

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

PROBATE AND ADMINISTRATION CAUSE NO. 145 OF 2022
IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH FABIAN MREMA
AND
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF THE GRANT
OF LETTERS OF ADMINISTRATION ISSUED TO GABRIEL FABIAN MREMA
AND
IN THE MATTER OF AN APPLICATION FOR GRANT OF LETTERS OF
ADMINISTRATION TO DIANA JOSEPH MREMA
BETWEEN

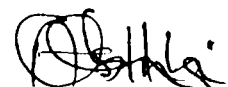
DIANA JOSEPH MREMA.....APPLICANT
AND
GABRIEL FABIAN MREMARESPONDENT

RULING

Date of last order: 23/06/2023
Date of Ruling: 05/07/2023

OMARI,J.


This is an Application by an heir *cum* beneficiary seeking for orders that the grant of letters of administration issued to the Administrator in Probate and Administration Cause No. 145 of 2022 which were granted on 31 October, 2022 to be revoked. The Applicant is also praying that in the event the first



prayer is granted then she be granted with the letters of administration and any other reliefs that the Court deems just to grant. The said Application is preferred *inter alia* under Rule 29 of the Probate Rules of 1963 (the Rules) and section 49(1) (e) and (2) of the Probate and Administration of Estates Act Cap 352 RE 2019 (the PAEA).

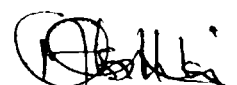
The Applicant supported her Application with an affidavit. The matter was disposed by way of written submissions and both parties adhered to the scheduling order.

The Applicant who prayed for her Affidavit to be adopted and used as part of the submission and commenced her submission by stating the law which the Application is preferred then stating that the Application is seeking to have the grant issued to Gabriel Fabian Mrema revoked on the ground that he has exhibited an inventory and accounts which are untrue in material aspect which she divided into three aspects she submitted on, that is the inventory, the accounts and secrecy on the administration. She gave a synopsis of the law as in section 107(1) of the Act that requires an Administrator to exhibit an inventory containing a full and true estimate of the estate. She submitted that an administrator who contravenes the requirement is culpable under section 49 of the PAEA. The Applicant

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augmented her submission by averring the incidences of the untrue statement on the inventory as deponed in her Affidavit to be under estimation of the value of the house on Plot No. 454, the *Kihamba* in Marangu having no monetary value, there being no proof of sale of some motor vehicles alleged to have been sold by the deceased during his lifetime and lastly a motor vehicle with Registration No. T272 BMY despite being listed in the inventory is in the hands of a third party. She further submitted that the Respondent's Counter Affidavit proves her claim in that the Respondent contends he used his own judgment in estimating the value of the estate. The Applicant is of the view that being the Respondent is not with the expertise to estimate the value of the estate he provided untrue estimate of the values of the estate of the deceased which may lead to jeopardizing the interest of the beneficiaries. She made further reference to section 3(1) of the Land Act Cap 113 RE 2019 stating that the *Kihamba* cannot be an exception to the rule that value is taken into consideration in transaction affecting a property.

The Applicant beseeched this court to disregard the contention that the property is clan land and has graves as it is self-contradictory since the said *Kihamba* is included in the inventory therefore a part of the estate of the

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deceased, therefore ought to be valued for the purpose of distribution and not selling if the same is not traditionally allowed to be sold. As for the motor vehicles allegedly sold the Applicant submitted that the claim be disregarded if no proof is availed. She stated that the motor vehicle with Registration No. T272 BMY also has no proof being sold yet the person in possession has been ordered to return it.

She concluded her submission on the part of the inventory by stating that the administrator exhibited untrue inventory contrary to the law and his fiduciary duty towards the beneficiaries and the Court, therefore the grant should be revoked.

On the allegation of exhibiting untrue accounts the Applicant commenced her submission by referring to section 107(1) of the PAEA and argues that the administrator is under a duty imposed to him to exhibit an account of the estate showing the assets which have come to his hands and in the manner in which they have been applied or disposed of. She went on to describe the anomalies in the accounts exhibited in court, that include what she has deponed in paragraph 6 of her Affidavit. The said anomalies are as regards the funeral expenses, legal fees and the value of the vehicle,

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Mercedes Benz. Lastly is the fact that no division has been affected albeit the administrator exhibiting the accounts.

The Applicant further submitted that the averments in the Respondent's Counter Affidavit regarding the funeral expenses, legal fees and the motor vehicles should all be disregarded for being falsehoods. The Applicant ended her submission on the accounts exhibited by stating that the Administrator has failed to effect transfer of the properties in the inventory to the beneficiaries so they are still in the name of the deceased. Therefore, the accounts exhibited are misleading this court as division of estate should not be only on the accounts exhibited in court.

Lastly the Applicant submitted on the secrecy in the administration which in her opinion is what led to the exhibition of the untrue inventory and account. She submits that as deponed under paragraph 5 of her Affidavit there was no meeting between the heirs and the Administrator despite the Applicant's persistence that the same be held. This in her opinion leaves the beneficiaries in darkness and the lack of the meeting was done purposely and maliciously to punish the Applicant.

The Applicant then contends that under section 107(5) of the PAEA the inventory and accounts should be prepared and the beneficiaries be allowed

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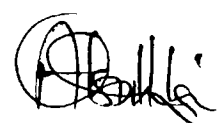
to inspect the same. Therefore, the Respondent's claim that no law requires him to serve copies of the inventory and accounts defeats the spirit of the provisions of section 107 (5) of the PAEA. She further cites the case of **Ahmed Daud Nyabu v. Rehema John Lyimo**, Probate Appeal No. 01 of 2023 to cement her argument that the right of inspection and rising an objection does not cease upon the filing of the inventory and accounts in court. She concluded her submission by reiterating the objective of section 107 of the PAEA, stating that the Administrator and Respondent herein has breached the said law and the remedy for that is the revocation of the grant of letters of administration as per the provisions of section 49 (1)(e) of the PAEA t and the same be granted to her, the Applicant.

When it was his turn, the Respondent, who is also the Administrator of the estate of Joseph Fabian Mrema commenced his submission by giving a statement of the law pertaining to the Application and prayed that his Counter Affidavit be considered as part of the written submission. He further submitted that in accordance to Part XI, section 107 (1) of the PAEA he as the Administrator discharged his duties and in accordance to the oath of the Administrator. To this end the Respondent contends he filed an inventory of the estate and the same was accepted in court on 25 November,2022 in the

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presence of the Applicant. He also submitted that in his identification and collection of the properties of the deceased it is only the widow who assisted him while the Applicant was never bothered. He therefore submits that having done his job with full diligence and provided a true inventory thus, the prayer for revocation under section 49(1) PAEA has no merit and should be dismissed.

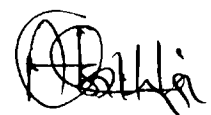
As regards the untrue statement of inventory the Respondent submitted starting with the estimated value of Plot 454 is based on his opinion and not of an expert or precise value of the property. The Respondent argues further that regardless of the Applicants averments she also has not provided any expert proof of the value. On the *Kihamba* farm land in Marangu not being accorded monetary value the Respondent reiterated what is in his Counter Affidavit by arguing that in Chagga customs a *Kihamba* has no monetary value and it is owned by the clan and this particular one has graves including that of the deceased, two of his children and some other relatives. Customarily the same is inherited by the eldest son of the deceased but also remains a home for all the other surviving beneficiaries who, like the other clan members have the right of access and to care for the family graves. He then submitted on the motor vehicles as having been sold to various persons

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by the deceased in his lifetime and the proof is as annexed to his Counter Affidavit. He further added that there being no contracts and most of the deceased's transactions being on cash basis then it would be her the Applicant with the legal burden to prove otherwise, the vehicles were sold. To cement his argument, he referred to the case of **Berella Kirangirangi v. Asteria Nyambwa**, Civil Appeal No. 237 of 2017 (unreported), then veered of the submit on the allegation of exhibiting untrue accounts.

On the said untrue accounts of the estate, the Respondent began his submission by pointing out that the Applicant was not present during the death, mourning and funeral of the deceased so she is not in a position to know the costs related to the same. He then went on to explain that the provision as per the inventory was as a matter of caution and in any case, there are still debts and other expenses still owed from the estate. He finished his submission on the funeral expenses by stating the claims by the Applicant are frivolous considering he is even incurring personal expenses to administer the estate.

On the contention of the legal fees the Respondent argued that he engaged the services of M/S Mrosso & Associate Advocates for legal services related to the administration of the estate at a fee of TZS 6,000,000. The said firm

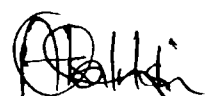
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has been paid TZS 500,000 and the rest of the fees are to be paid upon sale of one of the vehicles that has been earmarked for paying this and other debts.

On the claims of the vehicle make Mercedes Benz being worth TZS 20,000 the Respondent argued that this claim does not have any basis, likewise the allegation that it is beyond repair adding that because the cars have been parked since the demise of the deceased then they are due to depreciate in value.

Regarding the other motor vehicle (that is the one with Registration No. T272 BMY) the Respondent argued that the said vehicle is with the deceased's sister who has since been instructed to hand it over to the Administrator or produce evidence as to how she came to possess it. With that the Respondent ended his submission on the second issue by stating he has performed his duties in accordance to the law and he has not distributed the estate because this Application has stalled the process.

On the allegation issue of secrecy in the administration leading to exhibiting untrue inventory and accounts. The Respondent submitted he has acted in full compliance with section 107 of the PAEA, he filed the inventory and the same was accepted in court on 25 November, 2022 and has submitted the

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accounts which means he acted in accordance to the oath of the Administrator.

He submitted further that the Applicant wrote a letter to remove herself from the Probate & Administration proceedings and from then on has blocked all communication with the Administrator and others and has abstained from any meetings he has convened. Further to this, the Respondent submitted that the Applicant was not prevented to inspect the inventory and resultant accounts exhibited in court and she is included as an heir therefore her claims are frivolous and should be disregarded.

He further contended that the issue of secrecy is one that should not be entertained since the whole rationale of exhibiting the inventory and accounts are so that the beneficiaries are kept informed and for transparency in the administration of the deceased estate. To augment this thinking, he referred to the Court of Appeal's decision in **Joseph Shumbusho v. Mary Grace Tigerwa, James Rugaimukamu and David Rugamukamu**, Civil Appeal No. 183 of 2016. He averred that although the Administrator does not have to consult the beneficiaries, he used commonsense to consult them and it is only, the widow and some other relatives who assisted in identifying the deceased's estate. The Applicant has not been cooperative and has been

claiming there are other properties but has failed to say where the same can be found.

The Respondent concluded his submission contesting this Application by stating he is aware of his responsibility as an Administrator and has been fulfilling his duties; he thus beseeched this Court not to grant the Application to revoke of his appointment as the Administrator, he urged this court not invoke the provisions of section 49(2) of the PAEA because the Application is devoid of merit and has been motivated by greed.

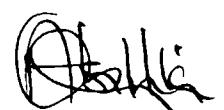
Having considered the parties submission for and against the Application there's only one issue for determination of this Court; that is whether the Application is meritorious and the way forward.

The Applicant unequivocally wants the Respondent removed as the Administrator of the estate of the late Joseph Fabian Mrema who is her father, through the revocation of the letters granted to him and the same to be granted to her in his stead. She is relying on the provisions of Rule 29 of the Rules and Section 49(1)(e) and (2) of the PAEA. Her basis for wanting this is that the Respondent has exhibited an inventory and accounts which are untrue in material respect. Both her Affidavit and submission aptly elucidate on this. The Respondent on the other hand has presented himself

as to have acted in accordance to the requirement of the laws, performed his duties as an Administrator and lived up to the oath that he took at appointment thus contested the Applicant's claims and prayer to have him removed as the administrator.

On the exhibiting the inventory, it is not disputed the same was exhibited on 25 November, 2022. What the Applicant is alleging is that the said contains untrue information including the under valuation of the residential house on Plot No. 454 which according to the inventory is located at Kijitonyama Dar es Salaam and valued at TZS 110,000,000.00. The *Kihamba* at Marangu has unknown value. The cars that the Respondent submitted to have been sold by the deceased valued at 38,000,000/= in the inventory as a loss and the Applicant is claiming for evidence of the same. Then there is the Motor vehicle with Registration No. T 272 BMY listed in the inventory as being valued at TZS 6,000,000.

As for the value of the Kijitonyama property on Plot No. 454 I am of the view that since the same was not being put for sale for the proceeds to be distributed amongst the heirs then the Administrator did nothing wrong to estimate the value and that is the essence of the inventory being filed and the heirs being called to confirm list of assets and liabilities as the case may



be as well as their value. From the Record the said inventory was confirmed on 06 December, 2022 in the presence of the Applicant among other heirs. The Applicant had the opportunity to point this out in court and even if she was of the view that she needed the time to go through it; in the assumption that she had no chance to thoroughly go through the same; she could have asked for time to do so; nothing is on record to depict that there was any issue with the inventory filed from the Applicant or any of the other heirs.

An inventory as described by section 107 of the PAEA and Rule 106 of the Rules is in the form of Form 80 in the First schedule to the Rules. The Administrator is required to file the said Form which contains a full and true estimate of the properties of the deceased that have come into his possession including any liabilities. In the world of book keeping and rudimentary accounts this would be a balance sheet of the deceased's estate. It is a duty of the Administrator to exhibit the inventory. In the present case as already pointed out it is undisputed that the same was filed and confirmed. Exhibition of an inventory and accounts is the law's guard rail on the powers of the administrator, it is also meant to ensure transparency in the process. To this end, section 107 (5) of the PAEA states:

'Any beneficiary under a will, person entitled to a share under an intestacy or unsatisfied creditor shall be entitled to inspect the inventory and account of the executor or administrator'

This gives the heirs rights to look over the exhibited inventory and file objections if any. The Court will ordinarily deal with the same before the said inventory is confirmed. In the case of **Joseph Shumbusho v. Mary Grace Tigerwa, James Rugaimukamu and David Rugamukamu** (supra) the court had this to say:

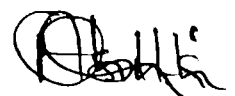
'The rationale of exhibiting the inventory and accounts is to keep the beneficiaries informed and to have transparency in the execution/administration of the deceased's estate.'

The Respondent when acting as Administrator exhibited the inventory as ordered on 30 October, 2022 when he was appointed. The said order required the inventory to be filed by 30 November, 2022 and a hearing of the inventory be conducted on 06 December, 2022 with the beneficiaries to appear. The record depicts that an inventory was filed on 25 November, 2022 and the hearing was done as scheduled and therefore there being no objections the inventory was confirmed; after which the court ordered for the accounts to be filed by 15 February, 2022 and scheduled a hearing for

the same on 22 March 2023 which was subsequently adjourned to a later date.

The Applicant herein albeit being present and not objecting when the inventory was being confirmed still could have alerted the Administrator or court on the anomalies that she subsequently discovered in the inventory and after determination of the same this court would have made the necessary orders to the administrator regarding the same. I find her complaint that she was not served with the inventory and or accounts exhibited therefore her failure to do so in court diminutively self-preserving.

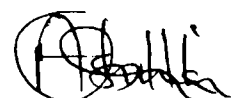
As for the accounts of the estate, being that the same were never confirmed or approved by this court I find it futile to comment on the same since it would be premature. Moreover, the Applicant (and or any other heir/beneficiary) can raise concerns or objections if any in court on the date set for hearing of the accounts of the estate. The Applicant's allegations that the Administrator has exhibited accounts but has not distributed anything to the heirs is also a matter that she (and or any other heir/beneficiary) can be raised on the date set for hearing of the said accounts so that if need be the court can inquire and make orders on the same.

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Lastly, on the issue of secrecy and lack of transparency as alleged by the Applicant it is perhaps prudent to look back on the duties and functions of an Administrator as well as the powers that he is vested with. The Administrator once duly appointed has powers over the estate as a legal representative of the deceased. There is no legal requirement for the administrator to seek consent or advice from the heirs in order for him to undertake his duties, see **Mohammed Hassan v. Mayasa Mzee and Mwanahawa Mzee** [1994] TLR 225. Furthermore in the case of **Joseph Shumbusho v. Mary Grace Tigerwa, James Rugaimukamu and David Rugamukamu** (supra) the court clarified this in the following manner:

'As a legal Representative of the deceased's estates are vested to him and has all the powers of the deceased's assets as the deceased would have, save that he is acting in a representative capacity.'

In that same case the Court of Appeal further remarked that the Administrator has powers to deal with the immovable property by way of disposing, sale, mortgage leasing or otherwise as per section 101 of the PAEA. It added that this has to be done in accordance to the Administrator's oath as provided for in section 66 of the PAEA. The Court further observed



that the Administrator owes a fiduciary duty to the beneficiaries and went on to say:

'...whereby prudence requires an administrator to make consultation for smooth administration leading to a peaceful conclusion of administration but it is not a statutory requirement. It is a matter of prudence rather than legal obligation.'

This means the administrator out of prudence has to consult, get and provide information to the beneficiaries and or heirs so that he is able to smoothly perform his duties. The Applicant is complaining that the Respondent, as an Administrator has not called any meetings and the Respondent is averring he has it is the Applicant who has not been partaking in the same. The Respondent has also averred that the other heirs including the widow cooperate with him and have helped him in identification of the properties.

As already stated, the Applicant wants the Respondent's appointment to be revoked and she be appointed to administer the estate of her late father, however, once letters of administration are granted there is only a prescribed set of reasons that can cause the same to be revoked or annulled. The said reasons are as prescribed in section 49 (1) of the PAEA, which I reproduce hereunder for ease of reference:

*'The grant of probate and letters of administration may be revoked or annulled for any of the following reasons– (a) that the proceedings to obtain the grant were defective in substance; (b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case; (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; (d) that the grant has become useless and inoperative; (e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or **has exhibited under that Part an inventory or account which is untrue in a material respect.**'*
(emphasis supplied)

This means where an Administrator has exhibited an inventory or accounts which is untrue in material respect and the court is satisfied that the said inventory or accounts are untrue then it may revoke the grant to the said administrator. For clarity, I also wish to refer to section 107 of the PAEA, which provides for the mandatory requirement to exhibit the inventory and accounts of the estate in the time prescribed. Section 107 (1) provides:

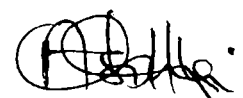
*'An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint or require, **exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and in the manner in which they have been applied or disposed of.** (emphasis supplied)*

As already stated, the duty and rationale of exhibiting an inventory and or accounts of the estate has been well clarified by the Court of Appeal in the **Joseph Shumbusho v. Mary Grace Tigerwa, James Rugaimukamu and David Rugamukamu** (supra) and as already seen the record depicts that the Respondent exhibited an inventory as ordered and the same was confirmed by this court in the presence of the beneficiaries including the Applicant. The order for filing of the accounts has also been complied with however, the same have not been approved. The Respondent has constantly

fortified his argument that he has complied with this courts orders and acted in a manner that is congruent to his oath as an administrator. The Applicant thinks otherwise.

Having scrutinized the record and the annexures availed by the Respondent it is my considered view that there is a communication gap between the Applicant as a beneficiary of the estate of the late Joseph Fabian Mrema and the Respondent as the Administrator of the said estate. This gap could have been bridged by the provisions of section 107 (5) of the PAEA which accords a beneficiary or creditor the right to inspect the exhibited inventory and or accounts either before, during or after the hearing.

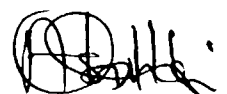
The Applicant who was at the hearing of the inventory knowing that there was something amiss with the inventory as she is alleging should have either objected or prayed for additional time for her to scrutinize the same. Having information and withholding it from the administrator or the court, likewise seeing anomalies and keeping silent cannot be said to be in the interests of the estate or the beneficiaries of the same. In this regard it would be uncalled for at this juncture to say the Administrator *cum* Respondent has been running a one man show and not consulting the beneficiaries in the course of his duties.

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In my considered view, the Applicant has not done a very good job in convincing this court that the allegations she meted were intentional on the part of the Administrator such as he intentionally submitted an untrue inventory and accounts contrary to section 107 (5) of the PAEA. I am persuaded by this court's reasoning in **Abraham Ally Sykes & Another v. Mluguru Paula Sykes & Khwemah Ally Sykes (administrators of The Late Zainabu Sykes) & 2 Others**, Misc. Civil Application No. 85 of 2020 where it was stated:

'It should be noted, here and now, that revocation of a grant of probate is such a weighty and agonizing decision that cannot hinge on sketchy or flimsy grounds which are lacking in any concrete proof of the executors 'wrong doing or ill motive that borders on breach of fiduciary duties.'

This means a party seeking a court to revoke a grant of probate or letters of administration has to not only to make averments that can fit in the scope of section 49(1) and (2) but they are duty bound to substantiate the same as she is the one who alleges and it would seem she is the one with the knowledge of the averments she is making. See **Tanzania National Roads Agency and the Attorney General v. Abdallah Magabe Sindoma and Another**, Civil Appeal No. 307 of 2021.

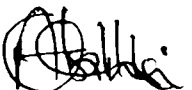


On account of the above, I am not convinced that the Administrator of the estate of the late Joseph Fabian Mrema and Respondent herein has intentionally exhibited an inventory and or accounts of the estate which is untrue in material respect, thus, has not failed to discharge his legal obligation in respect of the deceased's estate. Consequently, this court find this Application without substance. It is hereby dismissed. Owing to the circumstances and this being a probate matter, I order that each party should bear its own costs.




A.A. OMARI
JUDGE
05/07/2023

Ruling delivered and dated 05th day of July, 2023.


A.A. OMARI
JUDGE
05/07/2023