

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM
PROBATE AND ADMINISTRATION CAUSE NO. 76 OF 2016
IN THE MATTER OF THE ESTATE OF THE LATE EVA DAVID MTAVANGU
AND
IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION
BY ANTHONY DAVID MTAVANGU**

RULING

Last Order: 21/06/2022

Ruling: 22/07/2022

MASABO, J.:-

On 3rd April 2019 this court appointed Anthony David Mtavangu and Allen Mollel as joint administrators of the estates of the late Eva David Mtavangu. Further to the appointment, they were ordered to file an inventory within six months and to render accounts of the estate within a year after their appointment. However, this time lapsed before exhibiting the inventory and final accounts owing to a misunderstanding between themselves over the proper administration a house located at Boko which is purportedly the most valuable asset in the estate. The first administrator filed an application for extension of time whereas the co-administrator, drew an inventory and filed it in court.

Upon hearing both parties, on 3rd June 2020, this court enlarged the time to allow the applicant to file the inventory in terms of rule 110(1) of the Probate Rules and ordered the co- administrator to rectify the inventory already filed in court to include information that had been left out. It held further that, both administrators should file the inventory within 6 months.

This too did not work. On 3rd December, 2020 the co- administrator filed an inventory while the first administrator did not. Appearing in court on 21/10/2021, the counsel for the 1st Administrator, Mr. Imam Daffa prayed that the matter be stayed pending hearing and determination of miscellaneous applications filed in this court by the deceased husband's and another one by one of the administrators by the parties. The co-administrator was discontented. He passionately argued that the prayer is devoid of merit as all the applications referred by the counsel seek for revocation of letters on grounds that the administrators have failed to exhibit the inventory and final accounts owing to misunderstandings. He proceeded that, having filed the inventory and availed a copy to the first administrator, there is no point for delaying the matter further. He prayed that the inventory he has filed be adopted and the matter proceed to the next step.

Allowed to address the court on compliance with the court order for enlargement of time, the co-administrator who was self-represented, argued that having obtained the leave for enlargement of time, the first administrator continued to be elusive. Although he contacted him and availed him a copy of the inventory filed in this court, he refused to cooperate. Under the circumstances and guided by section 104 of the Probate Act and fearful that the leave for extension of time would lapse prior to the filing of the inventory, he filed the inventory and final accounts. Based on the decisions of this court in **Saada Rashid v Abdallah Rashid**, PC Civil Appeal No. 12 of 2020, he argued that since the validity of the inventory has not been challenged, it is prudent and justifiable that it be adopted as the filing of the inventory by one administrator is permissible under section 104.

Moreover, he submitted that, the inventory he has filed in court is accompanied by final accounts of the estate. Therefore, as the filing of the account implies closure of the estate, it is in the interest of justice that the probate cause be marked as closed. However, when probed by the court on the actual status of the estate, he submitted that there was a serious misunderstanding over the house located at Boko area which has stalled the

administration of the estate. Probed further about the rest of the estate, he submitted that money obtainable from the deceased's employment benefits is lying in the court's account waiting for distribution which has so far not taken place owing to the dispute. Thus, implicitly, the estate is not ripe for closure.

On his part, Mr. Daffa prayed that the inventory filed by the co-administrator be expunged as it was offensive of the order of this court which required the co administrators to file a joint inventory. He submitted that much as it is true that section 104 gives a leeway for one administrator to perform the duties which ought to have been performed by all administrators, that can only be done if there is no order to the contrary. Since in the present case there was a court order directing both administrators to file the inventory, an inventory filed by one administrator cannot be entertained. The cases cited by the co-administrator, are therefore inapplicable.

The main issues pending determination is whether the inventory and final accounts filed by the co-administrator on 3/12/2020 are legally tenable.

Section 104 of the Probate Act which is at the center of the contention by the parties provides that:

When there are one or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration [emphasis added].

Before advancing on this provision, it is of utmost important for the parties to be reminded that, the office of an administrator of the estate is a delicate one and comes with crucial responsibilities. The main responsibilities awaiting the administrator upon grant of letters is to collect all the assets of the estates, pay debts due to the deceased if any, and faithfully distribute all the residuals to the heirs/beneficiaries (**Sekunda Mbwambo v. Rose Ramadhani** [2004] TLR 439). A person appointed an administrator is expected to dutifully discharge these responsibilities. The failure of which attracts stern consequences.

In cases where there are two administrators as in the present case, it is expected that they will render each other full cooperation in discharge of the functions vested in their office as the essence of having two administrators

is to harmonize the process of administration. The administrators are expected to work with cooperation to safeguard the interest of the beneficiaries. As held by the Court of Appeal in **May Mgaya vs Salimu Saidi (Administrator of the Estate of the Late Saidi Salehe) & Another** [2019] 1 T.L.R. 486 [CA]:

As co-administrators the respondents were jointly and together responsible for everything in respect of the administration of the estate including exhibiting in court an inventory containing a full and true estimate of all the properties, debts and credits (section 107(1) of the Act) as well as distributing to the rightful heirs the residue after paying all the debts and liabilities (section 108(1) of the Act).

The co-administrators herein have exactly done the opposite. Instead of jointly administering the estate, they have not only failed to cooperate but accuse each other for being the reason behind the stalemate such that it is not easy to tell with precision who is indeed the cause of the stalemate. As the accusations were merely assertions from the bar, I would not advert on them further. It suffices to just state that, as held in **May Mgaya vs Salimu Saidi (supra)**, any default, in exhibiting the inventory and statement of account would attract consequences on all administrators.

Reverting to section 104 of the Probate Act, it is crystal clear from the self-explanatory content of this provision that, as correctly submitted by the parties herein, it provides a room for one of the administrators to perform a function which would have ordinarily been done jointly by both administrators and this includes the filing and exhibiting of inventory and final accounts in court. The exercise of such function by one of the administrators in exclusion of the other, is only permissible where, as correctly argued by Mr. Daffa, there is no any direction to the contrary in the will or letters of administration. In the present case it is undisputed that, although the letters of administration granted to the co-administrators bears no directive to the contrary, there is on record, an adverse order dated 3rd June, 2020 by which this my learned sister Ebrahim, J while addressing the validity of an inventory filed by the co-administrator directed that:

the same must be rectified to include all the prerequisite information that have been left out. For the purpose of clarity **both administrators** should file the inventory within six months from today.

Clear as it is, by this order it was longer open for one administrator to file the inventory to the exclusion of the other. I understand the good will of the

2nd administrator to comply with the provision of section 107 of the Probate Act and finalizing the administration of this estate which has stretched for too long, it was incumbent for both administrators to work closely together, exhibit the inventory, distribute of estates to the beneficiaries and afterwards, file the final accounts as per the court order. Failure to file the inventory within the time enlarged by the court and filing of the exhibit and final accounts by one of the administrators are all contemptuous acts to the Court Order.

It is a cardinal principle that, court orders do not issue in vain. Unless varied by the same court or higher court a court order, valid or not, must be respected and enforced. As stated in a highly persuasive authority in **Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another**, (2005) 1KLR 828:

The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by Court of competent jurisdiction, to obey it unless and until that order is discharged.

Since the administrators in the present case were aware that there was a court order requiring them to jointly file the inventory and final accounts within six months, it was not open for them to ignore the court order and proceed at their convenience. As none of them had challenged the order in a higher court, they were duty bound to abide by it. Thus, just as the first administrator erred by not filing the inventory, the 2nd respondent erred by solely filing the inventory and final account. As held in Kenyan case of **Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 others** [2017] eKLR, a court must not allow its orders to be disobeyed without consequences as the whole essence of litigation as a vehicle for administration of justice will be lost if orders issued by court are not complied with in full. In consequences, the administrators are warned and the inventory and final account filed by the co-administrator is hereby expunged from the record for offending a lawful court order. For similar reasons and for the reasons that the accounts were prematurely filed prior to the distribution of the estate, the accounts filed by the co-administrators are expunged from the record.

As there are other miscellaneous applications pending determination, it is prudent that having made the foregoing order, this matter be stayed pending determination of the pending miscellaneous applications. Each party will should its respective costs.

DATED at DAR ES SALAAM this day 22nd day of July, 2022

X 

Signed by: J.L.MASABO

J.L. MASABO

JUDGE

