

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM -SUB REGISTRY

AT DAR ES SALAAM

PROBATE AND ADMINISTRATION CAUSE NO. 50 OF 2021

**IN THE MATTER OF THE ESTATE OF THE LATE Dr. SERVACIUS BEDA
LIKWELILE**

AND

**IN THE MATTER OF APPLICATION FOR LETTERS OF ADMINISTRATION
WITHOUT WILL BY RAYMOND BABU LIKWELILE**

AND

IN THE MATTER OF THE CAVEAT FILED BY VICKY PASCHAL KAMATA

JUDGEMENT

13th July & 15th September 2023

Rwizile, J.

The late Dr. Servacius Beda Likwelile died intestate on 19th February 2021. Since his demise, his estate, however, has never been peaceful. Before this court was a legal battle between his children and Vicky Paschal Kamata styled as the deceased legal wife on her side, while the deceased extended family and children accused her of swiftly piercing herself into their father's life for her selfish goals as life mate, but remains a concubine since she was not legally married.

The two contending parties, the petitioner one of the sons of the deceased, and the caveator are fighting for an appointment to administer his wealthy

estate. In the caveat against the grant, the caveator attacks this petition on the following slants;

- i. That petitioner wrongly included in the deceased estate assets that belong to the caveator to wit;
 - (a) A house located at Plot No. 116 Block 3 Mbweni in Kinondoni Municipality, Dar es Salaam, which is a matrimonial house
 - (b) A house situated at Mpiji Magoe with 9.5 acres with 2 houses, where she owns 50% shares
 - (c) A house located at Plot No. 387 and 389 Block "D' Sinza area exclusively registered in her name.
 - (d) A house located at Kibamba, in the name of her biological daughter Gloria Likwelile
 - (e) Four Plots of land No. 318,319,320 and 321 at Mpiji Magoe Ubungu which belong to the Limited Liability Company called Beda Group Limited/ Beda Farms Limited where she holds 50% shares
 - (f) Toyota Prado with registration No. T731 CQR and Toyota with Registration No. MC 588 AHT
 - ii. That the petitioner defrauded the court by presenting forged family meeting minutes and misrepresented himself in court when filing this petition for not disclosing family meeting minutes that appointed her a Co-Administrator
 - iii. The petitioner maliciously circulates in the social media libelous material against her a thing that led to a sour relationship in that they cannot exchange any information.
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- iv. That the petitioner is not a better-placed person than a lawful surviving widow to know the assets and liabilities of the estate of the deceased, because the petitioner is merely a remote person and identification of the deceased assets is not through guessing.
- v. That the petitioner purposely and with ill motives omitted her name in a list of beneficiaries surviving the deceased when he made an application *pendente lite*.
- vi. The caveator has feelings and proven facts that, the petitioner is going to discriminate against her if appointed because he illtreats her.
- vii. That the petitioner is not a faithful person who will collect and distribute assets of the estate impartially and that he is likely to monopolize the deceased's assets under the pretext of being his biological father and, therefore, not fit to be appointed an administrator.
- viii. That the caveator prays for being appointed the sole administratrix of the estate for smooth holding of the office and management of the estate properly

Upon turning contentious, therefore, the parties led by their advocates, one Nkalani for the petitioner and Mr. Balomi for the caveator advanced four main jots for determination to include;

- i. Whether the caveator was legally married to the deceased,*
- ii. Who between the petitioner and caveator is to be granted letters of administration,*
- iii. Whether family meeting minutes were lawfully procured,*

iv. Whether the deceased and the caveator jointly acquired any assets and

v. To what reliefs are the parties entitled.

To prove its case, the petition, cast with the duty to commence, tendered five witnesses, namely Doris Ndewa Likwelile (Pw1), Optatus Beda Likwelile (Pw2), Patricia Mpuya (Pw3), Boris Silvacijs Likwelile (Dw4) and Raymond Babu Likwelile (Pw5). On the other side, 6 witnesses were called, called upon to prove the caveat, Abubakar Yusuph (Dw1), Tumainiel Steven Mruma (Dw2), Doglous Mmari (Dw3), Vedastina Hefel (Dw4), Hefen Solomon (Dw5) and Vicky Paschal Kamata (Dw6). After a full hearing, closing submissions were filed as scheduled.

Submitting on the first issue, Mr. Nkalani argued that, there was no legal marriage between the deceased and the caveator. It was argued that there could be no marriage between the two parties because the deceased was in a Christian marriage with Mary Ibrahim from 1986 as per exhibits P3 and P4, until when Mary died on the 26th of April 2020. The two marriages in the view of the learned counsel could not co-exist. It was further submitted that since the marriage between Mary and the deceased was never dissolved, and that since the evidence of Pw3 from RITA and Pw1 proved there had never been any such marriage, the caveator forged the marriage certificate.

That is why, upon investigation from RITA, it was argued, that the caveator was required to return the death certificate illegally obtained after purporting to have been a legal wife of the deceased as per exhibits P1 collectively. To support this point, I was asked to take reference on the case of **Donalt Temba(deceased) and Others**, Probate and Administration Cause No. 12 of 2021, where this court held that Christian Marriages are Monogamous, therefore the relationship between the two was merely concubinage.

According to the learned counsel, it is the petitioner who is best placed to administer the estate of the deceased. It was submitted further that at the family meeting, it was the petitioner and the caveator who were proposed for appointment. However, they came to notice that the caveator was not legally married to the deceased. It was argued that the caveator forged the loss report and a marriage certificate in order to obtain the death certificate of the deceased and does not love the deceased children, she should not, therefore, be appointed. It was argued that based on the evidence of Pw5, the caveator has alleged that her daughter belongs to the deceased which is not true, and worse still, she tells lies about her true name as Vicky Paschal Kamata Likwelile when in fact she is Vicky Paschal Kamata. In the view of the learned counsel, the caveator is not trustworthy and should not therefore be appointed.

Dealing with the third issue, it was argued that Pw2 chaired the family meeting after the burial. It was on the 14th of April 2021, exhibit P2. In the meeting, it was stated that Pw5 and the caveator were proposed for appointment. It was said, that the caveator made deception that made them believe, she was a legally married wife of the deceased and hence appointed her. It was added that the meeting was duly held and the minutes were signed by all beneficiaries of the estate who were present at the meeting. In that view, it was stated that the minutes were properly procured since they are accepted by all beneficiaries except the caveator who is not a legal wife of the deceased.

On joint acquisition of the properties, it was submitted that the caveator did not tender any evidence to prove that the landed property, plot No.116 block 3, a house at Mbweni which she called a matrimonial house, was jointly acquired by the caveator and the deceased. This also applies to properties of Mpiji Magoe, with two houses, plots No. 318, 319, and 321. According to the petitioner, the properties belong to Beda Group Limited/Beda Farms Limited. Lastly, this court was asked to dismiss the caveat and appoint the petitioner, the administrator of the estate of the deceased.

The caveator who enjoyed the services of Mr. Alex Mashamba Balomi a senior counsel started his submission by attacking the competence of the petition for contravention of rules 66 and 68 of the Probate and Administration of Estate Rules. In expounding this point, it was pointed out that the estate has a value of over 4 billion. The two sureties are required to double the gross value of the estate as a bond. Instead, the learned counsel argued, they have committed themselves to a bond of TZS 1,000,000.00 for both of them. In the view of Mr. Balomi, this is an incurable irregularity good enough to render this petition untenable. In this point, the court was asked to follow the decision in the case of **Hassani v Mrisho Juma** [1988] TLR 134. On the importance of compliance with the probate rules, I was referred to the case of **Revenanth Eliawory Meena vs. Albert Eliawory Meena and Another**, Civil Revision No. 1 of 2017. I was asked, in terms of section 38 of the Probate and Administration of Estates Act (PAEA) and rule 50 to dismiss the petition thereby appointing the caveator to administer the estate of the deceased.

Further, it was argued that on 11th April 2021, a family meeting was convened whereby the petitioner and the caveator were asked to apply for letters of administration jointly. It was to the surprise of the caveator, he added, that

the petitioner secretly petitioned for letters of administration without the caveator.

It was said, that the family meeting at some point in the chairmanship of the Pw2, unlawfully distributed the estate of the deceased leaving the caveator, the legal wife empty-handed.

According to the caveator, the deceased is survived by one wife-caveator, seven identified concubines, and seven children. Some, it was insisted were born out of wedlock which is in line with evidence of Pw1, Pw2, and Pw4.

To prove the caveator is a legal wife of the deceased, a certificate of marriage exhibit D1 was tendered. According to the learned counsel, the same was issued on 30th January 2016 with No. 0580353 by RITA. In the view of the learned counsel, this piece of evidence was not impeached by the petitioner, despite tendering exhibits P5 collectively from RITA. It was added that even the officer from RITA-Pw3 did not prove that a marriage contracted in Arusha was not in the marriage register books. In terms of section 15, 38(1)(c) and 152 of the Law of Marriage Act, the learned counsel argued that there was no subsisting marriage between the caveator and one Msanche Mbeye, since he passed away on the 26th May 2014, while the marriage with the deceased was on 2016.

It was further argued that the caveator does not dispute the marriage between the Deceased and Mary Ibrahim was done on 5th December 1986 as testified and that she passed away on 26th April 2020. What she denies is knowledge of the substance of the marriage between the two and that she did not know about it or any divorce. It was argued that the caveator saw the certificate of that marriage in court. Mr. Balomi stated as well that, the caveator had never been in any monogamous marriage before.

It was added that death in itself is a cause for remarriage as held in the case of **Abdallah Hamid Mohamed vs Jasnena Zaludova**[1993] TLR 314 and **Ramadhani Said vs Mohamed Kilu** [1983]TLR 309

Discrediting the evidence of Pw3 from RITA, the learned counsel held the view that Pw3 being an expert had to tell the gospel truth and not his opinion in terms of section 47 of the Evidence Act. This court was asked to disregard her evidence. He said that is against the rule of bias and as held, the monkey cannot decide the affairs of the forest. He said the evidence of an expert is not like the evidence of the ordinary witness. To support this assertion, he cited the cases of **Fayed Hussien vs. R** [1957] E.A, 844 and **Hassan Salum vs. R** [1964] EA and an English case of **Anger vs. Ashton** [1873] LR Eq. 373 Jessel. MR. Observed at Page 374, and the book titled; The Law

of Evidence (9th Edition) Woodroffe and Ameer Ali. Mr. Balomi did not end there, he further said, that the widow-caveator has the right to enjoy the presumption of marriage as well as to be considered a common law wife if it is held that the marriage, she contracted with the deceased was against the Law of Marriage Act.

Insisting on the presumption, it was argued that before marriage, all traditional marriage processes were done by the caveator as she testified. It was added that the two lived under one roof for 7 years. That is two years of presumption and 5 years of marriage in the Deliverance and Restoration Church in Arusha. It was argued, that all that period of time, the public knew them as a married couple including Pw3 who so testified. He said, the bride price was paid in the amount of 1.6 million and the marriage was celebrated at Tuliani in the presence of members of the family of the deceased.

Mr. Balomi insisted, in view of the caveator's evidence being supported by Dw3 and Dw4 the marriage was indeed done in according with the law. In fine, this court was asked to hold that the caveator is the legal wife of the deceased.

Submitting on who should be appointed the administrator of the estate, the learned counsel stated that, the court may appoint a person who is not even

a member of the family, provided that person is reputable and capable of administering the estate of the deceased properly. The learned advocate substantiated this point by the case of **Seleli Dotto vs Maganga Maige and 3 Others**, PC Probate Appeal No. 6 of 2018 as cited on Page 92 of the case *digest on probate and Administration of Estates in Tanzania by L.M Mlacha, Z. N. Lukumay and D.P Kinywafu*, and the case of **Naftary Petro v Mary Protas**, Civil Appeal No 103 of 2018 cited in the same book at Page 95. As if the above Authorities were not sufficient, the learned counsel added the case of **Sekunda Mbwambo vs. Rose Ramadhan** [2004] TLR on page 439. It was his submission further that the caveator has demonstrated before this court to possess qualities for appointment citing as an example moving this court to expunge from the record properties wrongly included in the estate of the deceased. Contrary to that, it was submitted that the petitioner has demonstrated the negative. If appointed, it was argued chaos would be caused, because the same does not even know the estate of the deceased.

It was submitted further that, the caveator has shown at the balance of probability that she is worth the appointment and the petitioner has not discharged his burden of proof as under sections 110 and 111 of the Evidence Act.

In support, I was asked to refer to the case of **Joseph Shumbusho vs. Mary Grace Tigerwa and 2 Others**, Civil Appeal No. 183 of 2016. To conclude this issue, the learned counsel asked this court to consider that the caveator is the deceased's wife and therefore fit for appointment under section 33 of PAEA.

About the family meeting, it was argued that properties that belong to the estate of the deceased were distributed to the beneficiaries prematurely and illegally and left the caveator with nothing. In the counsel's view, the caveator has the locus to be appointed not simply because she has a valid certificate of marriage as the petitioner wants this court to believe, but because she has satisfied all requirements of appointment as in the case of **Hamisi Wendo vs Hamida Mohamed and 2 others**, PC Administration appeal No. 13 of 2019. That is to say, she has an interest and desire to administer the estate as she has proved to the court. The petitioner, it was insisted has no time to administer the estate because it has been proved that he lives in Canada with his family.

On the 3rd issue about proper procuring of the minutes of the family meeting, it argued that based on the acrobatics made by Pw2 who chaired the meeting, the same were not properly procured. In the view of the learned

counsel, the meeting was held on 11th April 2021 but the minutes were cooked and signed on 16th April 2021 by the secretary to the said meeting.

On the 4th issue of joint assets by the deceased and the caveator, it was argued that the caveator was not a housewife. She was a musician and a member of parliament, special seats. With the deceased, it was stated that they acquired jointly a house at Mbweni JKT Plot No. 116, block 3, under the certificate of title number 112054. This submission is supported by the evidence of Dw3 and Dw1 according to the learned counsel and that it was acquired by way of purchase for the amount of 400 million paid to RAN, IT Solutions (E.A) Limited on 19th November 2015. According to the learned counsel, the evidence of Dw3, the sale agreement proved that the same house was purchased by both the caveator and her husband and therefore, it is a joint property. It was argued, that other properties jointly acquired include Beda Farms Limited in which she owns 25 ordinary shares while the deceased owns 45%. For Beda Group Company Ltd, the two owned 50% each. It was further stated that the caveator injected her monies into the companies where there are mini supermarkets, a swimming pool, a bar, and various recreational and entertainment places. In his view, the caveator has operated the property since its founding to date, and other joint properties are stated in the affidavit.

Lastly, it was argued that the duty of the court is not to distribute the estate of the deceased, or determine who are beneficiaries of the estate of the deceased because that is reserved to the administrator as held in the cases of **Samson Kishosha vs. Charles Kigongo Gobba** [1990] TLR 133 and **Monica Nyamakare Jigamba vs Mugeta Bwire Bhoke as the administrator of the estate of Musiba Jigamba and Another**, Civil Appeal No. 199/01 of 2019. This court was therefore asked to appoint the caveator to administer the estate, because all witnesses for the petitioner had inconsistencies and discrepancies and that their evidence was uncorroborated and full of improbabilities.

Before determining the issues raised, I think I have to agree at the outset with the finding by Mr. Balomi that this petition did not comply with Rule 66 of the PAEA. Optatus Beda Likwelile and Denis Kilian Likwelile are sureties of the petitioner. Their bond in all terms is in the sum of TZS 10,000,000.00 portioned in two. Although it is by estimate, the estate cannot be less than a billion. But the caveator estimates that the same is over 4 billion. By all standards, the bond of 10 million by two sureties does not meet the requirements of the law. As cited, the law provides for the administration bond shall, except when the court otherwise orders, be given in double the amount of the gross value of the property for which the grant is to be made.

The law directs the same bond to be filed in the appropriate form prescribed in Forms 48 or 49 set out in the First Schedule. This petition therefore did not comply with the law. The remedy however will be dealt with at some stage later.

It is now opportune, to determine issues in the manner they were presented.

Starting with the first issue;

Whether the caveator was legally married to the deceased or put it simply; If Vicky Paschal Kamata/ Vicky Paschal Likwelile was legally married to Dr. Servacius Beda Likwelile

Going by evidence, Pw1 told this court that she is the daughter of the deceased born in 1987 to Mary Ibrahim Likwelile. She said, her mother was married to Servacius in 1986 by a civil marriage. She further testified, that the two in 1994, celebrated a Christian marriage in the Roman Catholic Church at the University of Dar-Es-Salaam.

Her evidence is aligned with that of Pw5, the petitioner who said, the late Servacius and Mary had a marriage that occurred on 5th December 1986. In a marriage certificate 0096259, admitted as P3. Its authenticity according to Pw5 is by exhibit P4 which is a letter from Registration Insolvency and

Trusteeship Agency (RITA). Mary Ibrahim died on the 26th of April 2020, as per exhibit P5.

Dw6, on the other hand, testified that she was married to Servacius in a Christian marriage on 30th January 2016, in the Deliverance and Restoration Ministry Arusha. She tendered to prove so, a certificate No. 0580353, exhibit D1. Her evidence is in line with her submission that she had before marriage cohabited with the deceased for some years.

Examination of both marriages shows that they were both done in the church because Mary and Servacius did so in the Church on 4th April 1994 due to an endorsement on the certificate exhibit P3. However, in terms of exhibit P1 collectively, RITA refused to have known and had not registered the same marriage in the register of marriages. They also said the investigation disclosed the minister alleged to have officiated the marriage between the Caveator and the deceased denied having done so. This in actual fact proves there was no such a certificate issued or if it was issued, it was not registered as the law requires.

But all that done, what is the position of the law as regards Christian Marriages in Tanzania. Marriages in Tanzania are of two kinds, in terms of section 10(a) and (b) of the Law of Marriage Act (LMA) [Cap. 29 R.E 2019]

those that are monogamous or so intended, and that are polygamous or that are potentially polygamous.

It can be said with certainty that Christian marriages are monogamous in that they are between one man and one woman to the exclusion of all others as stated under section 9(2) of LMA. It is therefore unlawful for a man or woman in a monogamous marriage, to contract a marriage when another one still subsists. This is provided for under sections 15(1) and (3) of the LMA, which states as hereunder;

5.-(1) No man, while married by a monogamous marriage, shall contract another marriage. or

in terms of subsection 3, that

(3) No woman who is married shall, while that marriage subsists, contract another marriage.

It is from these provisions that this court needs to inquire into whether in 2016 when the deceased was contracting marriage with the caveator had the capacity to do so. It was testified and submitted by the petitioner that Mary Ibrahim died in 2020 and had not divorced with deceased. The caveator on the other hand has testified that she knew Mary Ibrahim as the former wife of the deceased. She said she knew they were separated and

lived apart. She said she was introduced by the deceased at the marriage of one of the children of the deceased with Mary. In her submission, the caveator alleged that she did not know if there was a marriage subsisting between the two before and after she got into that marriage.

In my view, there was no evidence that the caveator was married to another man when she contracted a marriage with the deceased. But there is no evidence as well that when the caveator and the deceased got married in 2016, Mary's marriage with the deceased had been terminated by divorce or death.

It is therefore clear to me, in the absence of evidence of divorce between Mary Ibrahim and Servacius that at the time Vicky Kamata got married, the deceased had the capacity to marry. This court in the case of **Francis Leo v. Paschal Simon Maganga** [1978] LRT 22, Mfalila, J (as he then was) had this to say;

"A Christian who has neither renounced his faith nor divorced his wife has no capacity to marry another woman and therefore cannot invoke the presumption under section 160 in his favour"

It goes without saying therefore that when the spouses have no capacity to marry, the presumption of marriage cannot be invoked in their favour. It does not matter how long the parties lived together. The fact that the deceased lived with the caveator for 7 years and that they were known so by the family members and the public and it was submitted that she enjoys the presumption of marriage cannot salvage the situation. This does not absolve the fact that the presumption under section 160 of LMA cannot be enjoyed by the parties.

It was submitted that there was a legal marriage between the two as per exhibit D1, the marriage certificate. But still, this was denied by Pw3, and exhibit P4 that the certificate did not exist and that the minister who allegedly officiated that marriage denied doing so. The caveator did not even effort to call that person to testify. All in all, whether married or not in 2016, as it has been stated, still such a marriage was contracted by parties that had no capacity to marry. MY brother Mugeta J, held in the case of **Donalt Temba(deceased) and Others**, (supra), that Christian Marriages are Monogamous, therefore any marriage done during the substance of another marriage is merely concubinage.

I therefore hold that there was no marriage between the late Dr. Servacius and Vicky Paschal Kamata. What they considered a legal marriage between them may be taken as sham marriage and therefore void ab initio. The submission that a presumption of marriage applies in the circumstance of this case, is in my opinion, like the kicks of the dying horse. The first issue is answered that the caveator is not a legal wife of the deceased but a concubine like the other seven she mocked in her evidence.

Second issue;

Who between the petitioner and caveator is to be granted letters of administration,

Having determined the first crucial question in the first issue. I have to say here that the appointment of an administrator is a matter of the law. It is governed by sections 33(1) and (2) of the PAEA. The section states;

(1) 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.

(2) Where more than one person applies for letters of administration, it shall be at the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests

From the provisions, it is clear that in case of intestacy as in this case, it is in the discretion of the court to appoint any person to administer the estate of the deceased. However, the court is guided by the relationship between the deceased and that person. **First**, it must at least be a person who is entitled to the whole or part of the estate. **Second**, and perhaps most importantly, when it is contested as in this case, a person who has greater or immediate interest over that who is too remote or with less interest.

To determine this point, I have to say, that the petitioner is the blood son of the deceased. He is compared to the caveator who lived with the deceased in concubinage and is not even an heir. It is sufficient to hold, that her interest in the estate is too remote. Without much ado and without mincing words, the petitioner is best placed for the reasons I have endeavored to

show worth an appointment as an administrator of the estate of the deceased.

Third issue

Whether family meeting minutes were lawfully procured,

I have gone through the evidence by both parties, there is nothing that suggests that the family minutes meeting was forged. The meeting was held by the family members and discussed who should petition for letters of administration. The petitioner and the caveator were proposed. But later the two appeared to be in a tag of war and the rest of what followed is history. From the foregoing, I do not find any evidence to prove improper procurement of the minutes.

Third issues;

Whether the deceased and the caveator jointly acquired any assets

The caveator testified and it was submitted by her advocate that, she was not a housewife. She said she was a musician and a member of parliament-special seats for 10 years. She said, she garnered beautifully over TZS 300,000,000.00 in terms of gratuity for two terms and her net income per month was not less than TZS 11,000,000.00. This income was used to

acquire a matrimonial house at Mbweni JKT. She also has been the director of Beda Farms where she allegedly owns 25% and owns 50% of the Beda group. It was her evidence therefore that these properties should not form the estate of the deceased since they were jointly owned.

In my view, this being a probate matter, where the deceased died intestate, I think the court is concerned with four things; **One**, who are the rightful heirs or beneficiaries of the estate of the deceased. **Two**, what property constitutes the estate of the deceased? **Three** who is the rightful person(s) to be appointed to administer the estate? And **four**, how will the estate be distributed to the rightful heirs? Whenever a question arises in one of the points above, the court has to determine it with the limitations stated under the law. For instance, as rightly submitted by Mr. Balomi for caveator, it is not the duty of the court to look for the beneficiaries and/or distribute the estate to them. That duty is reserved for the appointed administrator.

The caveator has alleged that some properties listed by the petitioner as shown in this judgment are hers and so should not constitute the estate of the deceased. She was cast with the duty to prove they are her properties or are rather owned by someone else. In the absence of the evidence, it will not be simply assumed that they do not belong to the deceased. If the same

were jointly owned, she has the duty to prove, for this court to rule in that favour. But the issue before me for determination is if she jointly acquired properties with the deceased. With respect, I do not think this court is competent to venture into that question. The reason for believing so was stated by this court in Probate and Administration Cause No. 83 of 2020, In **the matter of Tumsifu Elia Sawe and in the matter of the application for letters of administration of the estate of the Late Tumsifu Elia Sawe**, High Court, One Stop Judicial center, Temeke on page 4, where it was held that;

*'... it is now settled that when one spouse dies intestate as in this case, all assets falling in his hands can only be dealt with under the laws of succession. I have no doubt in my mind, the Law of Marriage Act ceases to apply. The reasons for holding so are simple, **one** what constitutes matrimonial assets is defined by the Law of Marriage Act to include the properties jointly acquired by the spouses during the pendency of their marriage under section 114. **Two**, for the properties to be divided between the spouses, each spouse has to prove and establish the extent of her contribution towards the acquisition of the same as in the case of **Bi Hawa Muhamed vs Ally Seif** [1985] TLR 32. **Third**, and perhaps more importantly, in the absence of one*

*spouse, there won't be evidence to establish the contribution of the other deceased spouse, and **fourth**, when one spouse dies, the matrimonial properties jointly acquired and those in the name of the deceased definitely fall in the estate of the deceased to be distributed to the deceased beneficiaries..."*

True to this case, in order to establish whether the two jointly acquired the assets, that ought to be done in the matrimonial matter where spouses are in the position to prove when and how the same properties were acquired. I therefore do not think, this court is as of now in the position to say whether the same properties were jointly acquired or not. But this does absolve, the fact that at some stage, the caveator has a chance to establish before the court with evidence the property that is in joint ownership for her share to be excluded from the estate of the deceased. This applies as well to Beda Farms and Beda Group where the caveator stated she has 25% and 50% respectively and in the matrimonial home.

In summary, it has not been proved that the listed items in the caveat and the petition do not form the estate of the deceased. In the final analysis, I am bound to hold that the caveat fails.

Lastly, this court rules as hereunder;

- i. That the caveator Vicky Paschal Kamata is not the legal wife of the deceased
- ii. That the properties listed in the petition should not be excluded from the estate of the deceased
- iii. That the petitioner Raymond Babu Likwelile is appointed to administer the estate of the deceased
- iv. That before the grant is issued to the administrator, he should comply with rule 66 of the Probate Rules, by providing the administration bond to be twice the gross value of the estate, which has been estimated at 4 billion. This is to be done in 14 days from the day of this judgement.
- v. I make no order as to costs.




ACK. RWIZILE
JUDGE
15.09.2023