

**IN THE HIGH COURT OF TANZANIA**  
**TEMEKE SUB-REGISTRY**  
**(ONE STOP JUDICIAL CENTRE)**  
**AT TEMEKE**  
**PROBATE AND ADMINISTRATION CAUSE NO. 113 OF 2022**  
**IN THE MATTER OF THE ESTATE OF THE LATE ANASTAZIA WILLIAM**  
**AND**  
**IN THE MATTER OF APPLICATION FOR THE LETTERS OF**  
**ADMINISTRATION BY ELIZABETH WILLIAM KAMBANYUMA**  
**AND**  
**IN THE MATTER OF CAVEAT AGAINST THE GRANT OF LETTERS OF**  
**ADMINISTRATION BY EDWARD EUGEN MUSHI**

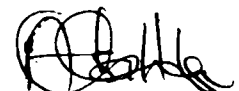
**JUDGMENT**

Date of last order: 25 /05/2023  
Date of Judgment: 11/07/2023

**OMARI, J.**

The Petitioner herein Elizabeth William Kambanyuma petitioned for letters of administration of the estate of the late Anastazia William Sudi who died at Mwananyamala Hospital in Dar es Salaam sometime in 2012.

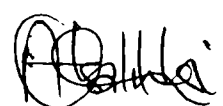
Edward Eugen Mushi filed a caveat against the grant of letters of administration on 09 November, 2022. It is stated in his Affidavit to support



his appearance that the deceased left a Will and he was the administrator of the estate of Anastazia William Sudi before this court determined the grant was null and void for the primary court lacked jurisdiction.

It is trite law where a Caveator appears and opposes a Petition for probate or letters of administration the proceedings shall take, as nearly as possible 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. This is in terms of section 52 (b) of the Probate and Administration of Estate Act, Cap 352, R.E 2002 (the PAEA) and has been well elaborated by the Court of Appeal in the case of **Monica Nyamakere Jigamba v. Mugeta Bwire Bhakome & Another**, Civil Application No. 199/1 of 2019. To this end two issues were framed for the disposal of the matter. The first was whether the deceased left a valid Will and the second is who would be appointed to administer the deceased's estate.

On the date set for hearing of this matter, the Caveator and his advocate did not appear in court. The Petitioner/Plaintiff's learned advocate, Brash Thomas prayed for this court to find that the Caveator is not interested to prosecute his case, however, there being a Caveat, it should be in the

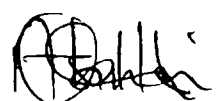


interest of justice for the Petitioner and her witness to be heard as he prayed for the matter to be heard *ex-parte*.

Elizabeth William Kambanyuma the Petitioner, testified as PW1. She stated that the deceased was her and her sibling's paternal grandmother who died in 2012 at Mwananyamala Hospital in Dar es Salaam. She narrated that as was customary after the death of her grandmother, the family met and proposed one David William Kambanyuma to administer the estate of their late grandmother. He was duly appointed as the administrator of the estate of the late Anastazia William Sudi.

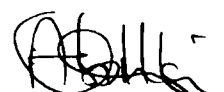
The said appointment was revoked after one Edward Eugen Mushi showed up in court with a Will and was then appointed as the administrator. Dissatisfied, the revoked administrator appealed to the district court which upheld the decision of the trial court and later on the High Court nullified the proceedings for want of jurisdiction of the primary court to hear the matter. She further stated that she petitioned for the letters since David William Kambanyuma now lives in Morogoro but is also of ill health.

After this, she narrated how the family came to know of said Edward Eugen Mushi who is also the Caveator and how she and the rest of the family believe the said Will and contracts that the Caveator produced in the primary court



cannot be genuine for various reasons including that they are not related and no one in the family knew of the existence of the Will. She went to explain that her grandmother was a wealthy woman who was able to fend for her self and did not need to be cared for by a stranger in the form of one Edward Eugen Mushi. PW1 went on to testify that upon the death of her grandmother, the said Edward Eugen Mushi was not involved in any of the rituals and the actual burial. He, in her testimony is the one who is enjoying the use of the estate left behind by the late Anastazia William Sudi.

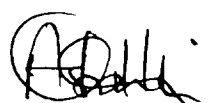
With her testimony she tendered various documents that she used to question the Caveator's contention that the deceased not only left a Will but also some of the properties were not part of the deceased's estate as they had been sold in her lifetime, these include Exhibits marked P1, P2, P3 and P4 which are all correspondences between the deceased and the Tanganyika Law Society regarding an advocate whose conduct the late Anastazia William Sudi was complaining about. PW1 was using the said correspondences in questioning the alleged relationship between the deceased and the Caveator. Exhibit P5 is a contract for sale for a property on Plot No. 111, Block E Muheza Street, Kariakoo which the caveator presented to the primary court asserting it is not part of the deceased estate as it was since sold to him by

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the deceased. Exhibit P6 is a grant of letters of administration of the estate of the late William Salum Sudi who is her great grandfather and was the owner of the property on Plot No. 111, Block E Muheza Street, Kariakoo while Exhibit P7 is an application at the District Land and Housing Tribunal for Ilala at Ilala for Application No. 220 of 2006 between Alexia William and Anastazia William regarding Plot No. 111 Block E Muheza Street, Kariakoo. In essence PW1 was trying to show that the Caveator was a stranger to the estate and raising doubt on the property he allegedly bought from the deceased. Finally, she prayed to be appointed as the administrator of the estate for the deceased person was her grandmother whom she is related to by blood contrary to the Caveator.

PW 2 was Benigna William Kambanyuma, her testimony rides closely to what PW1 testified, briefly her testimony was that the deceased was their grandmother and the family is not aware of the Will that the Caveator is purporting to have until he brought the same to court. She testified that her grandmother left no Will and it is Elizabeth William Kambanyuma who should be appointed to administer the estate of the late Anastazia William Sudi.

After going through the testimonies, I now turn to the disposition of issues. On the first issue, that is whether the deceased person left a valid Will? As



already stated, the Caveator in this matter did not appear in court on the day set for hearing to prosecute his Caveat despite entering appearance vide an Affidavit filed on 09 November, 2022.

Being mindful of Order XIX Rule 1 of the Civil Procedure Code, Cap 33 RE 2019, despite the Caveator's absence, I have gone through his Affidavit to evaluate the same, for it may contain sufficient grounds to determine the objection without having the deponent appearing in court to testify. In support of his objection, the Affidavit of the Caveator states he was called and given a Will by the late Anastazia William Sudi he was also shown by her properties in the said Will. He further deponed that the said will gave him the properties of the deceased Anastazia William Sudi and that he was the legal administrator of the decease's estate up until when this court quashed the proceedings and set aside the decision for want of jurisdiction.

In my considered view the said Affidavit is not sufficient for this court to determine the objection. Furthermore, the Caveator had an opportunity to appear and defend his objection and he did not, and in the process, he forfeited his right to be heard on the said objection. In that respect this court cannot entertain his objection, thus the first issue is determined in the negative as per

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the explanation above. What remains is the second issue, who should be appointed to administer the deceased's estate?

Section 2(1) of the PAEA defines an 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'*

From that definition, simply put an administrator is a person appointed by the court to collect and distribute deceased person's estate when the deceased has died intestate or where there is a Will but it did not appoint an executor or the executor refuses to act.

On who should be an administrator, this court in **Benson Benjamini Mengi and 3 others v. Abdiel Reginald Mengi and Another**, Probate and Administration Cause No. 39 of 2019 when referring to the case **of Saleli Doto v. Maganga Maige and Others**, PC Probate Appeal No. 6 of 2018 had the following to say:

*'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 qualification for an administrator is therefore tested through a reputation and capability to act faithfully, diligently and impartially in administering the estate to the rightful owners. The question is whether the current Petitioner has those qualifications.

Furthermore, section 33(1) of the PAEA 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.'*

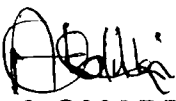
The section allows any person who has interest in the deceased's estate to petition for the letters of administration and the court may entitle the whole or part of it depending on the circumstances, hence the Petitioner herein being an heir of the deceased's estate is eligible and qualified to petition for letters of administration by virtue of section 33 (1) of the PAEA. However, the Caveator sought to object this Petition, but, as already explained he did not show up to prosecute his objection to the said Petition and would be appointment. The Petitioner testified that she has the support of her immediate family as did PW2. I see no reason why in the absence of any



objection the Petitioner cannot administer the estate of the late Anastazia William Sudi. With that in mind, the Caveat is rejected, the Petitioner Elizabeth William Kambanyuma is appointed the administratrix of the estate of the late Anastazia William Sudi. In so doing she shall exhibit the inventory of the deceased's estate, and accordingly file final accounts on the same within the time as will be prescribed by this court.

It is so ordered.



  
**A.A. OMARI**  
**JUDGE**  
**11/07/2023**

**Orders:**

Grant of letters of administration to issue.

Rule 111 of the Probate Rules to be complied with.

Inventory of the estate to be filed by 15/08/2023.

Hearing on 22/08/2023 at 12:30 HRs beneficiaries to be present those outside of Dar es Salaam to join via virtual court.

**Sgd. A.A. OMARI**

**JUDGE**

**11/07/2023**