

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM SUB DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 442 OF 2022**

(Arising out of Probate and Administration Cause No. 11 of 2020)

**IN THE MATTER OF THE ESTATES OF THE LATE FRANK GABRIEL RICHARD  
SOMI**

**AND**

**IN THE MATTER OF AN APPLICATION FOR THE REVOCATION OF AN ORDER  
OF RE-SEALING OF PROBATE ISSUED TO BARBARA SALLY SOMI AS AN  
EXECUTRIX OF THE LATE FRANK GABRIEL RICHARD SOMI**

**BY**

**FOUARD GABRIEL SOMI.....APPLICANT**

**VERSUS**

**BARBARA SALLY SOMI.....RESPONDENT**

**RULING**

*Date of last Order: 11<sup>th</sup> January, 2023*

*Date of Ruling: 10<sup>th</sup> February, 2023*

**E. E. KAKOLAKI. J**

The applicant herein the son of the late Frank Gabriel Richard Somi who died testate in Australia is seeking for an order to revoke/annul the re-sealed Probate and Administration of the estate of the said late Frank Gabriel Richard Somi granted by this Court in favour of the respondent on 28/04/2020, sealing the Probate issued by the Supreme Court of New South Wales, Equity Division, at Sidney Australia, appointing the respondent as executrix of the above mentioned deceased's estate. The application is

preferred under sections 95 and 49(1)(a) of the Probate and Administration of Estate Act, [Cap. 352 E.E 2002] (the PAEA) read together with Rule 29(1),(2),(3) and (4) of the Probate and Administration of Estate Rules GN No. 369 of 1963 (the Rules), section 95 of the Civil Procedure Code, [Cap. 33 R.E 2019] and any other enabling provisions of the law. The same is supported by the affidavits of the applicant and one Nicodemus Agweyo.

In response when served with the same the respondent vehemently resisted and challenged it by filing two counter affidavits dully sworn by the respondent and her advocate Audax Kahendaguza Vedasto. Hearing of the matter proceeded by way of written submission as the applicant appeared represented by Mr. Stephen Mosha, learned advocate while the respondent enjoying the service of Audax Kahendaguza Vedasto, learned advocate. Submissions were filed in accordance with the scheduled court orders.

Briefly the respondent is the wife and executrix of the will of the late Frank Gabriel Richard Somi that was probated by Supreme Court of New South Wales, Equity Division, at Sidney Australia. Upon that grant vide Probate and Administration Cause No. 11 of 2020 she applied before this Court for re-sealing of the probate granted in Australia the application which was granted on 28/04/2020 without inventory and valuation of property lodged with the

Registrar as per the requirement of the law under Rule 101 of the Probate Rules. As the applicant wanted to comply with the law in Misc. Civil Application No. 170 of 2022 successfully applied for extension of time within which to file notice to creditors and exhibit an inventory and accounts of estate as time was extended to her for four (4) months from 16/06/2022. It appears in the course of executing her duties in the office the respondent filed with the Registrar of Titles an application for Registration as Legal Personal Representative of her late husband in respect of Plot No. 166 Mbezi Beach in which the applicant claims an interest therein as the elder son of the late Frank Gabriel Richard Somi, in which a notice of 30 days before effecting the registration was issued to him (applicant). It is out of that notice and following the advice from his lawyer, the applicant filed this application seeking for revocation/annulment order of the re-sealed Probate and Administration of the estate of the late Frank Gabriel Richard Somi granted in favour of the respondent, on the ground that the proceedings to obtain the grant were defective in substance.

Submitting in support of that ground Mr. Mosha contended that, when filing the application for re-sealing of the probate the respondent omitted to comply with the mandatory provisions of Rules 99 and 101 of the Probate

Rules. He argued that, it was imperative for the respondent to publish in the Gazette the Notice of Application as no re-sealing order could have been issued by the Court before expiry of 14 days of the publication of the notice since to do otherwise would be denying other persons with the right to object the applicant hence go against the object of the law. In further argument he said the applicant failed to file an inventory and valuation of the property in respect of the application under consideration seven (7) days before the date fixed for hearing of the application as mandatorily put by Rule 101 of the Probate Rules. According to Mr. Masha the omission by the respondent to file all necessary papers as provided under Rule 97 of the Probate Rule rendered the whole exercise null and void thus vitiating the re-sealing proceedings dated 28/04/2020 and the ruling granting extension of time for the respondent to file the notice to creditors and exhibit inventory and accounts hence the application was incompetent and prematurely made. He thus implored the court to find the sealed probate in favour of the respondent was defective in substance hence be revoked.

In his response Mr. Vedasto for the respondent prefaced his submissions with three points of objection contending that the application is legally untenable, thus a prayer for the Court to consider them first before venturing

into the merits of the application. He mentioned the three points to be one, the revocation order sought by the applicant is legally non existing, two, the order is factually non-existing and thirdly, the jurisdiction of this Court to entertain the application is wanting.

On the first point he argued the order sought is for revocation/annulment of the **resealed** Probate and Administration of the estate of the late Frank Gabriel Richard Somi granted in favour of the respondent herein does not exist under the law as section 95 of the PAEA refers to an order of **sealing** of probate granted by any part of Commonwealth and not **resealing** order referred by the applicant in the chamber summons. Relying on the case of **General Williamson Vs. Cletus Swilla** [2001] TLR 148 at page 151 he submitted that, this Court cannot give the sought order as it is an order giving no legally known relief. On the second point Mr. Vedasto contended, factually the sought order for revocation of ***'resealing Probate and Administration of the estate of the late Frank Gabriel Richard Somi*** as the order which was granted on 28/04/2020 was for ***'sealing the probate'*** and not ***resealing Probate and Administration of the estate.*** Citing to the Court the case of **James Katabalo Mapalala Vs. BBC** [2004]

he submitted that a party cannot be given an order against what he thinks suits his interest but rather what is legally and evidentially supported.

With regard to the third point it was his argument that, section 49(1)(a) of PAEA in which the applicant relies on to move this Court to grant him the sought order for revocation of the resealed probate, empowers this Court to **revoke a grant of probate** and **not to revoke the sealing of the probate** made under section 95 of PAEA as the order that was issued by this Court on 28/04/2020 was an order **to seal** the Probate granted by the Supreme Court of New South Wales, Equity Division, Sidney Registry in Australia on 16/02/2019 and **not to grant** the same. Hence under section 49(1)(a) of PAEA this Court has no power to revoke the **sealing order of probate**, the probate which was granted by the commonwealth court as what is empowered to do under the above provision is to only revoke the grant of probate which it issued and not the one issued by the court of different jurisdiction. He so submitted as under subsection (2) of section 49 of PAEA once the administratrix or executrix is removed from the office after revocation of grant of probate this Court is entitled to appoint another person in the office which remedy this Court cannot offer to the applicant under the circumstances as it is not the Court that granted the probate but rather

sealing court. In view of the above submission he invited this Court to hold that the application is untenable as it has no jurisdiction to entertain it hence struck it out.

Back to the applicant's submission on non-compliance of the law by the respondent for failure to publish a notice of application in the gazette, the official government newspaper as mandatorily provided under Rule 99 of the Rules, Mr. Vedasto submitted that the submission by the applicant is a total misconception as this Court's record dated 28/04/2020 is very clear on compliance of the above complained of mandatory requirement. Citing the excerpt from that record he argued that court record is a serious document that cannot be impeached lightly as stated by the Court of Appeal in the case of **the Registered Trustees of Movimento Popular De Libertacao De Angola (MPLA) Vs. Hamisa Mohsin and 5 Others**, Civil Revision No. 1 of 2018 (CAT-unreported). Regarding the assertion of non-compliance with Rule 101 of Rules for not lodging with the Court Registrar seven days before the hearing of application an inventory and valuation of property in respect of the application, it was Mr. Vedasto's argument that, the powers of this Court to seal probates and letters of administration is derived from Part X (sections 94 – 98) of PAEA and not from Rules 99 and 101 of Probate Rules

which governs the manner, procedures and timeline within which to effect the Principal Act. He contended, section 96 of PAEA is the one providing for conditions to be fulfilled before re-sealing which are to furnish security sufficient in amount to cover the property if any in Tanzania and that condition is applicable to the application for sealing of letters of administration only and not probate which is the under discussion in this matter. To him therefore the requirement of Rule 101 of the Probate Rules is inapplicable under the circumstances of this matter as issues of inventory and valuation are applicable when the applicant is to furnish security regarding the properties sought to be administered in the sealed letters of administration. He therefore implored this Court to find the application is destitute of merit and dismiss it with costs.

In his brief rejoinder submission Mr. Mosha started with the third point of objection by the respondent on jurisdiction of this Court to entertain the applications submitting that it has inherent powers and the requisite mandate to entertain this application for revocation of the resealing of probate under section 49(1)(a) of PAEA read together with section 95 of the same Act. To him the word revoke as used in section 49(1)(a) of PAEA as interpreted in the case of **Ahmed Mohamed Al Laamar Vs. Fatuma**



**Bakari and Another**, Civil Appeal No. 71 of 2012, originating from latin word "revocere" meaning 'to call again or back' empowers Court annul, repeal, vacate, put to an end, etc, what was previously granted or passed and is still operative or existing. Relying on the same interpretation it was Mr. Mosha's submission the resealing order having been passed from the proceedings defective in substance and the same being operative this Court is possessed with sufficient powers to revoke the same. Next to his submission was the response regarding the first and second point by the respondent on contention that the sought order for revocation of **resealed probate** allegedly legally and factually non-existing hence rendering the application untenable in law, Mr. Mosha resisted it faulting the same as aiming at derailing this court from rendering justice. He drew attention of this Court to the provisions of section 4 of PAEA read together with section 95 of PAEA, this Court is crowned with jurisdiction to re-seal grants of probate and letters of administration made by court of probate in any part of the Commonwealth in accordance with the provisions of Part X of PAEA. According to him the definition of the term **re-sealing** as provided by the **Blacks Law Dictionary**, 2<sup>nd</sup> Edition available at <https://thelawdictionary.org/resealing-writ> is 'the second sealing of write by

a master so as to continue it, or to cure it of an irregularity' which is literally meaning to seal again a foreign grant with seal of the Court. Further to that he cited to the Court its decision in Misc. Civil Application No. 25 of 2022 (unreported) An application of Resealing of Probate granted to Christopher Peter Theobald and John Paul Batting where the court issued an order for resealing of letters of probate granted to the applicants.

Regarding the response submission by the respondent on the non-compliance of the provision of Rule 99 of the Probate Rules, Mr. Masha viewed it as a total misconception and that on violation of Rule 101 of the Probate Rules the respondent conceded that the said procedures were not complied with hence the resealing proceedings were defective in substance and it suffice to move this Court to revoke the resealed probate as prayed. Otherwise the applicant reiterated his submission in chief.

I have taken time to consider the rival submissions by the parties as well as perusing the pleadings in this matter and the records in the Probate and Administration Cause No. 11 of 2020 in which this application originates. In this ruling I am intending to consider and determine the three points of objections first as raised by the respondent in his submission. I find it apposite to start with the third point in which the jurisdiction of this Court is

touched and where Mr. Vedasto contends that, under the provisions of section 49(1)(a) of PAEA this Court lacks jurisdiction to entertain the application as the same provides for revocation of grant of probate or letters of administration and not resealed probate which is the subject of this application. To appreciate the gist of respondent's contention it is imperative that I quote the said section 49(1)(a) of PAEA which reads:

*49(1) 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;*

From the above exposition it is true and I agree with Mr. Vedasto that the section does not empower this Court to grant an order for revocation of resealed probate as sought by the applicant but rather empowered to annul or revoke the previously granted or passed *probate and letters of administration* which is still operative or existing as rightly held in the case of **Ahmed Mohamed Al Laamar** (supra) where the Court of Appeal observed thus:

*"Indeed the High court is vested with powers to revoke or annul the grant of probate and/or letters of administration for reasons stated in section 49(1)(a) to (e) of the Act. The word*

*'revoke' has its origin in a Latin word "revocere" which meant "to call again or back". In both legal and ordinary English language, this word means to cancel, withdraw, reverse, repeal, vacate, put to an end, etc.*

*In our respectful opinion, both common sense and logic dictate that one can only annul, repeal, vacate, put to an end, etc, what was previously granted or passed and is still operative or existing."*

As alluded to above while I am in agreement with Mr. Vedasto in the interpretation of the provisions of section 49(1) of PAEA on powers of this court to revoke the resealed probate, I distance myself from his proposition that this Court lacks jurisdiction at all to revoke the resealed probate which in essence is in existence. I do so as that section cannot be read in isolation as the applicant when moving this Court invoked also the provisions of section 95 of the CPC which provides for inherent powers of this Court to make orders for the end of justice. As there is no provision of the law under PAEA providing for revocation of the resealed probate or letters of administration, it is the finding of this Court that once the passed or granted order is still in existence then this Court under section 49(1)(a) to (e) of PAEA read together with the provisions of section 95 of the CPC, has the requisite jurisdiction to entertain the application for annulment or revocation

of the resealed probate and letters of administration. I this matter therefore I hold this Court had jurisdiction to entertain the application as sought by the applicant hence discount the third point of objection.

I now move to consider the first and second points in which Mr. Vedasto contends the sought order for revocation of resealed probate and administration of the estate of the late Frank Gabriel Richard Somi, do not legally and factually exist as what is provided by the law under section 95 of PAEA is **sealing** which is different from **resealing**. Mr. Mosha is of the contrary view that, in essence **resealing** is interpreted in online **Blacks Law Dictionary** to mean sealing (something) again hence what is sought in the order is correct thus what is legally and factually done by this Court when sealing the probate granted outside the jurisdiction of the Court is resealing it. It is true as submitted by Mr. Vedasto that what section 95 of PAEA provides is sealing of probate and that the order given by this Court on 28/04/2020 was to the effect of sealing the probate granted by the Supreme Court of New South Wales, Equity Division, Sidney Registry in Australia on 16/02/2019. Section 95 of PAEA in which its reads:

*S.95 Where a **court of probate in any part of the Commonwealth**, has, either before or after the passing of*

*this Act, **granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may**, on being produced to, and a copy thereof deposited with the High Court, **be sealed** with the seal of that court, and thereupon shall be of the like force and effect, and have the same operation in Tanzania as if granted by that Court.* (Emphasis supplied)

Though the above section provides of sealing of probate, I differ with Mr. Vedasto's submission that since that section mentions sealing of probate and the order of this Court on 28/04/2020 was for sealing of probate, then the sought order by the applicant for revocation of resealed probate does not legally and factually exist as the same provision is found under Part X of the Act which is titled **Re-sealing of Probates and Letters of Administration ss94 – 98**. I embrace Mr. Mosha's proposition legally it is section 4 of PAEA that provides for jurisdiction of this Court to re-seal certain grants by courts of probate in any part of the Commonwealth in accordance with Part X of the same Act referred above. Section 4 of PAEA reads:

*S.4 The **High Court shall have jurisdiction to re-seal grants of probate and letters of administration** made by a court of probate in any part of the Commonwealth in*

*accordance with the provision of Part X of this Act. (Emphasis supplied)*

Now since the above section provides for general powers of this Court re-seal the probate granted in Commonwealth courts then order of 28/04/2020 by this Court though reading sealing of probate the same has the effect of being resealed as provided under section 4 and Part X of the PAEA. I so hold as **sealing** as defined by Mitra's Legal & Commercial Dictionary, 6<sup>th</sup> Edition at page 779 is to *accredit, approve, attest; authenticate, certify, confirm, endorse or impress with mark something* which simple means to **reseal** (something) again or the second sealing of a write by a master so as to continue it as rightly provides in the Online **Blacks Law Dictionary** (supra). The two terms therefore refer to the same action under the law (PAEA) as they are used interchangeably hence a finding that the sought revocation order of resealed probate by the applicant is legally and factually existing.

With the above findings therefore, I move to consider the submission by the respondent on violation of the provisions of Rule 99 and 101 of the Rules by the applicant. As alluded to above I took time to revisit the pleadings and records concerning this matter. What is gathered therefrom is the fact that, the record discloses in Probate and Administration Cause No. 11 of 2020

that, the respondent applied to this Court for re-sealing of the Probate granted her by the Supreme Court of New South Wales, Equity Division, Sidney Registry in Australia on 16/02/2019, the probate which was sealed on 28/04/2020. It is also undisputed fact that in so doing this court was satisfied that the respondent had complied with the law under Rule 99 of Rules by publishing the Notice of an application in the Government Gazette dated 27/03/2020 issue No. 13 and Mwananchi and the Citizens newspapers. The assertion by Mr. Mosha that, the respondent violated the mandatory provision of Rule 99 of the Probate Rules for not publishing the notice of the application before this Court proceeded with hearing of the application for resealing of the probate, I find is unfounded as it is not backed by any evidence. I so hold as the presumption is that the record of this Court on 28/04/2020 being a serious document as held by the Court of Appeal in **the Registered Trustees of Movimento Popular De Libertacao De Angola (MPLA)** (supra) cannot be impeached lightly by mere assertion by the applicant that, the notice of application in terms of Rule 99 of Probate Rules was not published by the respondent since the same provides categorical that, the respondent complied with the law. To appreciate the stance of this Court I quote the excerpt from the order of this Court dated



28/04/2020 in Probate and Administration Cause No. 11 of 2020 which goes thus:

***COURT***

*Having considered the submissions made by Mr. Diritick Mwesiga learned advocate for the applicant and the fact that **citation of this application was issued through publication in the Government Gazette dated 27/03/2020 issue No. 13** and Mwananchi and the Citizens Newspaper dated 13/03/2022 and having considered the fact that 14 days have passed since the last publication without any objection raised, have no reason to refrain from granting the application...”*(Emphasis supplied).

From the above excerpt of court record and in absence of any other evidence to impeach it, I find the contention by the applicant on non-compliance of Rule 99 of the Probate Rules, is unfounded hence this ground fails.

Next for determination is whether the respondent infringed the provisions of Rule 101 of the Probate Rules providing that, the applicant must lodge with the Registrar an inventory and valuation of the property in respect of which the application is made, seven days before hearing of the application as claimed by the applicant. It is not in dispute fact as also rightly conceded by Mr. Vedasto for the respondent that, the said inventory and valuation papers

were not lodged with the Registrar as claimed by the applicant. Despite of such admission the learned advocate is resisting the claim by the applicant that the omission vitiated the proceedings submitting that, the requirement of Rule 101 of Probate Rules being procedural law does not apply to sealing of probate and letters of administration as the conditions for sealing of the same are provided by the provision of section 96 of the Act which is provision of security of sufficient amount to cover the property if any in Tanzania, particularly when the sought order is for sealing of letters of administration and not inventory and valuation as claimed by the applicant. Section 96 of PAEA provides thus:

*"96. The High Court shall, before sealing a probate or letters of administration under this Part, be satisfied in the case of letters of administration, that security has been given in as sum sufficient in amount to cover the property, if any, in Tanzania to which the letters of administration relate, and may, in any case, require such evidence as it thinks fit, as to the domicile of the deceased."*

From the above exposition of the law, while I am in agreement with Mr. Vedasto on the condition of the law that, a party seeking to seal the letters of administration shall provide security of sufficient sum to cover the

property sought to be administered in Tanzania, I distance myself from his proposition that Rule 101 of the Probate Rules being procedural law its conditions are not applicable to the party seeking to seal the probate. The reason I am so holding is not fat fetched as Rules being procedural laws are providing for manners, procedures and timeline within which the provisions of the principal Act are to be effected, hence binding and applicable to the party effecting the provision of the principal Act. That is why the respondent sought it important in Misc. Civil Application No. 170 of 2020 to apply for extension of time within which to file notice to creditors and exhibit an inventory and account of the estate of the late Frank Gabriel Richard Somi which was granted on 16/06/2022, which is now its propriety is subjected to scrutiny by the applicant. Probably the vital question would be whether the omission by the respondent to lodge the said inventory and valuation report with the Registrar before hearing of Probate and Administration Cause No. 11 of 2020 as provide by Rule 101 of Probate Rules, has the effect of vitiating the proceedings and orders of this Court on 28/04/2020 when sealing the probate granted to the respondent by the Commonwealth court in Australia. In answering this pertinent query I find it imperative to quote the provision od Rule 101 of Probate Rules which reads thus:

*101. An inventory and valuation of property in respect of which the application is made must be lodged with the Registrar not less than seven days before the date for fixing the hearing of the application.*

From the reading and interpretation of the above cited provision the law calls for the party seeking to reseal the probate and letters of administration to lodge with the Registrar the inventory and valuation of the property sought to be administered in the said application. The object of the law in my considered opinion is to assure the Court that there in fact a property with value sought to be administered by the applicant when considering to either grant or refuse to grant the application for resealing of probate and letters of administration. In this matter the application was granted without the respondent lodging the said inventory and valuation of the property. I do not however find the omission fatal as the applicant does not claim to have been prejudiced anyhow by the failure of the respondent to file the said documents, thus it did not have vitiated the court proceedings. More so the omission of the requirement of the law was cured by the respondent when applied and granted an extension by the Court on 16/06/2022 for four months to file the same. Hence the ground by the applicant is wanting in merit.

The applicant would have been justified to seek revocation of the respondent's resealed probate on the ground of the grant becoming useless and inoperative under section 49(1)(d) of PAEA read together with section 95 of the CPA, upon expiry of time of four months extended to her to file the said inventory and valuation report of the property(ies) which expired on 15/10/2020. However, the application was filed on 07/10/2022 before expiry of the extended time.

In the premises and for the fore stated grounds and reasons, this application is destitute of merit hence is hereby dismissed in its entirety.

I order each party to bear its own to costs.

It is so ordered.

Dated at Dar es salaam this 10<sup>th</sup> day of February, 2023.



E. E. KAKOLAKI

**JUDGE**

10/02/2023.

The Ruling has been delivered at Dar es Salaam today 10<sup>th</sup> day of February, 2023 in the presence of Mr. Steven Mosha, advocate for the applicant who is also holding brief for Mr. Pascal Mashanga, advocate for the Respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI  
**JUDGE**  
10/02/2023.

