

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

PROBATE AND ADMINISTRATION CAUSE NO. 9 OF 2018

(c/f transferred file from High Court of Arusha in Probate and
Administration Cause No. 7 of 1989)

**IN THE MATTER OF PROBATE AND ADMINISTRATION OF THE
ESTATES OF THE LATE ADAM SELEMANI**

AND

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF
ADMINISTRATION BY SAIDI ADAM SELEMANI AND FATUMA
ADAM SELEMANI**

RULING

28/9/2022 & 4/10/2022

SIMFUKWE, J.

The above administrators namely Said Adam Selemani (1st administrator) and Fatuma Adam Selemani (2nd administratrix) were appointed to be administrators of the estate of the late Adam Selemani by this court vide Probate and Administration Cause No. 9/2018. In its Ruling, this Court directed and ordered the administrators to file inventory within six months from the date of ruling that is 28/9/2019.

There have been disagreements between the two administrators despite persistent efforts of this court to reconcile them. Thus, the said



administrators could not file the inventory as ordered due to failure to reach consensus. As a result, the case file has been hanging since 1989. Due to that fact, this court summoned the two administrators and it appeared that each administrator had filed in court his/her own inventory different to each other. Both of them were not ready to sign an inventory prepared by the other administrator. Therefore, the court required the administrators to address the court why they should not be revoked from administering since they had failed to adhere to the order of this court which required them to file the inventory.

In his submission, the first administrator told the court that there was no reason for him to be revoked because even if someone else is appointed there is no property to administer. That, he distributed the estates of the deceased but did not file the inventory to the court.

The second administrator on her part told the court that she was ready to be revoked because since her appointment, the first administrator has refused to cooperate with her and that is why everyone collected the properties/estates separately. She stated that the efforts of this court to unite them had proved futile. Even the clan meeting convened could not proceed as the young brothers of the 1st administrator were alleged to have assaulted her (2nd administratrix) while the meeting was on progress.

In his rejoinder, the 1st administrator admitted that he will be grateful if he will be revoked.

Having heard the parties' response, I now turn to determine the following issues;

- 1. Should the administrators be revoked?*



If the answer is in the affirmative; then

2. who will be the administrator of the estates of the late Adam Selemani?

The law provides circumstances of revoking the administrator. The same are provided for under **Section 49(1) of Probate and Administration of Estates Act**. For ease reference the section reads: -

(1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

(d) that the grant has become useless and inoperative;

(e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or has exhibited under that Part an inventory or account which is untrue in a material respect. Emphasis added



Basing on the above provision of the law and without further ado, the provision of **section 49(1) (d) and (e)** of the above Act, squarely fit the circumstances of this case. That, since their appointment, the administrators have failed to file inventory as ordered by the court due to their misunderstandings rendering their appointment useless. In their submissions, the administrators agreed to be revoked. It is on that basis that this court is of considered opinion that the revocation of the two administrators is inevitable.

The next issue is how the estate will be administered? In the case of **Sekunda Mbwambo vs Rose Ramadhani [2004] TLR 439** the Court had this to say:

*"Furthermore, it must by now be very obvious to all, that such an administrator must be a person who is very close to the deceased and can therefore easily identified the properties of the deceased. He must also have the confidence of all the beneficiaries or dependants of the deceased. Such a person may be the widow or the widows, the parent or child of the deceased or any other close relatives of the deceased. **If such people are not available or if they are found to be unfit in one way or another, then the Court has the powers to appoint any other fit person or authority to discharge this duty.**" [Emphasis Added]*

What can be construed from the above authority is that the court has powers to appoint any person or authority to be administrator. However, such person must be fit. Thus, the next question is that; under the



circumstances of this case, who is a fit person/ authority to administer the deceased's estates?

The proviso of **section 5(1) of Administrator General Powers and Function Act Cap. 27** provides that:

"Where it appears before the court that circumstances of the case require, for reasons recorded in its proceedings, the Court may, of its own motion or otherwise, grant letters of administration to the Administrator General or to any other person not withstanding that there are persons who in the ordinary course, would be legally entitled to administration."

The above quoted provision speak loudly that the court may grant letters of administration to the Administrator General or any other fit person.

Therefore, on the strength of the above provision and cited case law, I am of considered view that in the circumstances of this case, the court should appoint the Administrator General to administer the estates of the deceased since there have been misunderstandings since 7/7/1988 when the late Adam Selemani passed on to date. Thus, there should be an impartial person to administer the estate considering the fact that it has taken so long to finalise the administration.

In the upshot, I hereby revoke Said Adam Selemani and Fatuma Adam Selemani from administering the estate of the late Adam Selemani. In their position, I hereby appoint the Administrator General to be the administrator of the estate of the deceased Adam Selemani.



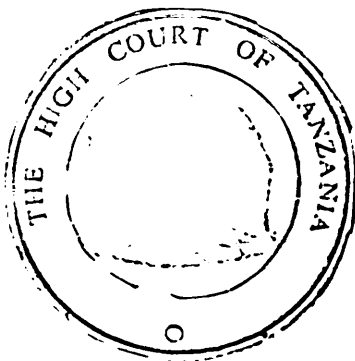
Under **section 51(1) of the Probate and Administration of Estates Act** (supra) the revoked administrators are hereby ordered to surrender to this court letters of administration granted to them, immediately.

The Administrator General is hereby ordered to file accounts and an inventory within three (3) months from the date of this ruling, to wit: listing all the properties of the deceased; to list all the income generated from the businesses of the deceased such as the rentals of the houses at Dar es Salaam and Moshi and the like; money in all bank accounts at the time of the death of the deceased and to list the debts if any which he was owed and which he owed regardless of whether they have been paid or not. Finally, to give the current status of the estates of the deceased and distribution of the estate of the deceased to lawful beneficiaries.

It is further ordered that the revoked administrators are obliged to cooperate with their successor in their capacity as persons who know better the estates of the deceased, some of which might be under their possession.

It is so ordered.

Dated at Moshi this 4th day of October 2022.




S. H. SIMFUKWE

JUDGE

4/10/2022