

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

PROBATE AND ADMINISTRATION CAUSE NO. 01 OF 2021

*(Originated from Probate Cause No. 09 of 2021 from Mbinga District Court at
Mbinga)*

**IN THE MATTER OF ESTATE OF THE LATE BENO LIPINDA KOMBA
AND**

**IN THE MATTER OF APPLICATION FOR APPOINTMENT OF
ADMINISTRATION OF THE ESTATE OF THE LATE BENO LIPINDA KOMBA**

BY

SELBELGA BENO KOMBA

RULING

Date of last Order: *31/05/2022*

Date of Ruling: *31/05/2022*

MLYAMBINA, J.

Selbelga Beno Komba of Mbinga District has petitioned before this Court for grant of letter of administration of the estate of the late Beno Lipinda Komba who died at Mbinga District on the day of 22nd December, 2017.

The petition was filed on 16th December, 2021. The reason for late petition for the grant of letter of administration of the estate of the late Beno Lipinda Komba is said to be difficultness of gathering clan

members who are very scared in terms of geographical location and poor knowledge about probate matters.

The Petitioner has stated that the assets which are likely to come in her hands are: Two houses located at Lupilisi Street Mbinga, land located at Masumuni, one farm tree located at Lupilisi Street, garden located along side River Luwaita, two gardens located at Lupilisi and 12 goats the properties of the deceased. All of the properties are estimated to be worth Tanzanian shillings One Hundred Million (TZs. 100,000,000/=). Upon issuing general citation in accordance to *Rule 75 of the Probate and Administration of Estates Rules, 1963* and *section 59 (2) of Probate and Administration of Estates Act (Cap. 354 R. E. 2019)*; a caveat was filed by:

1. Anitha Beno Komba.
2. Rehema Kandidus Milinga.
3. Gerold Gerold Shonga.
4. Kandidus Wilgis Komba.

On 31st day of May, 2022, when the file was placed before me for hearing, I thought of giving necessary directives following appearance of three of the above named Caveators.

Section 52(b) of the Probate and Administration of Estates Act [Cap. 352 R.E. 2019] requires where there is a contention, the proceedings shall take, as nearly as may be, the form of a suit in which the Petitioner shall be the plaintiff and any person who oppose it as a Defendant.

Further, section 59(3) of the Probate and Administration of Estates Act (supra) requires where a Caveator enters appearance, the Court shall proceed with the petition in accordance with *section 52 (b) of the Probate and Administration of Estate Act (supra)*. It is the findings of this Court that the two provisions should be read together with *Rule 82(6) of the Probate and Administration of Estates Rules G.N. 369 of 1963* which provides:


Where a Caveator enters an appearance the proceedings shall be numbered as a suit and the Registrar shall appoint a date upon which the suit shall be listed before a Judge in Court for such orders as to pleadings and date of the hearing as the Judge may make.

In the instant petition, the citation was issued to the Caveators as per *Rule 75 of the Probate Rules 1963* and *section 59(2) of the Probate and Administration of Estates Act (supra)*. The Caveators asserted that they do not support the petition because they were not involved in the family meeting that proposed the herein Petitioner.

Moreso, the three Caveators entered appearance on this 31st May, 2022. As such, the legal requirement has been met. In the circumstances of the above, this Court hereby issues the following necessary orders:-

1. That, the present proceedings shall turn into a suit in which the Petitioner Selbelga Beno Komba shall be the Plaintiff and the caveators: Anitha Beno Komba, Rehema Kandidus Milinga, Gerold Gerold Shonga and Kandidus Wilgis Komba; shall be co Defendants.
2. That, the suit shall be assigned a new Civil Case number by the Deputy Registrar of this Court.
3. That, the Parties shall file necessary pleadings in a suit as per the requirement of the *Civil Procedure Code, [Cap. 33 R.E. 2019]*.
4. That, the Parties in the suit shall appear before the Deputy Registrar to ensure that pleadings are in place before the suit is mentioned before the Judge.
5. That, all procedural requirements for the newly filed suit shall be complied with.
6. That, Parties to appear before the Deputy Registrar on 07/06/2022.

Order accordingly.



Y. J. MLYAMBINA
JUDGE
31/05/2022

Ruling delivered and dated 31st May, 2022 in presence of the Petitioner, first Caveator, third Caveator and fourth Caveator and in absence of the second Caveator.



Y. J. MLYAMBINA
JUDGE
31/05/2022