estate. According to him on 26th July 2021, the Applicant's son, Tandy Cleo David received Tshs 6,351,000/- as part of the estate of his deceased father. After that, the Applicant has never heard anything from the Respondent regarding the division of the remaining portion of the estate. The Applicant with the assistance of her advocate, perused court record and found that the Administrator has filed an inventory of the estate (Form 80) but Form No. 81 was missing. The learned counsel submitted further that, a subsequent

search revealed that Form No.81 was filed but it was tainted with unequal distribution of the deceased estate among the heirs. He explained the alleged unequal distribution that, the other two children of the deceased, Jaden and Dylan received a greater share compared to Tandy Cleo David with no justification.

In his Response, learned counsel for the Respondent registered his concern on the submission made by the Applicant's counsel. He urged that, the submission is not in support of the application before this Court but rather unequal distribution of the deceased estate. He argued that, the Respondent did not have an opportunity to counter the same as, the issue of unequal distribution was raised in the Applicant's reply to the Respondent's counter affidavit. The learned counsel referred this Court to the final accounts document which was annexed to the Respondents counter affidavit as evidence that the said Tandy Cleo David received his share in the deceased estate. In his rejoinder, the Applicant's counsel reiterated his submission in chief and adopted the contents of the Applicant's reply to counter affidavit to form part of his rejoinder submission.

I have considered submissions made by both parties and court record, pleadings filed by the parties. According to the Applicant's affidavit, what

search revealed that Form No.81 was filed but it was tainted with unequal distribution of the deceased estate among the heirs. He explained the alleged unequal distribution that, the other two children of the deceased, Jaden and Dylan received a greater share compared to Tandy Cleo David with no justification.

In his Response, learned counsel for the Respondent registered his concern on the submission made by the Applicant's counsel. He urged that, the submission is not in support of the application before this Court but rather unequal distribution of the deceased estate. He argued that, the Respondent did not have an opportunity to counter the same as, the issue of unequal distribution was raised in the Applicant's reply to the Respondent's counter affidavit. The learned counsel referred this Court to the final accounts document which was annexed to the Respondents counter affidavit as evidence that the said Tandy Cleo David received his share in the deceased estate. In his rejoinder, the Applicant's counsel reiterated his submission in chief and adopted the contents of the Applicant's reply to counter affidavit to form part of his rejoinder submission.

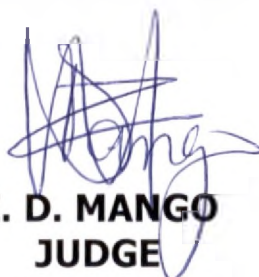
I have considered submissions made by both parties and court record, pleadings filed by the parties. According to the Applicant's affidavit, what

moved the Applicant to file the application at hand is failure of the Respondent to file Final Accounts of the deceased estates. Final Accounts, Form 81 of the Probate Rules, 2002, contains distribution of the deceased estate. In his counter affidavit the Respondent indicates that Tandy was allocated a number of properties that formed part of the estate of his deceased father and that the final accounts were filed on 15th July, 2022, a few months after the Applicant has filed this Application on 30th March, 2022. After receipt of the counter affidavit, the Applicant challenged the distribution of the deceased's estate contained in the copy of the final accounts alleging unequal distribution of the deceased estate. It should be noted that unequal distribution was not raised in this Application for revocation of letters of Administration to the Respondent. I am of a considered view that the issue of unequal distribution of the deceased estate merely emerged as an afterthought after the Applicant learnt on the existence of the final accounts filed by the Respondent. Had the issue been raised in the Application, the Respondent would have an opportunity to provide facts in his counter affidavit on what guided him in distribution of the deceased estate. In such circumstances, I agree with the Respondent's counsel that, if the Court will determine the issue of unequal distribution

basing on the pleadings in this application, the Respondent's right to be heard will be infringed. Right to be heard is a constitutionally guaranteed right to every party which this Court cannot bless its infringement.

Given the fact that, the Applicant's application for revocation of letters of administration of the deceased estate was grounded on the Respondent's failure to file final accounts which have already been filed, I find this Application to be over taken by events. If the Applicant is not satisfied with the distribution of the deceased estate, he should challenge the same via a fresh application in which both the Applicant and the Respondent will be heard.

For those reasons, the Application is hereby struck out for being overtaken by events. Given the nature of the application and the relationship of the parties to this application, I do not award costs.



Z. D. MANGO
JUDGE
20/07/2022