

**IN THE UNITED REPUBLIC OF TANZANIA
THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

PROBATE AND ADMINISTRATION CAUSE NO. 59 OF 2020

**IN THE MATTER OF THE ESTATE OF THE LATE LIONEL JOSEPH
MAWALLA**

AND

**IN THE MATTER OF APPLICATION FOR THE
LETTERS OF ADMINISTRATION BY SEPI LIONEL MAWALLA AND
STEVE LIONEL MAWALLA..... PETITIONERS**

AND

**IN THE MATTER OF CAVEAT AGAINST THE
GRANT OF LETTERS OF ADMINISTRATION BY
NOREEN LIONEL MAWALLA..... CAVEATOR**

JUDGMENT

Date of last order: - 27/07/2022
Date of judgment: - 16/12/2022

OPIYO, J.

The petitioners herein Sepi Lionel Mawalla and Steve Lionel Mawalla petitioned for letters of administration of the estate of the late Lionel Joseph Mawalla who died at Muhimbili National Hospital, Ilala-Dar es Salaam on **05th October 2018**. Noreen Lionel Mawalla filed a caveat against the grant of letters of administration on 22nd October 2020. It is stated in her affidavit to support her appearance that the deceased is her biological father. That, after the death of the deceased, his family



met and appointed Steve Lionel Mawala as a sole administrator of his estate. Sepi Lionel Mawalla who came to petition for co-administration was not lawfully appointed by the family meeting. She also averred that some of the properties identified to be administered by the petitioners are not part of the deceased's properties.

The above averment was strongly disputed by the petitioners in their joint counter affidavit in reply to the caveator's affidavit. They argued that the minutes of choosing the second petitioner are fragmented and fraudulent and the family does not have the power to appoint an administrator, thus they are entitled to petition and all the listed properties belong to the deceased.

Since the matter became contentious, it was treated in terms of Section 52 (b) of the Probate and Administration of Estate Act, Cap 352, R.E 2002. It is a common understanding that where a Caveator appears and opposes the petition for probate or letters of administration the proceedings shall take, as nearly as may be the form of a suit in which the Petitioner for the grant shall be a plaintiff and any person who appears to oppose the proceedings shall be the defendant (see **Monica Nyamakere Jigamba v. Mugeta Bwire Bhakome & Another, Civil Application No. 199/1 of 2019, CAT, (Dar es Salaam Registry)**)

For disposal of the matter two issues were framed. The first one is whether the first petitioner, Sepi Lionel Mawalla is competent to administer the estate jointly with Steve Lionel Mawalla? and whether there is a reason to appoint two administrators?

In hearing the matter, the petitioner/plaintiff Sepi Lionel Mawalla is the one who testified as PW1. He stated that the deceased was his father who died on 5/10/2018 at Muhimbili National Hospital and presented a death certificate, which was admitted and marked as **exhibit P1**. He narrated how their father got sick for a long time before he died and he has been the one responsible for taking his care, both financially and otherwise. Finally, he prayed for dismissal of caveat and he be appointed to administer the estate of his father jointly with Steve as they are the male children of the deceased and they are used to do things together. and caveat be dismissed.

PW2 was Steve Lionel Mawalla, testified to have been the one living with the deceased taking his physical care. The rest of the children were just contributing for his upkeep and treatment. That, he was proposed to administer deceased estate by the clan meeting, but he is praying for the court to appoint the two of them jointly as he cannot do it alone especially those parts with cost implications. PW3 supported appointment of both petitioners jointly.

The defence case was opened by Dorice Williams Mawalla, who disputed appointment of the first petitioner on the ground that the writing of his father excluded him and it is the second petitioner who was preferred by the deceased to administer his estate, not first petitioner whom they had some conflict with. She therefore, prayed the first petitioner not to be appointed and instead, caveator be jointly appointed with the second petitioner jointly. This testimony was supported by that of DW2, Noreen Lionel Mawalla, who stated that the deceased was her father. She stated



that after the burial they sat as a family on 3/10/2018 and the elders said it is Steve who will administer deceased estate and not Sepi as he was not in good terms with the deceased. The elders claimed to have been given such direction by the deceased himself. She was surprised to see the citation in a newspaper with two petitioners including Sepi whom deceased never wanted to administer his estate. Therefore, as she was not consulted and the decision of the clan meeting was not adhered to representing their fathers wish, she decided to lodge the caveat to object appointment of Sepi. She finally prayed for her appointment to administer the deceased estate jointly with the second petitioner to enable her protect her interest as she is the deceased daughter born out of wedlock.

After going through the parties' testimonies, I now turn to the disposition of issues. The first issue was whether the first petitioner Sepi Lionel Mawalla is competent to administer the estate jointly with Steve Lionel Mawalla? Section 2(1) of of Probate and Administration of Estate Act, Cap 352, R.E 2002 define administrator to mean;

" a person appointed by the court to administer the estate of a deceased person when there is no executor or no executor is able and willing to act, and includes, when Part VIII applies and subject to the provisions thereof, a person appointed an administrator under that Part".

In simple language it means a person appointed by the court to collect and distribute deceased person's estate when the deceased died

intestate or his will did not appoint an executor or the executor refuses to act. The court had a chance to deliberate on who should be an administrator in the case of **Benson Benjamini Mengi and 3 Others v Abdiel Reginald Mengi and Another Probate and Administration Cause No. 39 of 2019, HC, DSM at page 65** referring to the case of **Saleli Doto v. Maganga Maige and Others, PC Probate Appeal No. 6 of 2018 (Shinyanga Registry), (Unreported)**, it stated;

"In appointing the administrator of the deceased's estate, the main consideration is the reputation and capability of such person to act faithfully, diligently and impartially in administering the estate to the rightful owners. Therefore, Court can appoint any reputable person who is not even a member of the family or officer of the Court for that matter to be an administrator of the estate of the deceased.

The main test is therefore, to have a reputation and capability to act faithfully, diligently and impartially in administering the estate to the rightful owners and he must be appointed by the court with competent jurisdiction.

The question is whether first petitioner has those qualifications. From the caveat raised by the defendant/caveator herein is that the petition was made without her being informed, Sepi not being nominated by the deceased and the clan and he had some disagreements with the deceased. Section 33(1) of **of Probate and Administration of Estate Act** (*supra*) clearly states,



"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".

The section allows any person who has interest in deceased estate to petition for the letters of administration and the court may entitle the whole or part of it depending on circumstances, hence Sepi and Steve being the heirs of the deceased estate are both equally eligible to petition for letters of administration by virtue of section 33 (1) of Probate and Administration of Estate Act (*supra*). However, we are told the clan meeting only proposed second petitioner not the first. Is it worth considering family proposal in determining Sepi's competence to be appointed administrator? I am aware that family or clan meetings is not a mandatory requirements, but it is important in resolving unnecessary conflicts (**Adbul Aziz Hussein Ntumiligwa v Yunus Hussein Ntumiligwa, (PC) Probate Appeal No. 2 of 2019, HC, Kigoma. The family meeting proposals also makes the work of the court easy. In the case of Hadija Said Matika v Awesa Saidi Matika, PC. Civil Appeal No. 2 of 2016, HC, Mtwara, Mlacha, J held that;**

"...the clan or family will usually sit to discuss the matter and propose someone to be the administrator. He will be sent to court with some minutes. This practice is encouraged because it makes the work of court easy..."

From the above analysis, my view is that, although Sepi is equally eligible to be appointed as an administrator of the estate, but having the whole caveat being based on objecting him being so appointed, it means some section of beneficiaries have no faith in him. Gauging the reason for him petitioning in the first place without being proposed is mainly because the proposed administrator seem to need his company as they are used to do things together and contemplated his financial support in the process. From the facts of the case, one Steve Lionel Mawalla has all the blessing of all the beneficiaries, but in his submission he prayed for Sepi to be included so as to help him in administering the estate as he has no experience and he may not be able to cover the costs. These considered together, although no strong reasons have been put forward to disqualify first petitioner from being competent to petition, but equally there is no sufficient reason for him to petition jointly with the one accepted by all. The administration expenses feared by the second petitioner are covered by the estate itself, so 1st petitioner can still support the same even if he is not an administrator himself with prospects of refund after wards. In the circumstances, in order to minimize the family conflicts, let the decision of clan members be respected. Only the one proposed is therefore appointed.

Caveator also is not appointed for there is no strong reasons for her appointment. The records show that the family recognize her as part of the children of the deceased and also as one of the heirs as per paragraph 2 of the petition. There is no place where her interests have been prejudiced. Above all there is still a room where she can safe guard

or protect her interests as she has a chance of challenging the inventory or accounts of the estate before approval if the same seem to be not in her favour and in the worst case scenario even for applying for revocation of administrator in case of mismanagement to the estate.

With that in mind, the caveat is partly allowed in that only second petitioner, **Steve Lionel Mawalla** is appointed as a sole administrator of the estate of the late **Lionel Joseph Mawalla**. In so doing, he has to exhibit the correct inventory of the deceased estate and accordingly file final accounts on the same within the time as will be prescribed by the court.

It is so ordered.



A handwritten signature in blue ink, appearing to read "M. P. Opiyo", is written over a horizontal line.

**M. P. OPIYO,
JUDGE**

16/12/2022