

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

AT ARUSHA

PROBATE AND ADMINISTRATION CAUSE No. 08 OF 2019

IN THE MATTER OF THE ESTATE OF THE LATE HUSSEIN OLE LAIZER

AND

**IN THE MATTER OF THE PETITION FOR APPOINTMENT AS JOINT
ADMINISTRATORS BY YEREMIA LESHILALO LAIZER AND BENJUDA
HUSSEIN LEMOYANI**

JUDGMENT

02th & 20th May, 2022

TIGANGA, J.

In this case Yeremia Leshilalo Laizer and Benjuda Hussein Lemoyan petitioned for the Letters of Administration of the estate of the late Hussein Ole Laizer, who was also known as Hussein Ole Lemoyani Laizer hereinafter, the deceased. From the evidence, the deceased died interstate on 02nd day of October, 2018 of cancer as exhibited by the certificate of death which was attached to the petition. According to the petition the deceased left surviving him, the following three children namely; Benjuda Hussein Lemoyan, Lenana Hussein Lemoyan and Noela Lemoyan. He also left one legal wife Josephine S. Lemoyan.

In the petition, Yerima Leshilalo Laizer introduced himself as the relative of the deceased while Benjuda Hussein Lemoyan introduced himself as a biological son of the deceased.

In the petition, the petitioners listed the following assets to form part the estate of the deceased, a land located at Njiro Arusha with the following description, Plot No. 105 Block D, with estimated value of Tshs. 150,000,000/-, unsurveyed land measuring 50 acres located at Kwedihwahwala village in Handeni District Tanga Region, with estimated value of Tshs. 100,000,000/=.

It was also averred that the deceased was a Tanzanian considered to profess Islamic Religion and had affiliation with Christianity religion and Rastafarian practice. Together with the petition, there was filed an Administrator's oath, Certificate of surety as to financial position, Affidavit as to domicile, Administration bond with surety and the Consent of the heirs.

Following that petition, Zalkhan Shaban Laizer and Lenana Hussein Laizer filed the caveat in terms of section 58 of the Probate and Administration of the Estate Act [Cap. 352 R.E 2002]. Following that caveat, the petitioner filed the application for citation for caveator in terms of section 59 (2) of the same law. For the caveator to enter appearance

and when the caveator entered appearance in terms of section 59(3) they did not support the petitioner, instead, they objected the petition. Therefore, turned the matter to be contentious. The proceedings took, as nearly as may be, the form of a suit in which the petitioners for the grant became the Plaintiff and those who opposed the proceeding became the defendants.

Having taken that shape, a total of six issues were framed namely;

- i) Who is the legal wife of the deceased Hussein Lomayan Laizer?
- ii) Who are the legal heirs of the deceased person?
- iii) Who as between the plaintiffs and defendants should be appointed as the administrators of the deceased's estate?
- iv) What are the properties which falls under the deceased's estate?
- v) Whether the deceased professed Christian or Muslim?
- vi) What reliefs to which the parties are entitled thereto?

In the bid to prove the case, the petitioners/plaintiffs called a total of eight witnesses namely, Yeremia Leshilalo Laizer, Benjuda Hussein Laizer, Josephine Sebastian Lemoyan, Hellena Laizer, Solomoni Saroni, Huba Adam Lashikoni, Lilian Bernard Lyakurwa and Nyagusi Lepapakwo Nailiba. Their evidence was recorded as PW1, PW2, PW3, PW4, PW5, PW7 and PW8 respectively.

They also tendered a total of six exhibits namely, a copy of an entry in the Marriage register, (Marriage certificate), Barua ya Kuomba Ulaigwanan kwa kusimamia Olpolosati dated 12/11/2018, Barua ya kuteuliwa Olaiguanan Solomon Saroni kusimamia Olpolosati of 15/11/2018, Muhtasari wa Kikao cha Boma dated 24/11/2018, letter of introduction of Hon. Josephine S. Lemoyan, member of AAR dated 13/02/2018 and proceedings in Matrimonial Cause No. 09 of 2012 between **Precious Kalinga vs Kizolus Charles Watachoka**. These exhibit were marked as exhibits P1, P2, P3, P4, P5 and P6 respectively.

The totality of the evidence by the petitioners/plaintiffs is that, after the death of the deceased the clan called a meeting called Olpolsati in Masai tradition, which involved Laigwanani. In that meeting, they appointed Yerima Leshilalo Laizer and Benjuda Hussein Lemoyani as the co-administrators of the estate of the deceased. In their evidence they said the deceased was living at Njiro in Arusha city and was professing Christianity, Islam, Masai tradition and Rastafarian.

During his life, the deceased was married to Josephine S. Lemoyan, in the year 1980 when they solemnized Civil Marriage. He was also blessed with three children namely Benjuda Hussein Lemoyan, Lenana Hussein Lemoyan and Noela Lemoyan. Of the three children, Benjuda and Noela

were begotten from the wife, Josephine, while Lenana was begotten from the 2nd defendant.

In their testimonies they said that, the deceased left assets like a plot at Njiro with a house thereon. A shamba (50 acres) at Kwedihwahwala village at Kabuku, Tanga, two motor vehicles, one motor cycle and one bicycle as well as other household items and some boxes with various items including spares.

Of the three children of the deceased, the only one that is Benjuda, attended the meeting, Lenana was present but left soon after commencement of the meeting without assigning reasons of his non attendance. Therefore, the minutes recognizes his presence, Noela asked for leave of absence because she was in the examination.

According to the evidence, the person with the right to inherit the estate of the deceased are Josephine S. Lemoyan, Benjuda Hussein Lemoyan, Lenana Hussein Lemoyan and Noela Lemoyan. The property left behind are: i) Two farms at Njiro, ii) A house and Plot at Njiro (a house is built thereon), iii) A shamba at Tanga, iv) Two motor vehicles, v) Other furniture which were used by the deceased, which according to the evidence by the petitioners, they are dealt with under the Masai customs.

It is also evident that, of all the religious rites that the deceased was professing, he was buried in accordance with Islamic rites. That is according to the evidence of PW2. It was also proved that immediately before his death, the deceased was living with Lenana Hussein Lemoyan, the 1st defendant as other children were out of Arusha but when the deceased fell sick before his death it was Josephine who nursed the deceased.

In her evidence PW3, Josephine S. Lemoyan said she knew Zalkan Shaban Kalinga @ Precious Kalinga, as she was their house girl while schooling at Enaboishu Secondary School, before she suddenly developed sexual relationship with the deceased which resulted in impregnation and the birth of Lenana.

It was her further evidence that, after the 2nd defendant had given birth of the 1st defendant, she entered into another relationship with another man where she sired another child called Camilla. It was PW3 evidence further that, after the birth of Lenana, the 2nd defendant left him while still young and then went to marry another husband. She said the 2nd defendant cannot be the heir because she is not the wife and has never been a wife of the deceased as she left Lenana while still young and then got married to another man one **Kizolus Charles Watachoka**

against whom she filed Matrimonial Cause No. 09 of 2012 from whom she claimed matrimonial properties. Therefore, she has no rights to properties of the deceased.

Further to that PW3 said that, out of Tshs. 4,000,000/= which was used to purchase 50 acres of farm in Kwedihwahwala village, she personally contributed and paid Tshs 3,000,000/= of the purchase price. Therefore, the deceased could not have sold it one month before his death when he was seriously sick and was under bed rest. Also, that, even the signature of the seller is not his because it differs with the one which appears in the marriage certificate.

It was also the evidence of PW3 on cross examination that, Noela Lemoyan is also known as Noela Sebastian and that she is so referred instead of Noela Hussein because as a family, they preferred names of widespread choice "majina ya kijamii". Last but not least, PW3 said the house on Plot No. 105 Block "D" Njiro was built since 1979 but its construction is still ongoing though currently, it is resided in by Lenana. Before that, PW3 had stayed there as well as well as their guests were being accommodated therein, it was said.

PW4 a blood sister of the deceased said in her evidence that, the deceased had three children. That among them are Benjuda and Noela

who were begotten with PW3, while the third namely Lenana was begotten from another woman who was not the wife of the deceased. She said, the deceased changed his religious faith and started to profess the waswahili faith which was interpreted to be Muslim.

These facts were affirmed by PW5 one Solomon S/O Saroni, who introduced himself as a Laigwanani (clan leader) or in swahili "mzee mkuu" of Laizer clan. In his evidence, he testified that, the deceased had only one wife Josephine (PW3) and has left three children namely Benjuda Hussein, Noela Hussein, and Lenana Hussein.

While making clear of some terms, he said Olpolosati is a last respect for the deceased where members of his clan meet so as to get a member to stand as administrator of the deceased's estate. He said he was the leader of the meeting which appointed the administrators of the estate of the deceased in this case, and went further to say that, at that meeting, a cow was slaughtered to feed more than 100 people who attended among them being 11 Laigwananis.

To prove that, he tendered a letter i.e exhibit P2 which appointed him to that capacity. The meeting according to him appointed Jeremiah Laizer and Benjuda Huseein to be administrators of the estate of the deceased. He also said, Lenana never attended the meeting because he

refused to come though he was aware of it but he said his mother told him not to attend. He also said he know Mr. Mohamed Kitenge Laizer who is a close friend of the deceased but he is not blood related to the deceased. He said he did not know Zelkhan Shabani (the 2nd objector) and a mother of Lenana.

PW6 Huba Adam Lashikoni, had her testimony not related to the probate, but it seems he was called to shake the credit of the 2nd objector, that she snatched her late husband and destroyed her marriage. She said the 2nd objector opened the case against her late husband one Watachoka that is Matrimonial Cause No. 09 of 2012 and tendered proceedings of that case as exhibit P6.

Also, through the evidence of PW7 Lilian Leonard Lyakurwa, who happened to be a neighbor of the 2nd objector at Njiro, in Arusha city she said, the 2nd objector on 28th November 1999 asked to change faith from Islam to be a Christian and was baptized to be a Christian in which a ceremony PW7 stood as her baptism mother, and was baptized as Precious Mwenegoha and given the baptism certificate by the KKKT church in Arusha.

The last petitioners' witness was PW8 one Nyangusi Lepapakwo Nailiba, an acting District Administrative Secretary stationed at Arusha

District Commissioner's office. By virtue of his position, his office act as the registrar of birth, death and marriage. She proved that the record from his office shows via an entry No. 10276 in the register that the marriage between the deceased and PW3 was celebrated on 31/05/1980 and was registered on 11/11/1980. It is also his evidence that the search in the register was made on 09/10/2020 which resulted into exhibit P1 which is a genuine document from his office.

On the other hand, the objector led by Lenana, the 1st objector, who testified as DW1 lead their evidence to tell the court that, they objected the appointment of the 1st petitioner because they do not recognize him as one of the relative of the deceased. This is because, the deceased had never told them anything about him. They also object Noela Sebastian Lemoyan because she is not the biological daughter of the deceased.

They have no objection with the appointment of the 2nd petitioner Benjuda Hussein Laizer because they are aware that he is a son of the deceased having been introduced by the deceased himself.

Also, that they object Josephine Sebastian Lemoyan, because she is not a legally married wife of the deceased, because they never saw her coming at home and has never been informed anything about her.

In the conclusion DW1 said, Josephine only sired a son (Benjuda) with the deceased and was divorced to the deceased before the 1st defendant was born. DW1 recognized Benjuda Hussein Laizer as his brother and Zalkhan Kalinga as his mother. He said he stayed with the deceased since 1996 -2018 when he passed away. That, he stayed with his mother but was always on safari due to the nature of her work, she never stayed at home all the time.

DW1 is at one with the petitioner regarding the house on plot No. 105 Block "D" Engutoto Njiro, in which he is staying. He talked about the farm which the deceased bequeathed to them, himself and Benjuda, but regarding the other farm at Tanga he said the same was sold by the deceased in order to pay his school fees.

He said the legal wife of the deceased is Zalkhan whom he lives with in the house left by the deceased at Njiro and that Josephine had been divorced longtime ago. He suggested that, the administrators be the two children Lenana Hussein Laizer and Benjuda Hussein Laizer.

According to him, the deceased professed Muslim faith as per his name and he was buried according to Islamic faith. He was a full supporter of Muslims as they started a Mosque at Engutoto Njiro and that he had never followed customary rites.

He strongly objected Noela to be among the heirs because she had never been seen in the house where they used to stay unlike Benjuda who was seen and introduced to him.

Regarding an issue of who nursed the deceased, DW1 said, he is the only one who was attending the deceased. That Benjuda used to come very rarely and left. The sickness started in 2012 when DW1 was in Form III at Arusha Secondary School. The health of the deceased deteriorated in 2015 when DW1 had to travel from Uganda and come to nurse him because he was alone at home. He said due to that sickness, the deceased passed away under his care on 02/10/2018. He said that his Muslim name is Ibrahim Hussein Laizer, so he is called Lenana or Ibrahim Hussein Laizer. But his birth certificate is written Lenana.

He said according to the minutes of the clan meeting annexed as "LZ3" to the caveat, at paragraph 2, the wives of the deceased were divorced at the time of his death and had sired other children outside the wedlock.

He said, he is not sure if his mother had been divorced by then. He said his mother used to come at home but was not staying there. He said he does not know the owner of the house, but he remembers Josephine chased them away from that house. He said the deceased said he had

never stayed with Josephine under one roof but they only had one child Benjuda while staying at Kaloleni.

He said he remember that his mother left from that house of Njiro in 2008, but the deceased had never told him the exact date when he divorced the second objector. He said the second objector has two children the first is him and the second is Camilla bint Zalkan. That he cannot know if Camilla is the child of the deceased and neither does he know that the father of Camilla is Charles Watachoka.

He said the farm at Handeni was sold on 13th August, 2018 by his father but his father never went to Handeni. He sold it while at home at Njiro after his neighbour one Ibrahim came at Njiro and said wanted to purchase it. According to him, he signed the sale agreement on behalf of the deceased, because by then he had passed away after he was paid Tshs. 400,000/- as advance money. He said the contract was not signed by the deceased because it was not signed on 13/08/2018. By then it had not been prepared (sale agreement) because Abraham had payed advance only. The contract was signed when the remaining balance of Tshs. 3,6000,000/= was paid to complete the purchase price which is Tshs. 4,000,000/=. He said he signed because the deceased had instructed him to do so.

The second objector who testified as DW2 insisted to be the legal wife of the deceased, she said she objects the 1st petitioner, as he was never introduced to her as the relative of the deceased and that he is biased because he depends on Josephine for almost everything including food and shelter. Therefore, she cannot be fair because he had already tried to evict them from the house. According to her, all he wants is just to benefit himself from the deceased's estate.

She also said they objected Noela Sebastian because she is not the child of deceased as she was born in Iringa by a man called Bigael Biga a man who was a friend of the deceased. She said Josephine was married to that man as a third wife after her divorce from the deceased. She said she tried to secure that man as a witness but he never attended. He said the divorce was due to the fact that the deceased noticed that Josephine had a child born out of wedlock.

She testified further that, Noela has never attended to court to prove that she is a child of the deceased or even bring her birth certificate. There was no proof including the school certificates to prove that she is a daughter of Hussein. She said she stayed with the deceased for 20 years, but she had never seen Noela coming at home during the whole period

of 20 years which she stayed with the deceased under one roof, be it for visiting or even during burial ceremony.

She said that she is a legal wife of the deceased having married him while aged 16 years. She married him when she was staying at Serengeti Road, Arusha, Uzunguni to Amani Mwenegoha, her grandfather. After her marriage they stayed at Njiro and begotten him a child called Lenana on 7/4/1996.

She said they constructed the house at plot No. 105, Block 'D' Njiro Container. She said the deceased had never practiced Rastafarian practice.

According to her, in his life time, the deceased gave his two sons the plot each, Benjuda was given plot 293 Block 'C' while Lenana was given plot No. 294 Block 'J' while Josephine was given by the deceased a plot in Block J, which DW2 could not remember its number. A house of Singida which they built together during their marriage was sold by the deceased at the price of Tshs 25 million and the money was used to pay school fees in Uganda where Lenana was studying. The remaining balance was used to purchase a shamba in Tanga for Tshs 4,000,000/ = at Kabuku.

That land was later on sold to Mr. Ibrahim at the price of Tsh. 4,000,000/= to settle his medical bill after he was found to be suffering from cancer. That payment was made in two instalments starting with the down payment of 400,000/= while the balance of Tsh. 3,600,000/= was paid later after the death of the deceased.

With regard to the clan meeting she said that, in that meeting Josephine was called as she stayed to nearby house. She came but in the proceedings she rose up and said that she did not feel well. She said had the meeting during evening. After Josephine had left, they continued as planned in her absence.

But it seems later in the evening Josephine came and had their meeting which did not involve the objectors and when the objector went there in the evening they found that the gate had been closed, thus denying them the chance to participate in the said meeting.

She said there was no peace at the clan meeting, therefore they did not agree with the proceedings of the meeting, that is why after the probate had been filed, they filed the caveat objecting the anticipated administrators particularly the 1st petitioner. In her evidence, she proposed that the two children of the deceased that is Bejuda and Lenana Hussein be the one to be appointed as administrators. She also tendered

her marriage certificate which was marked as exhibit D3 and the minutes of "Arobaini" ya marehemu Hussein O/e Lemoyan Laizer " as exhibit 04.

On cross examination DW2 said that she was to attend studies abroad where she was known as Precious Amani Mwenegoha and during her study she also was called Precious Kalinga but her name Zalkhan Kalinga is from her childhood.

She admitted to know Kizolius Charles Watachoka who was her friend. While at the college sired her a child called Salha Shabani. That she remembers there was a dispute, Matrimonial Dispute No. 9/2012. That, she had a presumption of marriage with him as they had been in love affair for so long.

Currently she has two children. The first child is Lenana s/o Hussein born in 1996. That, she got birth of her second child with Kizolius Charles Watachoka in the year 2010 when her marriage with Hussein was still subsisting.

He said in the meeting, the second agenda says that the deceased left two children and that all two wives had been divorced. She therefore admits that her second child was born out of wedlock and is not of the deceased. She said she was not divorced by court proceedings "talaka" she was just separated with the deceased.

Although in the clan meeting it was recorded that, the deceased left two wives who had already been divorced, and in the caveat she said that she is the only surviving wife of the deceased, she asked the caveat to be believed because although she admits to have a child out of wedlock, she had never been divorced by the deceased.

She said she was aware that the deceased had legal marriage with Josephine when in 1995 she got married to the deceased. He said he did not know that the marriage between Josephine and the deceased was a monogamous marriage. She said she has no evidence to prove the marriage between Josephine and Biga.

DW5 Abrahaman Abdallah Mithaya, a Deputy Secretary of Njiro Islamic community which has its headquarters at Njiro Block "D" and a founder of Njiro Islamic community which we founded on 27/02/2000 at Njiro Block "D" his evidence was that, the deceased was a Muslim and lived a Muslim life and when he died he was buried according to Islamic rites. He said he had a wife and a son called Lenana.

DW6 Abraham Nazareth Mwamboma, he said he bought a farm located at Kabuku from the deceased at the agreed price of Tsh. 4,000,000/=. However, he paid the money in two instalments. In the first instalment he paid Tsh. 400,000/= and according to DW6 there was an

agreement that the balance of Tsh. 3,600,000/= would be paid later. It is unfortunately that before the same was paid the deceased died and the money was paid to Lenana who also signed the contract where the deceased was supposed to sign. This is exhibited by exhibit D5, the purchase agreement tendered by DW6 himself. However, exhibit D5 did not show that there was the first instalment of Tsh. 400,000/= paid before the second instalment. The contract shows that the purchase price was Tsh. 4,000,000/- paid at once.

That marked the case by both sides. After conclusion of hearing, both parties opted not to make or file final closing submissions, they invited the court to decide basing on the evidence presented by both parties. Now from the evidence so presented, there are some issues though not framed but are important in as far as the probate matter is concern. They were not framed because they were not in dispute but for making the record clear, it is important to point them out. From the evidence it has been proved that, the deceased Hussein Lemoyan Laizer died on 02nd October 2018 as exhibited by the death certificate and the evidence of both parties. The evidence is also clear that he died intestate. This is after having no one from among the family members or friend who came forward with the will left by the deceased. At least there is no

dispute that Benjuda Hussein Lemoyan Laizer and Lenana Hussein Lemoyan Laizer are among the proved lawful heirs of the deceased, both being his sons.

The issues which are in disputes are as listed above. In discussing and resolving the framed issues, I will start with the 1st issues as framed that is "who is the legal wife of the deceased Hussein Lomayan Laizer? This has become an issue because both PW3 and DW2 claimed each to be the sole wife of the deceased in exclusion of the other. While PW3 tendered exhibit P1, a marriage certificate proving that she married the deceased on 11th November 1980 through a civil marriage which was monogamous, DW2 said she also contracted Islamic marriage on 20th May 1995 with the deceased as exhibited by exhibit D3. It is the evidence of the PW3 that she begotten the deceased two children namely Benjuda and Noela, while DW2 said she begotten him one son called Lenana.

To prove her marriage, PW3 called the Assistant Registrar of Marriage, Death and Birth from the office of District Commissioner Arusha, who proved that, the marriage between the deceased and PW3 was solemnized in their office and the marriage certificate purportedly issued in respect of that marriage that is exhibit P1 is a genuine document which is also in the register of their office. That witness also said there is no any

other record to the contrary showing that, that marriage was once broken by the competent authority by the decree of divorce or an order annulling it.

Further to that, there is also no proof that, PW3 was once divorced or even circumstantial evidence that PW3 lived with another man. The only available evidence are the allegations by DW2 that PW3 married another man called Bigael Biga who is the father of Noela, the allegation which DW2 herself said had no proof to prove the same. Something which leaves the evidence of PW3 and that of the Assistant Registrar of Marriage unshaken.

Regarding the status of DW2, herself said in cross examination that, during the time between her alleged marriage with the deceased and the death of the deceased, she lived in concubine with another man one Kizolius Charles Watachoka and begotten her a child called Salha Shabani. She also admits to have commenced matrimonial proceedings with him, that is Matrimonial Cause No. 09 of 2012 in which she claimed the matrimonial property. She admitted by her own words that she had a presumption of marriage with him as they had been in love affair and lived under the same roof to the extent of being viewed and taken by the law

and general public that they were in a presumption of marriage and got a child called Salha.

DW2's marriage to the deceased was not proved by any other witness than the certificate of marriage tendered as exhibit D3. There was no any person who witnessed the solemnization of marriage who was called to prove that, no person from the Mosque in which that marriage was solemnized was called and there are no reasons as to why they were not called, in the circumstances of the case, that marriage certificate is doubtful.

However, even if we assume for the sake of argument, that the said marriage was there, I must confess that, I am not aware of any of the known religion which allows a practice where a married woman can go out, live with another man actually in concubine under the same roof to the extent of being impregnated and bear a child with him, and by promoting their relationship to a level of a presumption of Marriage under which a woman can file a matrimonial proceedings and still be believed to be the wife of the first man. I think, for the sake of modest of DW2 as a woman and a mother who deserves privacy, I should not go further.

To say the least, weighing the evidence of the two, PW3 and DW2, I find PW3 to have proved that, she married the deceased, their marriage

was legal, and there is no evince that it was at any time resolved. While to the contrary, the evidence by DW2 have failed her. That said, the evidence has proved PW3 to be the legal wife of the deceased, therefore the first issue has been resolved as explained hereinabove.

Having resolved the first issue that way, that takes us to the next issue which is "who are the legal heirs of the deceased person?". Having resolved earlier that Benjuda and Lenana are proved sons of the deceased, and Josephine is a legal wife of the deceased, these three are without doubt among the lawful heirs of the deceased. The person whom Lenana and DW2 have contested is Noela, as being not the child of the deceased. However, looking at the evidence of PW1, PW2, PW3, PW4 and PWS who are by blood relationship or family association attached to the Laizer clan, they all recognize her as the child of the deceased.

Further to that, the fact that she was born in the year 1991 the time when the marriage between her mother and the deceased was existing gives us a presumption that she was born of the deceased in the wedlock. That said, I find Noela also to be the lawful daughter of the deceased, had there been any evidence to the contrary, then the defendants were duty bound under section 110 of the Evidence Act, [Cap 6 R.E 2019] to prove the same something which they did not do. Therefore, that said,

basing on the reasoning herein above, it is safe to conclude that the lawful heirs of the deceased are four, namely Benjuda, Lenana, Josephine and Noela.

This takes us to the next issue, "who as between the plaintiffs and defendants should be appointed as the administrator of the deceased's estate?" It should be noted that an administrator of the estate is a person or persons chosen from among the followings categories of people namely, a surviving spouses, children of the deceased, grand children of the deceased when there are no children capable or willing to do the job, other lineal (blood) descendants of the deceased, parents of the deceased, sibling of the deceased or other person related to the deceased. It is not necessary that the administrator be an heir, he may not, as his duty is to collect the estate, pay debts and other liabilities, and at the end distribute the estates to the lawful heirs of the estate and account his or her job to the court. Administrator may be one or more, but by practice, should not exceed three. But once the court opt to appoint more than one administrator, then they must be the one capable of working together.

In this case the petitioners recognize the 1st objector as the lawful heir, therefore it is my considered view that, given the nature of the estates, he also be appointed to join the team of the administrators.

Therefore, the 1st petitioner, Yerima Leshilalo Laizer, the 2nd petitioner Benjuda Hussein Lemoyan and the 1st objector, Lenana Hussein Lemoyan deserve to be the administrator of the estate of the deceased, and they are accordingly so appointed to work together.

That take us to the next issue which is “what are the properties which fall under the estate of the deceased?” In answering this question, it must be noted that, it is always the duty of the Administrator after being appointed to collect the property of the deceased and pay debts and other liability and thereafter distribute the remaining properties to the lawful heirs. In this case even before Administrators have been appointed, a dispute arose as to whether the farm at Kabuku measuring 50 acres should be included in the estate of the deceased or not. This is because according to the evidence of DW1 DW2 and DW6, Abraham Nazareth Mwabona, the farm should not be part of estate because it had already been sold to the said DW6 when the deceased passed away.

The evidence of PW1, PW2 and PW3 proves to the contrary that should be part of the estate because there is no evidence to prove that the deceased sold the same before he died.

In proving that it had already been sold, Mr. Abraham Nazareth Mwambona said he purchased the land from the deceased when the

deceased was alive on the consideration of the purchase price of Tshs. 4,000,000 (four million). However, the purchase price was paid in two installments. The first installment was paid at the tune of Tshs. 400,000/- and was received by the deceased himself, while the second installment of Tshs 3,600,000/- was paid by PW6 and received by Lenana, the 1st objector.

Moreover, the sale agreement which was admitted as exhibit D5 show that the money was paid in one instalment of 4,000,000/- and was received by the deceased on 13/08/2018, the sale agreement also shows that the contract was signed by the deceased himself as a person who sold the land. There is nowhere, it has been said that Lenana signed on behalf of the deceased. Even if we take it to be so, then it is straight forward that Lenana had no power to do so because he was not the appointed Administrator, or if we are made to believe that the contract was signed before the deceased had passed away, which is not the case here, then it is also the law that Lenana had no power of attorney authorizing him to sale the land.

It should be noted that the person can act or sign on behalf of another only when he has the power of Attorney to do so. In this case there is no power of Attorney shown.

I am aware that this court is just probate court, it should not go far and determine the right of the parties. However, parties themselves framed this issue and gave evidence to prove and disprove it, thereby inviting the court to decide on the issue raised.

For the anomalies which I have indicated herein above, it is my view that the farm at in Kwedihwahwala village at Kabuku is still under the estate of the deceased, and is the other properties mentioned in the petition too.

As to the Religion belief of the deceased, there is no dispute that looking at his way of life, the deceased professed Muslim religion that is why even after his death he was buried in accordance with Islamic rites.

That said, the judgment and decree is hereby entered as explained herein above. Given the consanguinity nature of the parties, no order as to costs is made.

It is accordingly ordered.

DATED at **ARUSHA**, this 20th day of May, 2022



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA

JUDGE