

IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA
TEMEKE HIGH COURT SUB – REGISTRY
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE

PROBATE AND ADMINISTRATION CAUSE NO. 142 OF 2022

In the matter of the estate of late

AWADHI ZUBERI ATHUMAN.....DECEASED

BETWEEN

In the matter of application for letters of administration by

NEEMA LAZARO MAKONGORO..... PETITIONER

AND

In the matter of a caveat by

SALAMA HASSAN KIBIKI.....1st CAVEATOR

NAFSA AWADHI ZUBERI.....2nd CAVEATOR

JUDGMENT

Date of Last Order: 16/08/2023

Date of Judgment: 25/08/2023

M. MNYUKWA, J

The petitioner, Neema Lazaro Makogono is seeking to be granted letters of administration so that she can administer the estate of the late Awadhi Zuberi Athuman. The late Awadhi Zuberi Athuman died intestate on 20th April, 2020. Surviving him are his two wives and eight children.

When the petition was filed, caveators filed their caveat to object the petitioner from being appointed as administrator. And, they entered appearance by filling affidavit explaining reasons for their objections.



In the affidavit of the first caveator, she averred that she is the deceased's wife whom she married in 2012. She had two children with the deceased. Her reasons for objecting the petitioner as stated under para 8 and 10 of the affidavit are the fact that she was not mentioned in the petition as the beneficiary and her children were mentioned as children born out of wedlock, therefore their eligibility to the estate is subject to DNA test confirming that they were fathered by the deceased.

Further, she stated that petitioner mentioned few properties of the deceased in her petition contrary to what she said and that were mentioned at the family meeting.

Second caveator averred in her affidavit that she contested the petition since the petitioner failed to disclose other properties of the deceased. She said, the properties that were listed in the petition are not the only properties of the deceased.

At the hearing, petitioner was present in person and represented by Mr. Thomas Brush learned advocate whereas, the 1st caveator who was also in court enjoyed the legal services of Mr. Adnan Chitale and as for the 2nd caveator she appeared in person. The case was argued orally.

It is on record that the court framed two issues for determination which are;



- 1. Who is suitable to be appointed to administer the deceased's estate*
- 2. Whether the 1st objector (Salama Hassan Kibiki) is a lawful wife of the deceased.*

It has to be noted that before the hearing the learned advocate of the petitioner, Mr. Brush informed the court that they are not disputing the fact that the 1st caveator is the deceased's lawful wife, since they don't intend to give evidence in relation to the second issue.

It was Neema Lazaro Makongoro (PW1) who started rolling the ball, she testified that the deceased Awadh Zuberi Othman was her husband whom she married in 1993. And, she said deceased died in 2020 leaving two wives and eight children. According to her, she recognises the 1st caveator as the wife of the deceased.

She added further that she is aware of the caveats which were filed by the caveators but she firmly assured this court that she is a fit person to be appointed to administer the deceased's estate. It was her testimony that, she might have forgotten to list some of the properties, so she is inviting the caveators to cooperate with her in listing the same. She then said since she is capable of administering the estate, she sees no need for the caveators to be appointed too.

Her witness, Jamal Awadh Zuberi (PW2) testified that petitioner is a fit person to administer the deceased's estate, he also said he knows



the caveators as the wife and daughter of the deceased. He was of the view that if it is desirable for this court to appoint two administrators then the 1st caveator should be appointed and not the 2nd caveator.

As for defence, the 1st caveator (DW1) Salama Hassan Kibiki testified that she objected the petitioner for the reason that, she (petitioner) did not include her as a beneficiary in the petition and her children were said to be born out of wedlock. However, she stated that since petitioner stated in court that she recognises her and her children she is not objecting her appointment, but she want to be joined as a co-administrator in order to protect her interest and the interest of her children.

Nafsa Awadh Zuberi Athman (DW2) and 2nd caveator testified that she is the first-born child of the deceased. She stated further that her reason for objecting the petitioner is the fact that few properties were listed in the petition contrary to what she said were mentioned at the family meeting. She also said at the family meeting she was appointed to administer the deceased's estate together with the first caveator and the petitioner. In the oral evidence, she said that, she want to be appointed as a co-administrator so as to protect her interest and the interest of a child of a deceased whose mother did not enter caveat.

A handwritten signature in black ink, appearing to be the initials 'N' and 'A' intertwined.

Having heard the parties I am called upon to determine the remaining issue which is, who is suitable to be appointed to administer the deceased estate.

The caveators have testified that at the family meeting which was held in 2020 they were appointed together with the petitioner as administrators of the deceased's estate. However, it is not on record what caused them not to file this petition together with the petitioner. Since they decided to object the petition, it is therefore prudent to determine the foregoing issue.

The law under the provision of section 33(1) of The Probate and Administration of Estates Act, **[Cap 352 R.E 2002]** *henceforth the Act* provides that letters of administration may be granted to a person who, according to the rules of distribution in intestacy, would be entitled to part or whole of the deceased estate. For easy reference the same 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.

Considering the provision above, it follows therefore that a beneficiary to the deceased's estate is suitable to administer the estate.

A handwritten signature in black ink, appearing to be the initials 'M' and 'H' or similar, located at the bottom right of the page.

And as far as the petitioner in this case is the deceased's wife, she is therefore suitable to administer the deceased's estate. However, to hold so depends on the determination especially on caveat against the petition if the same hold water.

For this case at hand the first caveator seems to have withdrawn her objections after the petitioner testified to have recognised her and her children as the deceased's wife and children respectively. And they are also among the beneficiaries to the deceased's estate. Thus, the caveat as far as the 1st caveator is concerned is hereby dismissed since the issue of protecting her interest and the children's interest is baseless at the moment.

The 2nd caveator's objection is in relation to the fact that petitioner listed fewer properties in the petition contrary to what the family mentioned at the family meeting. I can say this fall short of being an objection due to the reason that objector/caveator ought to have established that the petitioner had an ill motive for her listing the fewer properties. Unless otherwise among the duties of the administrator when granted letters of administration is to collect all the deceased's properties as per section 108 of the Act.

Properties to be collected by the petitioner will be those which are known to her and those which will come to her knowledge in the course



of her administration. Thus why under the provision of section 107 of the Act, she/he is required to exhibit inventory of all the properties. Having said that, with respect I think listing fewer properties does not disqualify the petitioner from being appointed to administer the deceased's estate. This objection lacks merit the caveat is hereby dismissed. The reason of protecting her interest in the oral evidence is baseless and the same is dismissed too.

The issue of whether the caveators can be appointed as co-administrators is subject to sufficient cause being established. And I am convinced to say that, in this case there was no sufficient cause that was established by the caveators for this court to think that the administration of the deceased's estate needs more than one person.

Nevertheless, I want to assure the caveators that petitioner will be subject to court directions in relation to the administration. Section 65 of the Act provides that;

The court may give to an executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

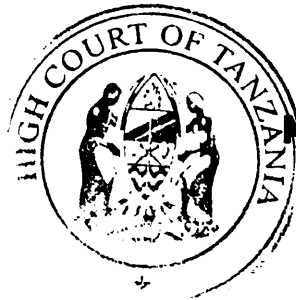
Having said what I have said above, I dismiss the caveats and appoint the petitioner as the administrator of the estate of the late Awadh Zuberi Athumani. This being a probate case I make no orders as to costs.



It is so ordered.


M.MNYUKWA
JUDGE
25/8/2023

Court: Judgment delivered on 25th August 2023 in the presence of the parties




M.MNYUKWA
JUDGE
25/8/2023