

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM SUB DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO. 566 OF 2021**

(Arising from Probate Cause No. 7 of 2008 before Hon Shangwa J.)

**WALTER FRANK MONGI.....1<sup>ST</sup> APPLICANT**  
**AINASIYA FRANK MONGI.....2<sup>ND</sup> APPLICANT**  
**GODLIVING FRANK MONGI.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**FRANK MLEKIO MONGI.....RESPONDENT**

**RULING**

Date of last Order: 13<sup>th</sup> September, 2022

Date of Ruling: 28<sup>th</sup> October, 2022

**E.E. KAKOLAKI J.**

The applicants here in by way of chamber summons, made under sections 49 (1) (a) and (e) of the Probate and administration of Estates Act [Cap. 352 RE 2002] (the PAEA), and Rule 29 of the Probate Rules, and any other enabling provisions, are moving this Court for an order of revocation of the letters of administration granted in favour of the respondent via Probate Cause No. 7 of 2008. The application is supported by an affidavit jointly sworn by the applicants. When served to the respondent the same met a

strong resistance as he filed the counter affidavit to that effect but later on prayed and granted leave to file the supplementary counter affidavit.

The application was disposed orally as both parties were represented. Applicants hired the services of Mr. Yusuph Kawembele while respondent enjoyed the services of Jerry Msanga, both learned counsels.

Submitting in support of the application, while adopting the joint affidavit, reply to counter affidavit and reply to supplementary counter affidavit by the applicants Mr. Kawembele argued that, the respondent who is their father was granted with letters of administration in respect of the estate of their late mother Esther Meshack Ndoje, via probate Cause No. 7 of 2008. According to them, the respondent has been acting unfairly to the tune of denying them with rights and peaceful enjoyment of the estate as beneficiaries. The applicants laments further that, due to mistreatments, assault and death threats from the respondent, were forced to vacate the premises constituting part of the estate, and since his appointment the respondent has been making decisions regarding the estate without their involvement including constructions on the property without notifying them to the extent of causing nuisance, as one of the construction activity involved construction of a dove house close to their windows during their stay in the

house. They added that, the respondent in several times failed to pay bills such as water bills and electricity bills which caused trouble to the applicants and other beneficiaries, leave alone denial of some basic rights to them example, respondent's act of locking the gate, the act which succumbed the applicants to sleep in the car or jump the fence wall, acts which endanger their life.

The above stated aside, the applicant contend the respondent has failed to file inventory and accounts in relation to the estate within time as required by the law under section 107(1) read together with section 108 (1) of the PAEA, without reasonable cause. The failure he mentioned was in infraction of the provisions of section 49 (1) (e) of PAEA, which provides for the conditions for revocation of the administrator to include failure to exhibit the inventory of the estate on the specified time. To fortify his stance, he cited the case of **Joseph Mniko and Others**, Probate and administration Cause No. 48 of 1996. Mr. Kawembele argued further that, since there is odd relation amongst the parties, it is obvious that the respondent will not act fairly towards the applicants, has lost the qualification of being the administrator of the estate, he stressed. He placed reliance in the case of **Delfina Emily Ngowi vs Answer Africans Mushi**, Pc Civil Appeal No. 13

of 2021, where the court held that, where there is ill relationship between the administrator and beneficiaries the latter cannot lawfully administer the estate. According to him, the respondent has sold some deceased items and house hold items and distributed some of the deceased house hold items without involving the applicants as the beneficiaries. Under the circumstances, the applicants implore this court to find that, it is for the interest of justice that the prayer sought in the chamber summons be granted.

Responding to the above submission Mr. Msamanga also prayed to adopt the contents of the respondent's counter affidavit together with supplementary counter affidavit to form part of his submission. He then indicated from the outset that, this application lacks merit hence should be dismissed.

He argued that, the application was filed under section 49 (1) (e) of the PAEA, but the same has been overtaken by event as the respondent was granted by this Court an extension of time to file the inventory in Misc. Application No. 74 of 2022 before Mango, J on 26/08/2022 and filed the inventory and final accounts since 30/08/2022. In his view the reasons for which this application was preferred has been cured hence it will be unjust

and meaningless to revoke respondent's appointment. Mr. Msamanga said, under section 108 (1) of PAEA, it is the duty of the administrator to distribute the estate of the deceased which duty the respondent has already discharged. Concerning the submission that there is odd relationship between parties, Mr. Msamanga submitted that, the same cannot be good ground for revocation of grant of letters of administration. Concerning the cited cases by Mr. Kawembele, he implored this Court not to apply them as he was not supplied with the same hence denied with the right to respond to. He finally reiterated his prayer for dismissal of application.

In a short rejoinder Mr. Kawembele argued that, applicants were not aware of the fact that the respondent was extended with time to file the inventory and accounts of the estate and that he had already filed the same. He thus requested the court to disregard the information supplied by the respondent in support of his submission that the application is overtaken by event.

I have dispassionately considered the contending submissions by the learned counsels from both sides with keen interest and perused the affidavit, counter affidavit and supplementary counter affidavit as well as the reply to the counter affidavit and reply to the supplementary counter affidavit. In my opinion, the issue which calls for determination by this court is whether the

applicant had advanced sufficient reasons warranting this court grant the prayer for revocation of the letters of administrator by the respondent.

In the present application applicants allege that, since his appointment as administrator of the deceased in 2008, the respondent failed to file inventory and accounts of estates within the specified time as required by the provision of section 107 of the PAEA, and his omission was without justifiable reasons. Looking at the pleadings, it is uncontroverted fact that, until the filing of this application on 4<sup>th</sup> November 2021, the respondent was yet to file either inventory or accounts of the said estate, thus applicants had a strong reason to file this application for revocation of the granted letters of appointment as stated under section 49 (1) (e) of PAEA. For clarity the said section provides that:

*49.(1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons:  
(e) That the person to whom the grant was made has **willfully and without reasonable cause** omitted to exhibit an inventory or account in accordance with the provisions of Part IX or has exhibited under that Part an inventory or account which is untrue in a material respect.*

Interpreting the above section, it is without doubt the same suggest that, revocation is not automatic merely because the executor or administrator

has failed to do, has done or omitted to perform her duties or functions provided or has performed them fraudulently, ignorantly or inadvertently. The court has to consider the reasons that prevented the party from so complying or omitting to do before his/her appointment is revoked. See the case of **John Sylvester Ngutse & others Vs. Anna Lori Sulle**, Civil Appeal No. 181 of 2020.

In his counter affidavit, specifically at paragraph 5, respondent averred that the applicants contributed to his delay in discharge of his obligation as have been frustrating. And further in paragraph 12, of the counter affidavit that he filed an application for extension of time before this Court seeking to file an inventory out of time in Misc. Civil application No. 74 of 2022, which application was granted on 26<sup>th</sup> August, 2022 and that the respondent had already filed the inventory on 30/08/2022. Following the above submission this Court ordered the respondent's counsel to supply the said decision of this Court for consideration in which he did.

As alluded to earlier on, the applicants had a genuine reasons when filling this application but in my profound view the same have been watered down by the fact that, respondent has already filed the inventory before the court by the permission of this Court in Misc. Civil Application No. 74 of 2022 dated

26/08/2022, in which this Court took note of. I could have granted this application for revocation for the reasons supplied by the applicant. However, after considering the fact that, the respondent has filed the inventory, I would agree with Mr. Msamanga's submission that the application is overtaken by event as the reasons from which this application was filed has been cured. In essence granting revocation at this point in my considered view, will be at the expenses of the heirs as it was the findings of this Court in Misc. Civil Application No. 74 of 2022 cited above, since they will be required to commence probate proceedings afresh at their own detriment. Notably, speeding administration of the estate and distribution of estate assists the beneficiaries to enjoy the fruits of the estate, which is the spirit of this Court. Since the respondent has already started performing his obligation though lately, wisdom dictates that this Court should refrain from revoking his appointment as that is cherishing the spirit of the rule that, litigation should come to an end.

It should be noted that determination of probate matters require calls for application of Solomonic wisdom, in making sure that the intended heirs of the deceased earn and enjoy the fruits of the estate timely. It is not gainsaying to note here that, being administrator of the deceased does not



mean gaining an advantages from the estate but rather discharging responsibility of collecting and distribution of the deceased estate to the responsible heirs. Such misconception and the uncalled for habit of administrators to remain in office for so long has been a source and the cause of conflicts between heirs. See the case of **Naftary Petro Vs. Mary Protas** (Civil Appeal 103 of 2018) [2019] TZCA 357(30 October 2019); [www.tanzlii.org](http://www.tanzlii.org), where the Court had the following observation:

*Perhaps, as an epilogue, we should observe that this appeal is sadly an archetypical illustration of needless problems and long-drawn-out struggles in the appointment of administrators of deceased's' estates in our country. The battles for appointment are most likely fueled by a misconception of the position and duties of an administrator of an estate. It is purely a position of trust, not personal gain.*

In this matter all the circumstances considered, I think interest of justice calls for this Court to resist the prayer by the applicants for revocation of the respondent's grant of letters of appointment and allow the respondent to finalise the administration duties, as when the inventory and accounts are filed, beneficiaries will retain the right to inspect them and file their objection over the same if any. See the case of **Hadija Saidi Matika and Awesa**

**Saidi Matika**, PC Civil Appeal No, 2 of 2016 (Unreported) where it was held that:

*In practice, in a good system of administration of justice, once they are filed, the court must cause the same to be known to heirs, debtors and creditors and ask them to file objections against them, if they so wish. If there is an objection, the court will be at liberty to return them to the administrator for rectification as was said by this court in or proceed to hear the parties and make a ruling on the matter.*

In the event and for the fore stated reasons I have endeavoured to provide, I find that the application deserves to be dismissed which order I hereby issue. Given the nature of this case I give no order as to cost.

It is so ordered.

Dated at Dar es Salaam this 28<sup>th</sup> day of October, 2022



E. E. KAKOLAKI

**JUDGE**

28/10/2022.

The Ruling has been delivered at Dar es Salaam today 28<sup>th</sup> day of October, 2022 in the presence of Mr. Yusuph Kawembele, advocate for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants, Ms. Bivery Liabonga, advocate holding brief for

advocate Jerry Msamanga for the respondent, and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI  
**JUDGE**  
28/10/2022.

