

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**PROBATE AND ADMINISTRATION CAUSE NO. 26 OF 2021**

**IN THE MATTER OF THE ESTATE OF THE LATE GEORGE ZACHARIA NIIMA**

**AND**

**IN THE MATTER OF APPLICATION FOR LETTERS OF ADMINISTRATION BY  
LINDAELY GEORGE OMBAY**

**RULING**

**6/04/2022 & 14/04/2022**

**GWAE, J**

The petitioner, **Lindaely George Ombay**, the wife of one George Zacharia Niima (deceased) who died intestate on the 2<sup>nd</sup> September 2021 at Fame Hospital within Karatu District in Arusha Region. The petitioner who filed this petition on the 11<sup>th</sup> October 2021 is before this court praying for grant of letters of administration of the estate of her late husband. The deceased at his demise had a fixed place of abode at Magadini-Mto Mbu area within Moduli District and he was professing the Christian Religion.

The petitioner has brought this petition under section 56 of the Probate and Administration of Estate Act, Cap 352, Revised Edition, 2019

(Act) and Rule 39 together with form 27 of the Probate and Administration of Estate Rules (Rules). In her petition, the petition stated that, the deceased left surviving him the following heirs; 1. Lindaely George Ombay (wife), 2, Irene George (deceased's daughter), 3. Calvin George (son), 4. Noel George (Son), 5. Nancy George (Daughter), 6. Andrea George (son) and 7. Lucrechia George (minor) as well as the deceased's biological parents namely; Zacharial Niima and Regina Zacharia. The petitioner further believes that the following assets are likely to come to her hands if appointed as administratrix; -

- i. A house built on a plot located at Magadini, Mto Mbu - Monduli District worth Tshs. 100,000,000/=
- ii. A house built on a plot measuring 450 squares located at Magadini polisi Mto Mbu-Monduli District worth Tshs.300, 000, 000/=
- iii. A house built at Magadini, Mto Mbu-Monduli District worth Tshs. 50,000,000/=
- iv. A house built on a plot No. 32 Block "B" located at Magadini, Mto Mbu-Monduli District worth Tshs. 60, 000,000/=
- v. A house built on a plot measuring 71 meters width and 24 meters length located at Mgombani, Mto Mbu-Monduli District worth Tshs. 60,000,000/=

- vi. A house built on a plot measuring 0.2 Acres at Kirurumo Migombani area-Mto Mbu-Monduli District worth Tshs. 25, 000, 000/ =
- vii. A house built on a plot located at Losirwa village, Kingongoni, Mto Mbu-Monduli District worth Tshs. 50,000,000/=
- viii. A house built on a plot located at Losirwa village, Kingongoni, Mto Mbu-Monduli District worth Tshs. 60,000,000/=
- ix. A house built on a plot located at Popo camp opposite the JWTZ's farm worth Tshs. 40,000,000/=
- x. A house built on a plot tembo area, Mto Mbu-Monduli District with blocking machines worth Tshs. 30,000,000/=
- xi. A house built on a plot located at Babati District within Manyara Region worth Tshs. 45,000,000/
- xii. A house built on a plot located at Babati District within Manyara Region worth Tshs. 50,000,000/
- xiii. A plot located at Magadini area worth Tshs. 5,000,000/=
- xiv. A plot No. 454 Block "R" measuring 450 square metres located at Mpanda District in Katavi Region worth Tshs.50, 000, 000/=
- xv. A plot located at Babati Stand worth Tshs. 12,000,000/=
- xvi. A plot located at Migungani Popo Camp area worth Tshs. 12,000,000/=
- xvii. A plot located at Migungania Popo Camp area worth Tshs. 12,000,000/=

- xviii. A plot located at Migungani, Popo Camp area worth Tshs. 5,000,000/=
- xix. A farm measuring 160 metres width 200 meters length located at Losirwa Village worth Tshs. 15,000,000/
- xx. A farm measuring 8 acres located at Losirwa Village opposite Losirwa Primary School worth Tshs. 20,000,000
- xxi. Shares of Fiesta Investment Co. Ltd
- xxii. NMB Bank Account with No. 43810003854
- xxiii. CRDB Bank Account with Number 0112046956600
- xxiv. NBC Bank Account with Card Number 4513800004105503 and
- xxv. Seven Motor vehicles as listed in the petition

This petition is further supported by an affidavit as to the place of the deceased's domicile sworn by the petitioner, petitioner's affidavit, administrator's bond with sureties namely; Ebeneza J. Ombay of Mto Mbu and Pendaël Emmanuel Tandu of Arusha and certificate of sureties' financial position as well as consent of the heirs (Irene George, Calvin George, Noel George and Nancy George) of the deceased person.

At the hearing, the petitioner was represented by Mr. George Mzava, the learned advocate duly notified the court that, they have cited the requisite citation through Mwananchi Newspaper dated 12<sup>th</sup> January 2022 at page 29 as well as in the citizen on the same date at page 4. The petitioner also tendered original copies of the deceased's death certificate,

Marriage certificate and burial certificates. The petition was reinforced by testimony one Noel George, the deceased persons' son

Immediately after hearing of the petition, a concern was raised by the petitioner's advocate who informed the court that there was another Probate and Administration Cause filed in Mto Mbu Primary Court vide Administration Cause No. 202 of 2020 by Joel Zacharia Niima, the deceased person's young brother. This court took judicial notice and issued a calling for the lower record.

When both the petitioners before this court and the Primary Court appeared before me, it was established that the family members from the widow's side including deceased's children and those of the parents of the deceased had amicably and mutually sat and came up with a resolution that the petitioner (Deceased's wife) in this petition and one Calvin George Zacharia (deceased's son). The petitioner then produced the family members' minute sheet dated 31<sup>st</sup> March 2022 and Mr. Joel, the one who petitioned in the Primary Court at Mto Mbu having informed the court that he is going to withdraw the matter that he instituted in the primary court of Mto Mbu.

According to section 33 of the Probate and Administration Act (Supra), the court has its discretion to appoint one (s) who applied for a grant of letters of administration of the estate after has considerably taken

into account of the direct interests of the deceased person's estate, for the sake of clarity subsection (2) of section 33 of the Act is reproduced herein under;

“(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”.

Considering the petitioner's petition as well as the subsequent family members' meeting appointing the petitioner and her step son, so to speak, I have seen no reason as to why letters of administration should not be granted to the petitioner together with the said Calvin George to be the co-administrators of the estate of their beloved husband and late father respectively and discharge their duty not only for their immediate interest but also for the interests of other beneficiaries of the estate of the deceased. The co-administrators have therefore a duty to faithfully act for the benefits of interested persons in the deceased's estate exhibiting the necessary trust and confidence that they have been given by their family members (see the decision of the Court of Appeal in **Joseph Shumbusho vs. Mary Grace Tigerwa and two others**, Civil Appeal No. 183 of 2016 (unreported) delivered on the 6<sup>th</sup> October 2020).

Therefore, I find that the petitioner and Mr. Calvin George to be eligible or appropriate persons for the grant of letters of administration due to the following reasons, **firstly**, that, they are beneficiaries of the deceased's estate, **secondly**, that, the family members have appointed them to be given letters of administration denoting that they have trust and confidence over them and **thirdly**, that, the one who would file a caveat has expressly informed the court that he has decided to withdraw his Probate and Administration Cause No. 20 of 2021 filed in Mto Mbu Primary Court and **fourthly** that, the estates aforementioned and any other estate of the deceased yet to be disclosed if not managed will likely be misappropriated.

Having said so, I am of the considered view that since the petition has disclosed that the deceased left properties, it is therefore sensible that such properties fall under the administration of administrators dully appointed by this court so that they can immediately play their role in safeguarding the interests of the deceased person's heirs/ beneficiaries.

Consequently, the petitioner, **Lindaely George Ombay and Calvin George are hereby** appointed to be co- administrators of the state of his late **George Zacharia Niima**.

The appointed administrators are hereby directed to faithfully and responsibly administer the deceased's estate in accordance with the law, bearing in mind that, their appointment is not absolute as it is subject to court's nullification if they mishandle the estate of the deceased. The administrators are further ordered to make and exhibit inventory of the deceased person's estate in this court within six (6) months from the date of this ruling and present final accounts within twelve (12) months from the date of this order or within such period as may be extended by the court upon application or the court may deem fit to do so.

It is so ordered.

Dated at Arusha this 14<sup>th</sup> April day of October, 2022.

  
**M.R. GWAE**  
**JUDGE**  
**14/04/2022**

**Court:** Mention on 17/10/2022 at about 09: 00 hrs for ascertainment of the Administrators' filing of the inventory and related matters.

  
**M.R. GWAE**  
**JUDGE**  
**14/04/2022**