

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB – REGISTRY OF MWANZA**

**AT MWANZA**

**PROBATE & ADMINISTRATION NO. 07 OF 2021.**

**IN THE MATTER OF THE ESTATE OF THE LATE JAPHET MBOGO GILYOMA**

**AND**

**IN THE MATTER OF APPLICATION FOR LETTERS OF ADMINISTRATION BY:  
ALICE KAMBONA GILYOMA AND ROSE MBOGO GILYOMA**

**ALICE KAMBONA GILYOMA .....1<sup>ST</sup> PETITIONER/PLAINTIFF**

**ROSE MBOGO GILYOMA .....2<sup>ND</sup> PETITIONER/PLAINTIFF**

**VS.**

**ADAM METHUSELA KABADI.....1<sup>ST</sup> CAVEATOR/DEFENDANT**

**ADAM METHUSELA GILYOMA.....2<sup>ND</sup> CAVEATOR/DEFENDANT**

**JAMES JAPHET GILYOMA.....3<sup>RD</sup> CAVEATOR/DEFENDANT**

**JUDGMENT**

*2<sup>th</sup> & 21<sup>st</sup> September, 2022*

***Kahyoza, J.:***

**Alice Kambona Gilyoma** and **Rose Mbogo Gilyoma** petitioned to this Court for grant of letters of administration of the late **Japhet Mbogo Gilyoma** who died intestate on 08<sup>th</sup> March, 2021 at Bugando Hospital in Mwanza. Before the Court granted the letters of administration, **Adam Methusela Kabadi**, **Adam Methusela Gilyoma** and **James Japhet Gilyoma** (the caveators) entered caveats in terms of section 58 (1), (5) of the Probate and Administration of Estates Act Cap. 352 [R.E 2002] (the Act). The petition turned into a civil suit, whereby the Petitioners and the Caveators became the Plaintiffs and Defendants, respectively.

The court framed the following issues-

1. Whether the petitioners were proposed by clan or family meeting.
2. Whether petitioners are fit to be appointed in exclusion of the first caveator.
3. Whether the caveators had interest against this deceased's estate.
4. To what reliefs are the parties entitled to?

A backdrop of the dispute is that; following **Prof. Japhet Mbogo Gilyoma's** death, his wife, **Alice Kambona Gilyoma** and his daughter **Rose Mbogo Gilyoma** petitioned for letters of administration of his estate. **Prof. Japhet Mbogo Gilyoma** died intestate. The late **Prof. Japhet Mbogo Gilyoma** was survived by a wife and several children some of whom, their paternity is an issue central to the dispute. The late **Prof. Japhet Mbogo Gilyoma's** wife and his relatives fought a legal battle before **Prof. Japhet Mbogo Gilyoma's** body was buried. The **Prof. Japhet Mbogo Gilyoma's** wife wanted to bury her husband's body at Kapripoint within Mwanza and the relatives wished to bury the body at Kisesa, the late **Prof. Japhet Mbogo Gilyoma's** home village.

The family won the battle. They buried the late **Prof. Japhet Mbogo Gilyoma's** body at Kisesa. **Alice Kambona Gilyoma**, late **Prof. Japhet Mbogo Gilyoma's** wife did not bury her husband. She did not travel to Kisesa to attend the burial ceremonies. The late **Prof. Japhet Mbogo Gilyoma's** family member convened a meeting, which **Alice Kambona Gilyoma** did not attend but **Rose Mbogo Gilyoma** attended. The family meeting proposed among other things, **Adam Methusela Kabadi** to petition for letters of administration of the late **Prof. Japhet Mbogo Gilyoma's** estate.

Before **Adam Methusela Kabadi** petitioned for letters of administration of the late **Prof. Japhet Mbogo Gilyoma's** estate, **Alice Kambona Gilyoma** and her step daughter **Rose Mbogo Gilyoma** petitioned. **Adam Methusela Kabadi, Adam Methusela Gilyoma** and **James Japhet Gilyoma** entered caveats. **Adam Methusela Kabadi** was the late **Prof. Japhet Mbogo Gilyoma's** nephew. **Adam Methusela Gilyoma** was late **Prof. Japhet Mbogo Gilyoma's** cousin. **James Japhet Gilyoma** is the late **Prof. Japhet Mbogo Gilyoma's** first son and **Alice Kambona Gilyoma's** step son.

The caveators claim that the petitioners are not fit persons to be appointed to administer the deceased estate because; **one**, the family meeting did not propose them to petition for letters of administration of the estate; **two**, they are not trustworthy as they did not list all the deceased's property; and **three**, they maliciously omitted five children alleged and known to be deceased's children.

The first caveator, **Adam Methusela Kabadi** claims to be a suit person to administer the late **Prof. Japhet Mbogo Gilyoma's** estate as he is impartial, trustworthy and the clan meeting appointed him to administer the deceased's estate. The second and third caveators who are **Adam Methusela Gilyoma** and **James Japhet Gilyoma** respectively, supported **Adam Methusela Kabadi's** claims.

The petitioners and all the caveators testified and their advocates made submissions, which I refer while answering issues.

### **Were petitioners proposed by clan or family members?**

The first issue is whether clan or family members proposed the petitioners to administrate the late **Prof. Japhet Mbogo Gilyoma's**

estate. The answer to the issue is a bit tricky. The evidence on record showed that there were two different meetings. The first meeting was conducted on 26/03/2021 at Kisesa involving clan members. The deceased's wife did not attend the meeting at Kisesa. The clan members' meeting held at Kisesa nominated **Adam Methusela Kabadi** to petition for letters of administration of the deceased's estate. Minutes were produced, admitted and marked Exh. D.1.

A second meeting was conducted on 25.5.2021 involving the some of the family members of late **Prof. Japhet Mbogo Gilyoma**. According to Exh. P.E. 2, the late **Prof. Japhet Mbogo Gilyoma's** three children, Joseph Masha, Rose Meja and Elizabeth attended a second meeting, which was chaired by **Alice Kambona Gilyoma**. The second meeting nominated the late **Prof. Japhet Mbogo Gilyoma's** wife, **Alice Kambona Gilyoma** and his daughter **Rose Mbogo Gilyoma** to petition for letters of administration of his estate.

The petitioners' advocate did not address the issue whether clan or family members proposed the petitioners to administrate the late **Prof. Japhet Mbogo Gilyoma's** estate. He proposed to consolidate the first issue and second issue to form one issue whether it was convenient to appoint the first caveator, **Adam Methusela Kabadi** instead of the petitioners, who are the first choice in the law of appointment. He did not answer the issue.

On the part of the caveators, their advocate submitted that the meeting which was attended by 72 members of the deceased's clansmen nominated **Adam Methusela Kabadi** to administer the deceased's estate. He relied on Exh. D1 to establish that a clan meeting was convened. He added that the petitioner did not testify that the clan

appointed them to petition for letters of administration of the deceased's estate.

As pointed out above, two distinct groups of members of the late **Prof. Japhet Mbogo Gilyoma** convened meetings to nominate person(s) to petition for letters of administration of the deceased's estates. Minutes of the meetings were tendered unopposed. I reviewed the minutes of the meetings, to say the least, I will not venture to determine which one of the two meetings was valid. I will simply say that the petitioners were nominated at the meeting conducted on 25.5.2021 and the meeting conducted on 26/03/2021 nominated **Adam Methusela Kabadi** to administer the deceased's estate. **Rose Mbogo Gilyoma** had an advantage to attend both meetings.

The reason for my not dwelling on the issue whether the petitioners were appointed by a clan meeting is simple. The law is settled that it does not provide that a person must be nominated by deceased's clan members to petition for letters of administration of the deceased's estate. Rules 39, 71 and 72 of the Probate Rules G.N. No. 10/1963 stipulate what are important documents to be attached to the petition for letters of administration of the deceased's estate. Rules 39 of the Probate Rules states-

*39. A petition for letters of administration shall be in the form prescribed in Forms 26 or 27 set out in the First Schedule, whichever is appropriate, and shall be accompanied by the following documents-*

- (a) subject to the provisions of rule 63 a certificate of death of the deceased signed by a competent authority;*
- (b) an affidavit as to the deceased's domicile;*

- (c) an administrator's oath;*
- (d) subject to the provisions of rule 66, an administration bond;*
- (e) a certificate as to the financial position of the sureties;*
- (f) subject to the provisions of rules 71 and 72, consent of the heirs; and*
- (g) in the case of an application for a grant to a sole administrator, an affidavit as required by rule 32*

This Court in **Angela Philemon Ngunge Vs. Philemon Ngunge**, (Probate and Administration of Estates Appeal No. 2010, HC (T) Songea District Registry) Chocha, J. had this to say:

*"Therefore, the need to have the clan minutes as supportive documents to the application for appointment of an administrator, **is a matter of practice and not law**. This is why clan minutes, will only propose a candidate. **The appointment is court's duty. A candidate therefore cannot rely on the clan meetings' minutes as authority for him to function as the administrator.**"*

I will answer the first issue that family members proposed petitioners to apply for letters of administration of the deceased's estate. I also find that **Adam Methusela Kabadi**, the first caveator was proposed by members of the clan meeting to petition for letters of administration of the deceased's estate. Since there is no legal requirement that a person must be nominated by family or clan members of the deceased to petition for letters of administration of the deceased's estate, clan or family meetings have no impact.

The basic requirement involving family members of the deceased is for them to give written consent or otherwise to a person petitioning for

letters of administration of the deceased's estate. Rule 71 of the Probate Rules states-

***71.-(1) Where an application for the grant of letters of administration is made on an intestacy the petition shall, except where the court otherwise orders, be supported by written consent of all those persons who, according to the rules for the distribution of the estate of an intestate applicable in the case of the deceased, would be entitled to the whole or part of his estate. (emphasis is added)***

The law further provides for a situation under which a consent cannot be obtained. Rule 72 of Probate Rules explains what must be done where consent is not available.

**Are petitioners fit to be appointed in exclusion of the first caveator?**

Having answered the first issue, now move to consider whether petitioners are fit to be appointed in exclusion of the first caveator. The petitioners deposed that they are proper persons to be appointed administratrix of the deceased's estate. The caveators deposed that the petitioners are not fit persons to administer the deceased's estate but the first caveator, **Adam Methusela Kabadi**, who is a trustworthy person to administer the deceased's estate.

Indisputably, the first petitioner, **Alice Kambona Gilyoma** was the late **Prof. Japhet Mbogo Gilyoma's** wife whereas the second petitioner **Rose Mbogo Gilyoma** was one of deceased's children. **Adam Methusela Kabadi**, one of the caveators, who prays to be granted letters of administration of the deceased's estate was the late **Prof. Japhet Mbogo Gilyoma's** nephew.

**Adam Methusela Kabadi (Dw1), Adam Methusela Gilyoma (Dw2)** and **James Japhet Gilyoma (Dw3)** deposed that the petitioners are not fit persons to be appointed to administer the deceased estate because; **one**, the family meeting did not propose them to petition for letters administration of the estate; **two**, they are not trustworthy as they did not list all the deceased's property; and **three**, they maliciously omitted five children allegedly to be deceased's children.

The caveators' advocate submitted strongly regarding the contention the petitioners are unfit persons because the clan meeting did not appoint them to be administratrixs of the deceased' estate. He insisted that even if, there is no statutory requirement or rule on the aspect of clan minutes as it is a principle which was developed by courts through practice, minutes of the clan meetings are important because; **one**, they act as a forum to filter things before going to court; **two**, they tell the court (something which may not be correct always) that the person before it has support from the clan/ family; **three**, a person who failed to get the minutes for some reason can still file his case provided he makes a statement (by an affidavit or otherwise) stating reasons why he could not attach the minutes; **Four**, minutes being important must be attached to the petition, save where it has been impossible to obtain them on reasons beyond the control of the petitioner. He cited the case of **Shabani Mussa Mhando v. Ester Msafiri Mhando** (Probate and Admn. Cause No. 75/2020 High Court Dsm (Unreported)).

I pray to differ with the decision in **Shabani Mussa Mhando v. Ester Msafiri Mhando** (supra) that the minutes of the clan meeting must be annexed to a petition for letters of administration of the deceased's estate under the Act. The law is clear as to what documents are required

to accompany a petition for letters of administration of the deceased's estate under the Act. There is no requirement for minutes of a clan or family members. To impose such a requirement would be to overburden a petitioner. A petitioner is required to obtain consent from heirs and in the absence of such consent he has to file an affidavit to explain. (See rule 72 of the Probate Rules). Thus, to require a petitioner for letters of administration of the deceased's estate to annex minutes of a clan/family meeting and if he has no minutes, to file an affidavit to account for his failure to obtain minutes would be nothing but to overstrain that petitioner. It is sufficient for a petitioner for letters of administration of the deceased's estate **under the Act** to annex heirs' consent certificates and if he cannot obtain them to annex an affidavit.

The rationale, for attaching minutes of clan meeting to a petition, is said to assure the court that members of the clan/ family support the petitioner. Written Consent also does the same. Interested heirs declares their support to the petitioner to apply for letters of administration of the deceased's estate under the Act. I wish to associate myself with the decision **in the Matter of the late Col. Secilius Kutisa Fussi (Deceased) and in the matter of Application for Letters of Administration by Dorah Kawawa Fussi**, Prob & Admn Cause No. 57/2010. This Court held that-

*"1. Rules 38(f), 71 and 72 of the Probate Rules leaves me in no doubt that consent document is important in an application for letters of administration where the deceased died intestate.*

*2. Rule 71 of the Probate Rules is to the effect that where an application for the grant of letters of administration is made on intestacy, that application must be supported by written consent*

*of all those persons who, according to the rules for the distribution of the estate applicable in the case of the deceased, would be entitled to the whole or part of his estate."*

I wish to state that minutes of the clan/family meetings are important and play an important role nevertheless, they are not mandatory for commencing probate and administration proceedings in **the primary court** where there is no requirement for written consent from heirs. For probate and administration proceedings instituted under the Act, or before this Court, there is no requirement to annex minutes of clan/family members' meeting. It is sufficient to annex written consent to the petition ***for the grant of letters of administration is made on an intestacy of persons who, according to the rules for the distribution of the estate of an intestate applicable in the case of the deceased, would be entitled to the whole or part of his estate.***

The caveators' advocate submitted further that, the petitioners are unfit persons to administer the deceased's estate because they are not trustworthy. He submitted that they told lies. He contended that the first petitioner lied that she gave birth to one child by name JaneFrida. The evidence of **Adam Methusela Gilyoma (Dw2)** who was not cross-examined was that the first petitioner has never given birth to any child let alone JaneFrida.

Let us agree that the first petitioner lied that she had a child with the deceased, is that enough to disqualify her? My opinion is that, unless there is any other reason, the fact the first petitioner lied that she had a child with the deceased is not a sufficient ground enough to declare the first petitioner unfit to administer the estate. It is indisputable that the first petitioner, **Alice Kambona Gilyoma** was the late **Prof. Japhet**

**Mbogo Gilyoma's** wife. They lived as wife and husband for long period i.e from 1989. She has all rights like any other widow having a child or otherwise with the deceased.

In addition, the caveators deposed and their advocate submitted that, the petitioners are not fit persons as they are not impartial and fair. They contended that the petitioners are not impartial and fair they deliberately omitted five children in the list of heirs of the deceased's estate. This argument does not convince me. The petitioners told the court why they did not include the five children in the list of the deceased's children. The first petitioner **Alice Kambona Gilyoma (Pw1)** deposed that she did not know that the deceased had those children. She added at the time Allen was alleged born, the deceased had become impotent, so he was not capable of making a woman pregnant. The second petitioner deposed that she heard that her father, the deceased had children but she was not sure whether they are her siblings.

The evidence of **James Japhet Gilyoma (Dw3)** proved that the petitioners knew that he was one of the deceased's child and requested him to join the first petitioner to administer the deceased's estate. He declined the invitation. As to the rest of the children alleged to be the deceased's children **James Japhet Gilyoma (Dw3)** deposed that the first petitioner did not know that her husband had those children out of their wedlock, as he did not introduced them to her. **James Japhet Gilyoma (Dw3)** deposed during the cross-examination that-

*"I do not know if my late father introduced our younger sisters and brothers to my stepmother. It is proper for my step mother not recognize other children who were not introduced to her."*

I am of the firm view that the petitioners cannot be adjudged to be liars, impartial and unfair persons because there was no concrete evidence that the first petitioner knew the five children were among the deceased's children. I am not saying they are not or that they are the deceased's children but I am saying the petitioners and especially the first petitioner did not have knowledge or it has not been established that she knew that the deceased had other children. Not only that but also, I believe the complaint was rather to early. If there is evidence that are **Celine Japhet Gilyoma, Cecilia Japhet Gilyoma, Isaac Japhet Gilyoma and Allan Japhet Gilyoma** are the deceased's children and are left out at the time the administrators file the statement of accounts, they can sue to claim their share in the estate. It is conventional that children, even if born out of wedlock have a right to inherit from the estate of their deceased parents. (See section 10 of the Child Act, [Cap. 113 R.E. 2019]).

I wish to add that it is not upon this Court to declare whether or not Celine Japhet Gilyoma, Cecilia Japhet Gilyoma, Isaac Japhet Gilyoma and Allan Japhet Gilyoma are the deceased's children or whether they are entitled to inherit or not. This is a probate and administration whose mandate is appoint an administrator of the deceased's estate. I am fortified in position by the decision of the Court of Appeal in **Mariam Juma v. Tabea Robert Makange**, Civil Appeal No. 38 of 2008 CAT (unreported), where it was held that-

*"We are inclined to agree with Mr. Lutema that the High Court Judge went beyond his jurisdiction of handling a caveat filed opposing the appellant's petition for letters of administration. **The findings he made that the appellant was not the legal wife***

***of the deceased and that the appellant's children were not entitled to inherit from the deceased's estate were beyond the scope of his mandate in handling the caveat filed by the respondent.” (Emphasis added)***

There is yet another argument seeking to discredit the petitioners, that they excluded or included in the deceased's estate some property which belongs or does not belong to the deceased's estate, respectively. They specified that they omitted in the list, the deceased's residential home/house at Plot No. 3/2 Block 'A' Kisoko Luchehele in Nyamagana District, Mwanza Region from the estate of the deceased.

The petitioners deposed that after they consulted lawyers they got information that the house belongs to surviving person. The evidence and the records portray that, the house on Plot No. 3/2 Block 'A' Kisoko Luchehele in Nyamagana District, Mwanza Region was owned under joint tenancy between the 1<sup>st</sup> petitioner and the deceased. I am not saying that the house is not part of the deceased's estate but if it was owned under joint tenancy, I have no quarrel with that contention that the house belongs to surviving person. That is the legal position. It can therefore, not be a ground to discredit the petitioners. Persons saying the house on Plot No. 3/2 Block 'A' Kisoko Luchehele in Nyamagana District, Mwanza Region is part of the estate may institute claims.

Furthermore, the contention that the petitioners be discredited for excluding from the estate of the deceased some of the deceased's property is bound to fail as it was raised prematurely. I am alive of the fact that the law requires a petitioner for grant of letters of administration to state the deceased's property in the petition. However, that that list is not expected to be comprehensive at that stage. That is why after the

Court appoints a petitioner to administer the estate, his first task is to file an inventory. Thus, a complaint that some of the property forming the deceased's estate has been excluded, may be raised after the administrator/administratrix has exhibited an inventory of property of the deceased in Court and not at the time of his appointment. Section 107 of the Act provides that-

*107.-(1) An executor or administrator shall, **within six months from the grant of probate or letters of administration**, or within such further time as the court which granted the probate or letters may from time to time appoint or require, **exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits**, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and in the manner in which they have been applied or disposed of. (Emphasis is added)*

The law makes it an offence for the administrator to refrain from filing an inventory. Thus, the administrator has an inescapable duty to exhibit an inventory in the court and once he does that heirs or any other person may raise a complaint that some of the property forming part of the deceased's estate have been left out. The untimely complaint that the petitioners excluded or included property which forms or does not form part of the deceased's estate, respectively, cannot be a ground to discredit them.

Lastly, I will answer the question who between the petitioners, on one side and the first caveator, on the other, this Court finds appropriate and suitable person(s) to administrate the estate of the late **Prof. Japhet Mbogo Gilyoma**. My penchant is to appoint the petitioners to administrate the estate of late **Prof. Japhet Mbogo Gilyoma**. The reason of my inclination to grant letters of administration of deceased's estate to the petitioners is not farfetched; **one**, the petitioners have greater and immediate interest in the estate of the late **Prof. Japhet Mbogo Gilyoma**. The first petitioner, **Alice Kambona Gilyoma** was the late **Prof. Japhet Mbogo Gilyoma's** wife whereas the second petitioner **Rose Mbogo Gilyoma** was one of deceased's children. **Adam Methusela Kabadi**, the first caveator was the late **Prof. Japhet Mbogo Gilyoma's** nephew. **Adam Methusela Kabadi**, the first caveator cannot have greater and immediate interest than that of the deceased's wife and one of the deceased's children.

I apprehend a fact that **Adam Methusela Kabadi**, the first caveator deposed that he is there to protect the interest of the children born out of wedlock. That notwithstanding, he is a distant relative. The law makes it a condition that when two persons contest to be administrators the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests. **Adam Methusela Kabadi**, the first caveator has lesser or more remote interests than the petitioners.

In addition, the law states that where the deceased has died intestate, letters of administration of his estate may be granted to **any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased,**

would be entitled to the whole or any part of such deceased's estate. This rule eliminates **Adam Methusela Kabadī**, the first caveator. **Adam Methusela Kabadī**, the first caveator who is the late **Prof. Japhet Mbogo Gilyoma's** nephew is not entitled by any set of applicable rules for distribution of the estate of an intestate to benefit from the estate of the late **Prof. Japhet Mbogo Gilyoma**. He stands less or no chance to be appointed to administrate the estate of the late **Prof. Japhet Mbogo Gilyoma**. Section 33 of the Act, stipulates that-

*33.-(1) Where the deceased has died intestate, letters of administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.*

*(2) Where more than one person applies for letters of administration, it shall be in the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.*

*(3) Where no such person applies, letters of administration may be granted to a creditor of the deceased.*

*(4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly*

*administered, appoint such person as it thinks fit to be administrator; and in every such case letters of administration may be limited or not as the court thinks fit. (emphasis added)*

I totally agree with the advocate of caveators' submission that a person to be appointed to administer the estate of the deceased must be trustworthy and must enjoy trust and confidence of the dependents or beneficiaries. See the case of **Sekunda Bwambo V. Rose Ramadhani** [2004] TLR 439. I subscribe to that but I wish to add that we must not put aside the dictates of the law that the priority must be given to those who have interest in the estate and their interest is greater and immediate.

**Adam Methusela Kabadī**, the first caveator, may enjoy support of the clan members. The question we need to answer is whether all clan members are the **deceased's dependents or beneficiaries**. The answer is not all. Very few are the deceased's dependents or beneficiaries. There is also no evidence to establish that the number the **deceased's dependents or beneficiaries** who support **Adam Methusela Kabadī**, the first caveator are more than those supporting the petitioners. It ought to be born in mind that it is not just a number of clan members but a number of the deceased's dependents or beneficiaries, who supports a petitioner for grant of letters of administration, which matters. It is undisputable that not all clan members are dependents or beneficiaries of the deceased.

It is for the above reason and rules, I find any person qualifying to be appointed as an administrator is the one who according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased person, is entitled to a share of the deceased person's

estate. Invariably, this will include any heir, a spouse, a devisee or even a creditor of the deceased. This Court in the case of **Sekunda Mbwambo Vs Rose Ramadhan** (Supra) held that: -

***"An administrator may be a widow or widows, parents or child of the deceased or any close relative; if such people are not available or if they are found to be unfit in one way or another, the court has the power to appoint any other fit person or authority to discharge this duty".***

I have no strong reason, save that the first petitioner lied that she had a child with the deceased. It is true that the petitioners' advocate did not cross-examine **Adam Methusela Gilyoma (Dw2)** regarding the issue whether the first petitioner had a child with the deceased. That notwithstanding, the evidence of **Adam Methusela Gilyoma (Dw2)** must be approached with caution. **Adam Methusela Gilyoma (Dw2)** deposed that the first petitioner lied regarding her name. He deposed that the first petitioner's name is Joyce Kambona Gilyoma and not Alice Kambona Gilyoma. The first petitioner tendered a marriage certificate, Exh. P1, which was admitted without objection showing that her name was Joyce-Alice Kambona Gilyoma. Exh. P1 further provides that the late **Prof. Japhet Mbogo Gilyoma** contracted a Christian marriage on 3/10/1998 with Joyce-Alice Kambona Gilyoma and not Joyce Kambona Gilyoma. Thus, both names Joyce and Alice are the first petitioner's name. She did not lie to refer to herself simply as Alice. For that reason, the evidence of **Adam Methusela Gilyoma (Dw2)** should not be wholly accepted as true.

It was deposed and submitted that **Adam Methusela Kadi**, the first caveator is suitable person as he is a retired person and commanding

trust and respect from the clan members. I totally agree with that submission save that **Adam Methusela Kabadi**, lacks one qualification, he has no interest or has *lesser or more remote interests* in the estate of the deceased than the petitioners. I also do not subscribe to the submission that **Adam Methusela Kabadi** is impartial and will be fair to all beneficiaries or heirs. **Adam Methusela Kabadi** (Dw1) and **Adam Methusela Gilyoma** (Dw2) demonstrated animosity to the first petitioner so much so that given a chance they will revenge. **Adam Methusela Gilyoma** (Dw2) demonstrate his feeling of string dislike by calling her names. **Adam Methusela Gilyoma** (Dw2) went to the extent of telling lies about the first petitioner's name.

The evidence of **Adam Methusela Kabadi** (Dw1), **Adam Methusela Gilyoma** (Dw2) depicts that they and other family members disliked the first petitioner during the life time of the late **Prof. Japhet Mbogo Gilyoma** and quarreled with her regarding the issue where to the bury the body of the late **Prof. Japhet Mbogo Gilyoma**. Their antagonism did not end there as they are skirmishing as to who should administrate the late **Prof. Japhet Mbogo Gilyoma's** estate. Thus, I do not see **Adam Methusela Kabadi** (Dw1), being an impartial and fair administrator.

### **What reliefs are parties entitled to?**

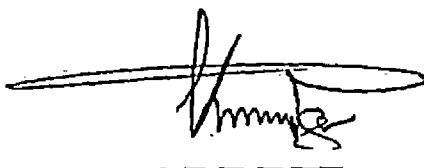
The caveators' advocate submitted and prayed the court to appoint the first caveator **Adam Methusela Kabadi** (Dw1) an administrator on account that he is impartial and fair, one side. On the other side, the petitioners' advocate submitted and prayed that the petitioners be granted letters of administration of the deceased's estate because they are first degree kindred and are of good character. I will not dwell on this

issue as I have already demonstrated why I prefer to grant letters of administration to the petitioners not to the first caveator.

In the end, I dismiss the all caveats and grant letters of administration of the late **Prof. Japhet Mbogo Gilyoma's** estate to the petitioners, **Alice Kambona Gilyoma** and **Rose Mbogo Gilyoma**. I make no order as to costs.

It is ordered accordingly.

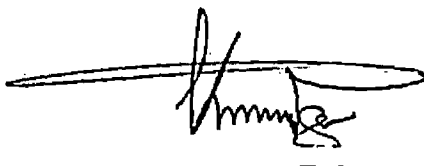
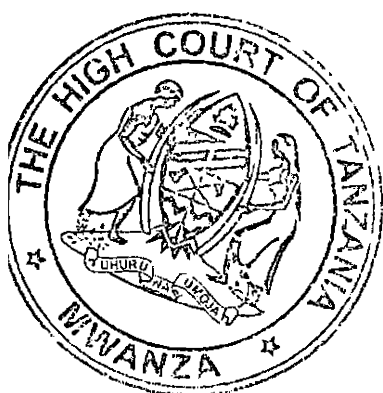
Dated at Mwanza this 21<sup>st</sup> day of September, 2022.



**John.R.Kahyoza.**

**Judge.**

**Court:** Judgment delivered in the virtual presence of Mr. Silas John for the petitioners and Ms. Ellen Mwakatobe advocate for caveators. B/C Jackline present.



**John.R.Kahyoza.**

**Judge.**