

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

PROBATE AND ADMINISTRATION CAUSE NO 54 OF 2020.

**IN THE MATTER OF AN APPLICATION FOR GRANT OF LETTER OF
ADMINISTRATION BY PAUL NGALASONI TARIMO OF P. O. BOX
61770 DAR ES SALAAM**

AND

IN THE MATTER OF THE ESTATE OF THE LATE

ADELFINA PAUL TARIMO DECEASED

AND

IN THE MATTER OF AN APPLICATION BY

ANTHONY PAUL TARIMO.....CAVEATOR

JUDGEMENT

18/3/2022& 9/5/2022

OPIYO, J.

THE Petitioner, Mr. Paul Ngalasoni Tarimo on 20th July 2020 petitioned in this Court for grant of letters of administration of the estate of the late



Adelphina Paul Tarimo, his wife who died at Kimara Dar es salaam on the 8th February 2012. Upon filling of this petition and publication of general citation Anthony Paul Tarimo who is also the petitioner's son entered a caveat objecting petitioner's appointment as an administrator of the estate of the deceased Adelphina, his biological mother. The grounds for objecting are that the petitioner failed to disclose all assets of the deceased as pleaded under 4 and 5 of caveator's affidavit and that there was no family meeting convened involving all beneficiaries that had lawfully appointed the petitioner to petition for administration of these estates.

Upon caveat being entered this matter became being contentious, it was from there dealt with in terms of section 52(b) of the Probate and Administrations Act, Cap. 352 RE 2019 in which the determination of the matter took as nearly as may be the form of a suit, petitioner became the plaintiff and caveator the defendant. In such determination, in this matter there were three issues that were framed, which are:-

1. Whether the petitioner is entitled to be appointed as a sole Administrator of the estate of the late Adelphina Paul Tarimo?



2. Whether the petitioner has exhausted in his list all the deceased properties subject to this probate?
3. What reliefs are the parties entitled?

In answering the first issue, plaintiff's evidence is essentially that he was a deceased husband as per the marriage certificate that was admitted as exhibit. That the deceased died on 8th February 2012, but it was very difficult to obtain the consent of his four children, who had attended the family meeting held with aim of proposing the one to be appointed as administrator of the estate of the deceased but refused to sign. He explained how the caveator and his three siblings disturbed the family meeting and refused to sign the same. The petitioner/plaintiff went further to list assets he believed to have been left by the deceased and names of the heirs as per the petition. He stated that the centre of the dispute between him and his four children including caveator lies on the fact that the four demand inclusion in the estate even those assets that are held by the plaintiff alone as they allege they are jointly owned by the Petitioner and the deceased.



In examining records with view of determination the basis of contention in this issue, it is observed that upon being served with affidavit of caveator the petitioner found no problem if both of them (him and the caveator) were appointed as co-administrators of the deceased estate. They went ahead and filed a settlement deed to the effect that the issue of joint administratorship was no longer under dispute. So, they agreed that the court appoint both of them as co administrators. Therefore, this issue will not detain me. I find no reason to refuse appointment of both caveator and petitioner as co-administrators. As argued by both sides, this being a petition for letters of administration of the estate of caveator's mother and wife of the petitioner plus the fact that all other heirs preferred both the petitioner and the caveator to be appointed as co-administrators, appointing both will not be a problem. Consent of both envisaged in settlement deed say it all. Therefore, both the caveator and the petitioner **ANTHONY PAUL TARIMO** and **PAUL NGALASONI TARIMO** respectively are appointed as joint administrators of the estate of the late **ADELPHINA PAUL TARIMO**. The first issue is marked settled.



In respect to the second issue, whether the petitioner has exhausted listing all the deceased properties subject of this estate? The plaintiff asserted that the list of assets annexed to the affidavit of caveator alleged to form part of deceased estate were not jointly acquire by him and deceased, rather he acquire them solely as his own properties in his own name. That, the assets forming the estate of the deceased are only those he listed to the petition as per paragraph 4 of the petition. That, he and his late wife owned assets and executed their businesses separately and individually. This testimony was supported by the evidence produced by the two additional witnesses brought by the petitioner who are Emmanuel Mrosso and Adivesta Richard Tarimo.

Turning to the caveator on the second issue, he testified that the plaintiff had shown some dishonest character by not listing some properties of the deceased including those they owned jointly, including shops, landed properties etc. The same thing was stated by the defendant's second witness. What is obvious in this issue is that the caveator is trying to challenge the list of properties listed in the petition as forming part of deceased estate. From the records this petition was still at the preliminary



stage when caveat was entered. This was immediately after the publication of general citation. The caveat was filed with the main purpose of challenging petitioner's appointment as administrator. It is noted in the preceding discussion that this issue of appointment of administrator was later resolved by both sides agreeing for joint administration of the deceased estate.

In this matter, the inventory was yet to be filed. Given the above circumstances, in my considered view, this issue of incorrect list of assets constituting deceased estate was prematurely brought by. This is because the issue of properties constituting the estate is determined after filing inventory under section 107 (1) of the PAEA. After all, the administrator of these estates was yet to be appointed, who was to discharge obligation of filing inventory capable of being objected as not constituting full and correct list of the assets constituting deceased estate? As a matter of law, the tentative list provided in the petition is not always an exhaustive and conclusive list of what constitutes deceased estate, capable of crucifying the mere petitioner for as lacking honest in exhibiting.



The rationale behind the above assertion is that, without administration powers under section 71 of the PAEA, one may not be able to exhaust the list of the deceased estate. Therefore, now that both the caveator and the petitioner have been appointed as co-administrators of deceased estate, they are required cooperate in jointly collecting and exhibiting full and correct inventory of all the deceased estate. It is after filing such inventory the question un-exhaustive list of assets may arise. Whoever will still be aggrieved with inventory will be in a position to sue the joint administrators over the ownership of properties constituting the estate of the deceased in a proper forum. For that reason, this court refrains from determining this issue that was prematurely brought before it. After such determination, I find no need to proceed with the remaining issue of the reliefs that parties are entitled to.

Given the nature of this matter, I make no order as to costs



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

M. P. OPIYO,

JUDGE

9/5/2022