

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA DISTRICT REGISTRY]

AT ARUSHA

PROBATE AND ADMINISTRATION CAUSE No. 20 OF 2022

IN THE MATTER OF THE PROBATE AND ADMINISTRATION OF THE ESTATES

ACT [ACT NO. 9 OF 1963]

IN THE MATTER OF ADMINISTRATION OF THE ESTATE OF THE LATE YUSSUF

STANLEY NZUGILLE

AND

IN THE MATTER OF APPLICATION FOR GRANT OF LETTERS OF

ADMINISTRATION BY JUDITH CHARLES MGONJA

**RULING**

13<sup>th</sup> & 16<sup>th</sup> December 2022

**TIGANGA, J.**

Pursuant to section 55 of the Probate and Administration of the Estate Act [Cap. 352 R.E 2019] herein after refereed to as the Act, and Rule 33 of the Probate Rules GN. No.369 of 1963, hereinafter Noted to as the rules, the petitioner **Judith Charles Mgonja** "the petitioner" petitioned to be appointed as the executor of the probate of the late **Yussuf Stanley Nzugille** who died testate by road accident at Simiyu on 30<sup>th</sup> June 2022. The petition was accompanied with the verification of petition for probate made under section 57(2) of the Act, and rule 34, of the Rules, affidavit as



to domicile made under Rule 64 of the rule, Executor's oath made under section 66 of the Act, and rule 65 of the Rules as well as the affidavit for declaration made under the Oath and Statutory Declaration Act [Cap 34 R.E 2019]. The petition was also accompanied with copies of the Will and the death certificate.

By the order of this court a notice to the general public was issued, via a Government Gazette Issue No. 44 dated 18<sup>th</sup> November 2022 and in Mwananchi News Paper dated 02<sup>nd</sup> September 2022. In the will, the deceased nominated the petitioner to be appointed the executor of his will. Now, following the death of the deceased, the petitioner petitioned to be appointed as executor of the will of the deceased by filing this probate.

In a bid to satisfy itself, the Court called upon the petitioner to testify. In her testimony which she gave as PW1, she said, she is the only widow of the deceased, and that the deceased left surviving him, three children namely; Albert Yussuf Nzugille, aged 23 years, Stanley Yussuf Nzugille 22 years and Adrian Yussuf Nzugille, 12 years old. He also left a number of properties movable and immovable shares in various companies. Her appointment was support by the evidence of Silas Peter Mayunga who introduced himself as the young brother of the deceased. He supported the



appointment of the petitioner as the executor of the estate. Other witnesses were Albert Yussuf Nzugille and Stanley Yussuf Nzugille both being sons of the deceased who testified as PW3 and PW4 respectively.

That being the case, what the court must do in the petition for probate is laid down in the case of **Mark Alexander Gaetje and 2 Others Versus Brigitte Gaetje Defloor**, Civil Revision No. 03 of 2011 where it was held inter alia that;

*"In a petition for probate, the court is concerned with the **validity of** the will as annexed to the petition. The questions which will come up are whether or not the will has been properly executed; whether or not the testator had the capacity to make the will; in the case where the testator has disabilities like blindness, deafness or illiteracy, whether or not the contents of the will were made knowledgeable to him by reading over, etc and he had granted his approval; whether there was undue influence or not; whether there was forgery and fraud or not; and whether the will has been revoked or not. If the will passes all the tests enumerated above it is taken to be proved, and the court grants the executor the power to administer the will. These requirements of the law are reflected in Sections 24 to 28 of the Probate and Administration of Estates Act, chapter 352 R.E. 2002"*



Therefore, in probate it is the wish of the testator that which is given effect as shown in the will. Unlike in the case of administration of estates, whereby deceased dies without leaving a will and a third party applies to the court to administer the estate of the deceased.

In the matter at hand, I have taken time to pass through the annexed will, I find it free from any impediment. It has been recognized by all the witnesses who supported the petitioner. Taking all into account, I find the will proved to be valid. Thus, in the spirit of giving effect the wishes of the deceased, I hereby appoint the petitioner as the executor of the will. She should do the job as soon as practicable and file the report in court as required by law.

It is so ordered.

**DATED** at **ARUSHA**, this 16<sup>th</sup> day of December, 2022.



  
**J. C. TIGANGA**

**JUDGE**