

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA**

AT MWANZA

PROBATE AND ADMINISTRATION CAUSE NO. 12 OF 2023

IN THE MATTER OF THE ESTATE OF THE LATE NOEL NELIGWA OBED

AND

**IN THE MATTER OF APPLICATION FOR LETERS OF ADMINISTRATION BY
JANE STANSLAUS MONGELAPETITIONER**

AND

**IN THE MATTER OF CAVEAT AGAINST THE LETTERS OF LETTERS OF
ADMINISTRATION BY THOMAS NELIGWA UGULA..... CAVEATOR**

JUDGMENT

21st June & 11th August, 2023

ITEMBA, J.

According to his death certificate, the late Noel Neligwa Obedi, of Nyankumbu Geita, herein the deceased, died on 3rd of April 2019 at Mabibo Kisiwani Kimara Dar es salaam. He was burried at Mugundu village within Singida on 6th April 2019. On 4th July 2022, Ms. Jane Stanslaus Mongela, the deceased's daughter, petitioned in this Court for grant of letters of administration of the estate. Upon filling of this petition and publication of general citation, one Thomas Neligwa Ugula, the deceased's brother, entered a caveat objecting petitioner's appointment as an administrator of

the estate. According to the caveator's affidavit, the grounds for objecting are that, following the deceased's death, he was proposed by the clan meeting held at Mugundu village within Singida, to petition for grant of letters of administration in relation to the estate of the deceased. That, the petitioner is unknown to the deceased's clan despite being present at the funeral. That, she is not well acquainted with the deceased's estate as she has shown a questionable list, her credentials and personal characters cannot be verified and she cannot be trusted to act fairly on the deceased's estate. That, the petitioner has demonstrated total lack of respect by filing the petition for letters of administration without the acknowledgement of the clan meeting in which she attended. Upon caveat being entered, this matter became contentious, it was from thereon dealt with in terms of section 52(b) of the Probate and Administrations Act, Cap. 352 RE 2019 in which the determination of the matter took as nearly as may be the form of a suit, petitioner became the plaintiff and caveator the defendant. See Also see the case of **Monica Nyamakere Jigamba v. Mugeta Bwire Bhakome & Another**, Civil Application No. 199/1 of 2019, Court of Appeal of Tanzania, (Dar es Salaam Registry) [2020] TZCA 182 where the Court of Appeal well elaborated this aspect.

In determination of this matter there were one issue framed, which is; Whether the plaintiff (petitioner) should be appointed the administrator of the deceased's estate.

At the hearing, both parties had legal representation of learned Advocates Messrs. Majura Kiboga and Felix Thomas for the petitioner and caveator respectively.

The plaintiff's evidence is essentially that she is the eldest among the five children of the deceased. That, the deceased worked as a geologist and died on 3rd of April 2019. She mentioned other children as Ayubu Obedi, Dorice Noel Neligwa, Rahim Abhraham Obedi and Rahma Abraham Obedi. That, the caveator (defendant) Thomas Neligwa was proposed to be the administrator of the deceased's estate and she trusted him. However, since then he had never taken any step and it has been a long time. That the deceased's children are scattered each stay with their mother and some with their relatives. She finalized by moving the court to appoint her as an administrator on behalf of her siblings because she has the consent of her siblings and she has good relationship with their mothers. She mentioned a number of deceased's properties with an estimated value of TZS one billion, which remain unadministered.

Upon being probed by the court, she stated that the said properties are currently under receivership of one Zaituni Muji, (PW2) the mother of Rahim and Rahma, the deceased's children. PW2 told the court that she was married to the deceased and he converted to Islamic religion. That they had 2 children Rahim and Rahma and they later separated through a divorce whereas she was granted a house located at Katoro and the children's custody was granted to the deceased. That the deceased later converted back to Christianity. She corroborated PW1 testimony to the extent that the deceased had a total of five children with different mothers, on the type of properties left by the deceased and that the caveator was proposed to be the administrator but he has not taken any step for four (4) years and he is not even living in the country. That, she supports the petitioner to be appointed because she has high confidence with her. That, the petitioner has been very cooperative throughout as they are going through a number of challenges raising the children.

In his defence, one Manase Obedi Ugula told the court that he called the deceased his brother because he was his paternal uncle's son. That the caveator is also his brother as he is a son to his paternal uncle. He explained that the caveator works as a lecturer in one of the Universities in

London since 2019 and he has given him a power of attorney to proceed with the present probate cause. He produced the minutes of the clan meeting (exhibit D1) which proposed the caveator as an administrator. He explained further that the caveator failed to proceed with petition because after the funeral ceremony he went back to England and there was lockdown due to Covid 19 pandemic. In 2021 he was preparing to come to Tanzania and PW2 was appointed a receiver at Geita. He was given a power of attorney to appeal and the appeal was dismissed. Thereafter, the petitioner filed a petition which was later withdrawn and lastly this probate cause was filed. He objected the petitioner to be appointed as an administrator because the clan became aware of her the moment she went for funeral therefore they do not trust her considering that there are other women who had children with the deceased.

Having gone through the records and evidence. Section 2(1) of **The Probate and Administration Of Estates Act** herein (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'

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, the 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 checked through a reputation and capability to act faithfully, diligently and impartially in administering the estate to the rightful owners. 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. There is no dispute that the caveator has been proposed by the clan meeting to be the administrator of the deceased's estate since 6th of April 2019 (see exhibit D1). There is also no dispute that since then, he has done nothing after going back to England. It has been 4 years. The caveator has filed his affidavit in opposition of the petition. In my considered view the said affidavit is not sufficient for this court to determine the objection. In fact, having filed this caveat, he could not even prosecute his case. The Caveator had an opportunity to appear and defend his objection and he opted not to. All he did was to send a representative under power of attorney of which his evidence was merely hearsay. In other words, the Caveator forfeited his right to be heard on the said objection. It has been stated that he is overseas. Now the administrator being a court officer, if he is appointed as an administrator, how can he execute his duties while in absentia? In the other side, the petitioner has full support of the mother's to the children of the deceased. These mothers are the one with interest

with the deceased's Estate as they need to support their children whose father is the deceased. There are no signs of mistrust on the petitioner as PW2 has testified that the petitioner is a cooperative person to PW2.

Finally, the petitioner herein, according to her own testimony and that of PW2, being in support of her family and being one of the heirs of the deceased's estate, she is eligible and qualified to petition for letters of administration by virtue of section 33 (1) of the PAEA. The Caveator sought to object this petition, but as already explained, he did not show up to prosecute his objection and would not be appointment. I see no reason why in the absence of any other objection, the petitioner cannot administer the estate of the late Noel Neligwa Obed. Having said that, the Caveat is rejected, I hereby appoint Jane Stanslaus Mongela as an administratrix of the estate of the late Noel Neligwa Obed. 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.

Regarding the nature of proceedings, each party shall bear its own costs.





L.J. ITEMBA
JUDGE
11.08.2023

Orders:

- (i) Inventory of the estate to be filed by 14th September 2023.
- (ii) Hearing on 25th September 2023 at 11:00 hrs. beneficiaries to be present those outside of Mwanza to join via virtual court.
- (iii) Grant of letters of administration to issue.




L.J. ITEMBA
JUDGE
11.08.2023