

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 561 OF 2022

(Originating from the High Court of Tanzania, Dar es Salaam District Registry in the Probate and Administration Cause No. 37 of 1994)

KAZI SELEMANI KITUNDU..... 1ST APPLICANT

KAUNDA SELEMANI KITUNDU2ND APPLICANT

MWAJUMA SELEMANI KITUNDU.....3RD APPLICANT

MWAJABU MRISHO KITUNDU4TH APPLICANT

VERSUS

**JUMA S. KITUNDU (Administrator of the Estates of the Late Selemani
Juma Kitundu)RESPONDENT**

RULING

14/02/2023 & 28/03/2023

BWEGOGGE, J.

The applicants above named have instituted an application herein praying this court to revoke the grant of letters of administration of estate of the

late Selemani Juma Kitundu granted to the respondent on 26th June, 1994, among others. The application is brought under s. 49 (1) (e) and (2) of the Probate and Administration of Estates Act [Cap.352 of 2019]. The affidavits of the applicants above named support the application herein.

The background of this matter may be briefly stated as follows: The respondent herein had petitioned and granted letters of administration of the estates of the above named deceased person on 26th June, 1994. For reasons which are not in the record of this court, to date, the respondent has neither filed an inventory nor final accounts. It is in the record of this court that in 2001 the 4th respondent (the widow of the deceased person) lodged an application praying this court to order the administrator of the deceased estate to file inventory and final accounts of the probate. The order to that effect was issued by this court. However, to date, the relevant order has not been complied with. Hence, the application herein.

The applicants were represented by Ms. Victoria Njau, learned advocate, and the respondent was fended by Mr. Burhani Musa, learned advocate.

In elaborating the facts deposed in the applicant's affidavits, Ms. Njau submitted that the deceased above named died intestate in 1993, leaving two wives, the 4th applicant inclusive, and 21 children who are beneficiaries of the estate. Likewise, the deceased left behind properties

namely, a house on Plot No. 390 located at Masaki Tour Drive, farm on Plot No. 290 - Mbezi Juu/Tangibovu and Beach Plot at Mbwamaji area at Kigamboni. That the respondent herein was granted letters of administration of the estate on 26th September, 1994 by this court to administer the estate of the deceased person. However, the respondent has not acted diligently to discharge his legal obligation. The counsel enlightened this court that it is now over a decade since the 4th applicant had filed an application praying this court to order the respondent to file inventory of the deceased estate which was granted with instruction to the respondent to file an inventory within 21 days from the date of the ruling. That despite the order of this court, the respondent has failed to distribute the deceased estate among the lawful heirs.

Further, the counsel charged that it is now 30 years since the grant of the probate that the respondent has failed to discharge his legal obligation whereas allegedly, he abused his power by selling some properties and appropriating proceeds of sale, specifically the house on Plot No. 390 located at Masaki Tour Drive, and failed to account for the beach plot at Mbwamaji Kigamboni area. Likewise, the counsel alleged that the respondent has been splitting and selling the land on Plot No. 290 at Mbezi

Juu, and allowed beneficiaries to possess pieces of land thereof and, or otherwise sell the same.

In tandem to above, the applicants' counsel submitted that they have been surprised by the recent move of the respondent to dispose the property (house) on Plot No. 290 which has been used as the matrimonial house and residence of the 4th respondent who is the widow of the deceased person without considering her contribution in acquisition of the property.

Therefore, the counsel concluded, the respondent has failed to discharge his legal function as per the dictates of the law under s. 107 (1) of the Probate and Administration of Estates Act which obliged the same to file inventory within six months after appointment and file accounts of the estate within a year period. Therefore, the counsel prayed for revocation of the respondent from administering the deceased estate for his inability to discharge his legal duty over 29 years now contrary to the order of this court entered in 2001. The counsel cited the case of **Sekunda Mbwambo vs Rose Ramadhani** [2004] TLR 439 to buttress her point.

On the other hand, Mr. Mussa, the counsel for the respondent countered that a house on Plot No. 290 Mbezi Juu within Kinondoni Municipality is part of the deceased properties and has never been matrimonial property.

That the 4th applicant has never been a co-owner of the property. The counsel argued that the reason the respondent failed to file inventory and final accounts of the estate, especially for the property on Plot No. 290 Mbezi area, is the subversive acts of the applicants herein, specifically, the 2nd and 4th applicants as well as other heirs who have sold parts of the farm without his knowledge. That over the decade now the respondent has been involved in land disputes seeking to restore the land misappropriated.

Further, the counsel contended that other parts of the land were sold by the respondents under the consent of heirs/beneficiaries. The mind of this court was drawn to the annexures bearing record of sales with the consent of heirs/beneficiaries of the estates. Otherwise, the respondent's counsel refrained to respond to the allegation of misappropriation in relation to property on Plot No. 390 Masaki area on the ground that the said allegation was not pleaded in the affidavits of the applicants.

The counsel concluded that the applicants are legally bound to prove that the respondent has wilfully and without reasonable cause omitted to exhibit an inventory or account. That the pending land disputes are the major cause for the respondent's failure to file inventory and accounts of the probate herein. That until the land disputes are resolved, the

respondent cannot file inventory and accounts in compliance with the law. Based on the above grounds, the counsel prayed for the dismissal of the application herein with costs.

The issue before this court is whether the application herein is merited.

From the outset, I find it pertinent to restate the obligation imposed by law upon an executor or administrator/administratrix of the deceased estate. The provisions of Section 107(1) of the Probate and Administration of Estate Act provides as under:

"S. 107

1. ***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 mine).

The provision afore-reproduced is clear in that the appointed executor or administrator/administratrix of the deceased estate is vested with a mandatory legal duty to exhibit in the court that granted the letters of administration of the estate 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. The appointed administrator/administratrix of the deceased estate is required to discharge the duty mentioned above within a prescribed period of six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate may provide.

Further, the law cited above, in no uncertain terms commands that the executor or administrator/administratrix of the deceased estate is likewise obliged 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, within one year from the grant or within such further time as the court may from time to time appoint.

The legal duty of the executor or administrator/administratrix of the deceased estate is further clarified in the case of **Joseph Shumbusho vs Mary Grace Tigwera and 2 Others** (Civil Appeal No. 183 of 2016) [2020] TZCA 1803 whereas the superior court stated:

"In the performance of his duty as a legal representative, the law requires him to act in accordance with his oath. And what does this mean? Section 66 of the Probate and administration act requires the grantee of the probate or letters of administration to take an oath that he/she will faithfully administer the estate of the deceased and will account for the same. That is the administrator will faithfully administer the deceased's estates by first paying just debts of the deceased, distributing the residue according to the law, making and exhibiting a full and true inventory of the deceased's properties and credits and rendering a true account of the administration. 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 estates... "

In the same vein, the law enjoins the court with power to revoke the granted letters of administration of the estates of the deceased person to the administrator/administratrix of the deceased estate based on prescribed grounds stated under the provisions of section 49 (1) of the

Probate and Administration of Estates Act. The stated reasons under the relevant section are as hereunder quoted *verbatim*:

"1. The grant of probate and letters of administration may be

revoked or annulled for any of the following reasons-

(a) N/A

(b) N/A

(c) N/A

(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."

Having explored the law above, I revert to the gist of the applicants case. It was alleged in the affidavit of the applicants and written submission filed thereto that the respondents herein have wilfully and without reasonable cause omitted to exhibit an inventory or account of properties for 30 years, contrary to the law, let alone the allegations of misappropriation. Based on the allegations mentioned above, the applicants have prayed for the revocation of the letters of administration of the deceased estate granted to the respondents. Admittedly, these are serious allegations that require the attention of this court.

Having scrutinized the annexures filed by the respondent, I found evidence ascertaining that the beneficiaries of the deceased estate, applicants inclusive, have been disposing of the land in respect of Plot No. 290 Mbezi Juu area under the consent of the respondent. I fail to apprehend why the respondent allowed the sale of the properties which constitute the deceased estate by some of the heirs whereas the estate has not been distributed to the beneficiaries.

The respondent has attributed his failure to discharge his legal duty on the pending legal disputes related to property on Plot No. 290 but failed to enlighten this court pertaining to the other assets which came under his possession nearly three decades now. He even failed to respond to the allegation of misappropriation on the pretext that it was not pleaded in the affidavit filed herein.

It is my considered opinion that the reason advanced by the respondent doesn't account for his failure to discharge his legal duty for 29 years. It is obvious that the pending land disputes were occasioned by the respondent's inaction.

In the same vein, the respondent has failed to account for failure to comply with the order of this court dated 22nd February, 2001 whereas he was ordered to file inventory within clear 21 days. I need not mention the

fact that the respondent has not enlightened this court in respect of the other properties which came under his possession and of which no disputes persist.

On the account of the above, this court joins hands with the applicants' counsel in that the respondent has failed to discharge his legal obligation in respect of the deceased estate without plausible reasons.

In fine, this court finds the application herein with substance. The application is hereby allowed. This court enters the following orders:

1. The grant of letters of administration of the estate of late Selemani J. Kitundu to the respondent is hereby revoked.
2. Considering the circumstances of the probate in dispute, the Administrator General is hereby appointed to administer the estate of the late Selemani Juma Kitundu, specifically, what remains of Plot No. 290 Mbezi Juu area.
3. The respondent (revoked administrator) to provide the Administrator General with particulars of beneficiaries of the deceased estate and necessary documents within his possession in clear 30 days.

4. The Administrator General, in the distribution process, is to be cognizant of the fact that some beneficiaries have already taken their shares in the property (Plot No. 290 Mbezi Juu area).
5. The respondent (revoked administrator) to file inventory and final accounts in respect of the deceased properties which came under his possession in the past 29 years.
6. The Administrator General to file inventory of the existing property, specifically, Plot No. 290 Mbezi Juu area within six (6) months and final accounts within the period of 12 months from the date of appointment.

Dated at Dar es Salaam this 28th March, 2023.



A handwritten signature in blue ink, appearing to read "O.F. Bwegoge".

O.F. BWEGOGGE
JUDGE