

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB REGISTRY OF KIGOMA)**

AT KIGOMA

(ORIGINAL JURISDICTION)

**PROBATE AND ADMINISTRATION CAUSE NO. 1 OF 2016
IN THE MATTER OF THE ESTATE OF THE LATE ELIAS RUKONYA
MALIYATABU**

AND

**IN THE MATTER OF PETITION FOR LETTERS OF
ADMINISTRATION WHEN THE DECEASED DIED INTERSTATE
BY**

STEPHEN MALIYATABU 1ST PETITIONER

SARA ISAYA DYOYA 2ND PETITIONER

VERSUS

CONSOLATA JULIUS KAHURANANGA CAVAEATOR

Date of Last Order: 29.09.2023

Date of Judgement: 06.10.2023

JUDGEMENT

MAGOIGA, J.

The petitioners, **STEPHEN MALIYATABU** and **SARA ISAYA DYOYA** jointly petitioned to this court praying to be appointed as administrator and administratrix respectively of the estate of the late Elias Rukonya Maliyatabu who died interstate in Dar es Salaam on 12.01.2015.

Subsequent to the filing of the petition, the caveator herein, **CONSOLATA JULIUS KAHURANANGA**, lodged a caveat in terms of the provisions of section 58 (1) and (5) of the Probate and Administration of Estate Act,




[Cap 352 R.E.2002] and Rule 82 of the Probate Rules of the same Act, G.N.369 of 1963 (hereinafter to be referred as the '**Act**' and '**Rules**' respectively)

Thereafter, on the basis of the caveat lodged to the petition and in terms of the provisions of section 59(2) of the Act, the petitioners did apply for issuance of citation to the caveator, requiring her to enter appearance to the petition. And, upon the caveator entering appearance to the petition, by virtue of the provisions of section 59(3) of the Act, the court had to bring into play the provisions of section 52 of the Act, which for easy of reference, provides as follows:

"Section 52 -Except as hereinafter provided and subject to any Probate Rules in that behalf-

(a) the proceedings of the court relating to the grant of the probate and letters of administration shall be regulated, so far as the circumstances of the case admit, by the Civil Procedure Code, or any enactment replacing the same; and
(b) in any case in which there is contention, the proceedings shall take, as nearly as may be the form of a suit on which the petitioner for the grant shall be plaintiff and any person who appears to oppose the proceedings shall be the defendant."



Guided by the foregoing provision, therefore, the petitioners became the plaintiffs, whereas the caveator has turned into defendant.

When this petition was called on for hearing, the petitioners were enjoying the legal services of Mr. Daniel Rumenyera, Kigoma based learned advocate, whereas the caveator had the legal services of Mr. Deus Nyabiri, Dodoma based senior learned advocate.

And, before commencement of hearing of the petition in compliance of the procedure stipulated in the aforementioned provision, it was agreed upon between learned advocates for parties that, this petition give rise to mainly one big issue and the consequential and usual relief issue, which were recorded for its determination as follows:

- 1. Who, between the petitioners and the caveator is more suitable to be appointed to administer the deceased estate?*
- 2. What reliefs parties are entitled to?*

The petitioners testified as PW1 and PW2 respectively and called two more witnesses in support of their case who testified as PW3 and PW4 and tendered 4 exhibits. On the part of the caveator, she testified as DW1 and called other 4 witnesses (DW2-DW5) in support of her case and equally tendered 10 exhibits.

Stephen Maliyatabu testified as '**PW1**'. Under oath PW1 told the court that, the deceased is his elder blood brother. According to PW1, the



deceased died in Dar es Salaam on 12.01.2015. From the Caveator, PW1 tendered original death certificate as **Exhibit P1**.

PW1 told the court that he is here praying to be appointed administrator of the deceased estate because immediately after burial, the family sat on 25/11/2016 and proposed him together with second petitioner (Sara Isaya Dyoya)- being surviving wife of the deceased to apply for letters of administration on intestacy. PW1 tendered minutes of the family which sat on 25/11/2016 as **exhibit P2**.

PW1 told the court that actually the meeting took place on 15/11/2016 and not the date earlier mentioned and went to mention beneficiaries of the deceased according to the minutes as Sara Isaya Dyoya, Asante Elias, Cornell Elias, Pascal Elias, Baraka Elias and Erick Elias. PW1 went on telling the court that the children of the deceased were born by three different mothers, namely: Sara for Asante and Cornel, Pascal by Diana Barampyana and Baraka and Erick by Consolata Kahurananga. Further, PW1 mentioned the properties of the deceased as bank accounts with CRDB Bank and NMB bank, two schools at Kasulu- primary school and secondary school, two motor vehicles-T226 CTE and T327 BJE, two residential houses- one at Murusi and the other at Mwilamvya, livestock and 36 acres of land. According to PW1, all the above listed properties were in the name of the deceased. PW1 further told the court that, since



the death of the deceased in 2015, the schools are under the management of Headmaster and Headteacher and later changed the story and said he does not know who operate the schools.

PW1 told the court that he knows the caveator as one of the women that had issues with the deceased and was not aware if the deceased had taken loans from the banks and the caveator gave spousal consent.

PW1 told the court that, the caveator is not fit to administer the estate because she was not recognized by the family, had not requested to be appointed, did not put surety, no family meeting endorsed her and did not sign any bond.

Under cross examination by Mr. Nyabiri, PW1 told the court that ever since the death of the deceased the properties are under no one who takes care of them and knows no one who stay in the houses and do not know where the children are as of now. Pressed with questions, PW1 told the court that since 2008-2015 she has never seen Sara Dyoya at Kasulu because she was working at Kigoma. PW1 pressed with questions admitted not knowing the affairs of the schools and their management at all, including the new acquired properties after the demise of the deceased. Further PW1 admitted not knowing how to manage schools and that upon appointed will distribute the properties to the heirs. PW1 insisted that he is fit person to be appointed because family meeting proposed and



endorsed him. PW1 insisted that upon appointed will distribute the properties to the respective heirs.

Under re-examination by Mr. Rumenyela, PW1 told the court that he has no intention to manage the schools. As to Dar es Salaam meeting(in exhibit D9b), PW1 admitted that Consolata Kahurananga was recorded as the wife of the deceased but now he do not recognize her so.

Next is the second petitioner- **SARA ISAYA DYOYA** testified as '**PW2**'.

Under oath, PW2 told the court that she seeks to be appointed as administratrix of the estate of Elias Maliyatabu Rukonya. According to PW2, she got married to the deceased on 04.07.1998 and tendered marriage certificate in evidence as **exhibit P3**. PW1 went on telling the court that in 1998 had exclusive personal house in her name at GTZ street but she voluntarily changed the ownership to the deceased to enable them get loans and in the course, they managed to establish a school which started in 2005. It was further testimony of PW2 that, herself and the deceased were blessed with two issues, namely Asante and Cornel and other properties as mentioned by PW1. PW1 admitted to know the deceased had other children with other women (Consolata and Diana) and mentioned them as Baraka, Erick and Pascal.

PW2 told the court that she is a fit person to administer the estate because she is the lawful widower, was endorsed by the family meeting, knows



the properties, all beneficiaries as mentioned by PW1 including the parents of the deceased and she was source of all these properties.

According to PW2, the caveator is not a fit person because was not proposed and endorsed by the family, do not know how the properties were originally acquired, and was just a girlfriend of the deceased with no interest in the properties.

Like PW1, PW2 insisted that the schools are under the management of the headmaster and Head teacher respectively. PW2 admitted to know nothing about the loans with banks because that was not proved. Further, PW2 changed the story and said the schools are under the management of the caveator.

PW2 insisted that and prayed that she be appointed along with the 1st petitioner to administer the estate of the deceased.


Under cross examination by Mr. Nyabiri, PW2 told the court not to remember when the first graduation took place nor when the motor vehicles were bought nor knows who stays at Mwilamvya house where burial was conducted. PW2 admitted that during burial, caveator was there and she introduced herself as the wife of the deceased and was aware of the relationship between the deceased and the caveator since 2007 and that they have two issues. PW2 denied to know anything to do with loans. PW2 admitted seeing letters which the deceased handed over



management to the caveator and that she has never been given such powers during the lifetime of the deceased. PW2 equally admitted not taking care of the deceased during his ailment and never went to Dar to attend him but qualified that she was instructed not to go Dar by the deceased and obeyed but had communication with him to his death.

Under re-examination by Mr. Rumenyela, PW2 told the court that the insurance card for the family had nothing to do with suitability of the person to administer the estate.

Next was **Mr. DEUS KIBABI NTABINDI** testified as '**PW3**'. Under oath, PW3 told the court that he was closer friend to the deceased and participated closely in the marriage arrangements between the deceased and 2nd petitioner in 1998 and he has been always invited to the school boards for his advice. According to PW3, after the death of the deceased and burial of the deceased was called and invited to the family meeting in which he attended and in that meeting was the chairman which ended up proposing and endorsing the petitioners to petition for grant of the letters of administration on intestate. PW3 identified exhibit P2. PW3 admitted knowing the caveator as having issues with the deceased and that she has been managing the schools since the death of the Elias. PW3 knows other added properties such as schools buses but do not know who resides in those houses.



Under cross examination by Nyabiri, PW3 admitted that the schools since the death of Elias are under the management of the caveator and are well managed for over 8 years now. PW3 admitted two more school buses have been bought after the death of Elias.

Under re-examination by Mr. Rumenyela, PW3 told the court that Consolata was given powers to manage the schools but do not know how she got the powers and do not know the in-depth of the management.

Last but not the least was **MALIYATABU RUKONYA** testified as '**PW4**'.

Under oath told the court that he is the biological father of the late Elias. PW4 went on telling the court that after burial he convened a family meeting which proposed and endorsed the petitioners to apply for their appointment to administer the estate of the deceased who are younger brother and wife respectively. PW4 orchestrated children and properties of the late Elias as did by PW1 and PW2.

Under cross examination by Mr. Nyabiri, PW4 told the court that, PW3 never advised PW4 to call all children and their guardians into the meeting. PW4 denied knowing the caveator but recognized his children. Like PW1 and PW2, PW4 pressed with questions, told the court that he doesn't know who manage the schools to date.


Mr. Rumenyela had nothing to re-examined PW4.



This marked the end of hearing of the petitioners' case and same was marked closed.

CONSOLATA KAHURANANGA- the caveator testified as '**DW1**'. Under oath told the court that she has several names which she uses in her daily life as '**Mama Baraka**', '**Consolata Elias Maliyatabu**', and '**Consolata Julius Kahurananga**' and explained how she acquired those names. According to DW1, she has two issues with the deceased, namely: Baraka and Erick born in 2009 and 2012 respectively, which relationship started in 2007 and developed into husband and wife. DW1 tendered marriage certificate issued in 2012 as **exhibit D1** and birth certificates of the children as **exhibit D2**.

Further testimony of DW1 is that ever since she met and started relationship with the deceased, she never saw any other woman, but she admitted guarding two children by other women by the names of Asante and Pascal, whom she met during burial ceremony as Sara and Diana. DW1 tendered in evidence birth certificates of Asante and Pascal as **exhibits D3**. As to Pascal, DW1 told the court, she is taking care of him and all his schooling expenses to date but Asante left with the mother after being taken by force out of her when she had sent him to Uganda for studies.



Further testimony of DW1 was that, herself and deceased managed to construct a house at Mwilamvya and moved in 2011 and it is where the deceased was buried. DW1 tendered 4 health insurance cards for the deceased and four children she was parenting/guarding as **exhibit D4**.

DW1 went on testifying that in her lifetime with the deceased, they managed to develop Mwilamvya secondary school by constructing new buildings such as dormitories, classes, laboratories, administration block, establishment of and Form V and VI. DW1 told the court the above developments were possible through their joint efforts with the deceased and through series of loans they got from CRDB Bank. It was further testimony of DW1 that as wife of the deceased she gave spousal consent to all loans. According to DW1, when Elias died left unpaid balance to CRDB BANK was Tshs.956,000,000/- but through her proper supervision of the schools all loans are as she was testifying fully paid up. DW1 tendered in evidence 4 mortgages of Right of Occupancies and spousal consent collectively as **exhibit D5**.

It was further testimony of DW1 that, in the administration of the schools, she was always assistant director and immediate advisor to the director in relations to the affairs of the schools and every time the director was outside Kasulu, he used to hand over all management to her. DW1 tendered in evidence two letters dated 10.12.2014 addressed to



Headmaster and Head Teacher of the schools respectively handing over the management to DW1 as **exhibits D6.**

DW1 told the court that he went to Dar es Salaam to attend his late husband but unfortunately died and tendered an air ticket dated 07.01.2015 as **exhibit D7.**

Further testimony of DW1 was that while in Dar es Salaam in the presence of Faray Chancharika, the deceased gave her another letter instructing her to take care of the schools, properties and his children (Asante, Pascal, Baraka and Erick) and to be careful with his young brother Stephen (referring to the 1st petitioner) as to be away from his properties. Letter dated 06.01.2015 was admitted in evidence as **exhibit D8.**

DW1 went on telling the court that she had no knowledge of the child called Cornell to belong to her late husband.

DW1 told the court that, after the death, they sat as a family and friends and deliberated on how to pay hospital bills and to transport the deceased body to Kasulu for burial and through that meeting were able to get money from CRDB BANK. DW1 tendered in evidence minutes and letter requesting money from CRDB Bank as **exhibit D9.** DW1 also tendered in evidence withdrawal form from CRDB BANK of Tshs.14,150,000/- from Mwilamvya Secondary School account as **exhibit D10.** DW1 equally



prayed that exhibit P1 form part and parcel of her defence case because at all material time was with it and was given to her as lawful wife.

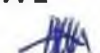
DW1 told the court that petitioners are not fit person to be appointed because they lied to court that the schools are under the management of the Headmaster and Headteacher, while the truth is, are under her management since 2014 to date. And, that they know nothing about how the properties were acquired, developed and managed, especially the schools, the house at Mwilamvya and livestock. DW1 insisted that in the circumstances of this suit, she is more suitable than the petitioners because she has been able to support the deceased in the development of the schools, paying the loans, taking care of all the children needs during his lifetime and after to date, chief advisor, took care of him during his health and ailment life and, more so, the late Elias left a note giving his last instructions to me to take care of all the properties, children, parents and Stephen was complete disqualified in that letter.

According to DW1, since the demise of the Elias, she has been managing the schools without problem, she has been able to pay schools debts with banks and private persons, schools are performing well under her management, no complaint from parents and employees. Not only that but that she has been able under her management added more buildings such toilets, class rooms, fence, permanent kitchen, two school buses all



for school development and concluded that all these proves that she is more suitable than the petitioners.

DW1 refutes the claims of the father and 1st petitioner not knowing her as liars. Stephen's denial of knowing me is an afterthought after failing to take the properties which was his wish and decided to team up with Sarah. Under cross examination by Mr. Rumenyela, DW1 told the court that the relationship with the deceased started in 2007 and got married in 2008 and in 2009 were blessed with Baraka, then, in 2012 were blessed with Erick. The marriage certificate was officiated at Dar es Salaam Kinondoni in 2012. As to spousal consent, DW1 replied that, was given because she was a lawful wife. DW1 admitted to have document to prove the debt of Tshs.956 millions with CRDB BANK and promised to bring bank official to corroborate her testimony. Ask as to the intention of exhibit D6 and says the two letters were self-explanatory that she was to manage the schools. Pressed with questions if exhibit D8 is a will and she says no it was not a will but a genuine wish. DW1 went on telling the court that the loans were terms loan and overdraft. DW1 pressed with questions on her suitability, replied that for 8 years she has been able to manage the schools with no problem and are doing well. As to beneficiaries, DW1 mentioned them as Asante, Pascal, Baraka, Erick and the parents and refused to recognize Sara and Cornel. Pressed with question relating to family meeting, DW1



replied that she was not invited for no apparent reason. Pressed with questions, DW1 mentioned properties which have increased under her management as one dormitory for boys, toilets, library, permanent kitchen, 8 class rooms, one house but two in-one for teachers, fence, and 2 school buses. DW1 completely denied the deceased to have owned a land cruiser mentioned by petitioners and called them to bring evidence of such ownership.

Under re-examination by Mr. Nyabiri, DW1 told the court that she gave spousal consent as wife because matrimonial houses were involved and other landed properties were mortgaged.

Next for defence was **FAHAD MOHAMED CHACHARIKA** testified as '**DW2**'. Under oath, DW2 told the court that he knew the deceased since 1990 and are from same village. According to DW2, the deceased involved him in his activities when constructing the schools and it was the deceased who introduced the caveator as his wife and witnessed their formal marriage in 2012. DW1 went on telling the court how he attended the deceased with caveator in December 2014 till when he passed on. DW1 confirmed the contents of exhibit D8 and the instructions therein and the exhibit D9. DW1 as closer friend denied knowing Sara and Cornel.

Under cross examination by Mr. Rumenyela, DW2 told the court that exhibit D8 was written while the deceased was in hospital and the Dar es



Salaam meeting was to facilitate paying hospital bills and transportation of the body and burial expenses. DW2 finally told the court that he came to testify in favour of DW1 as lawful wife.

Next was **EMMANUEL SAGUDA KINGI** testified as 'D3'. Under oath DW3, told the court that he has been teaching at Mwilamvya Secondary School since 2006. According to DW3, the school is owned by the late Elias Maliyatabu. DW3 told the court that, he has been the headmaster since 2013 to date and DW1 is the wife of the late Elias and her involvement in the management of the school started in 2008. Since then, according to DW3, when the director was not around, he used to hand over operations and management to DW1. DW3 recognized exhibit D6 as the last letter of handing over the operations and management of the school to DW1. DW3 insisted that, since 2014 to date the school is under the management and operations by DW1 and that a lot of properties have been developed and loans paid up as mentioned by DW1.

Under cross examination by Mr. Rumenyela, DW3 orchestrated all properties that have added in the development of the school under the management of DW1 exactly as mentioned by DW1. As to exhibit D6, DW3 said much as the same has never been revoked, then, is valid to date.



Under cross examination, DW3 told the court that management meetings of the schools everything is discussed in the board, which DW3 is the secretary and through that was able to know even the loans and the payments.

Next was **Mr. ALISON ANDREW MWAMPELWA** testified as '**DW4**'.

Under oath, DW4 told the court that he is the branch manager of CRDB BANK Kigoma branch responsible for supervisions of all branch activities at Kigoma. DW4 told the court that he knows the Caveator as the wife of late Elias Maliyatabu, the owner of Mwilamvya secondary school and Pre-Primary school as per their records as their esteemed customer to date. According to DW4, the late Elias had several loans with the bank both term loans and overdrafts, consent by his wife DW1 but which as he is testifying have been paid up in full. DW4 recognized exhibit D5. DW4 went on telling the court that after being transferred to Kigoma, he visited the schools and found were managed by DW1 and is well known to the bank. Under cross examination by Mr. Rumenyela, DW4 told the court that according to their records, the money was disbursed and it has been paid up.

Under re-examination, DW4 told the court that exhibit D5 was prepared by the bank and any defect in the names do not negate the documents.



Last but not least was **Mr. PETER JOHN MUSOBI** testified as '**DW5**'.

Under oath DW5 told the court that is the Headteacher of Mwilamvya Pre-Primary school and the rest of DW5 testimonies is as that of DW3. DW5 recognized the contents of exhibit 6.

Under cross examination by Mr. Rumenyela, DW5 denied knowing the mother of Asante and he has never seen her in the school since then.

Mr. Nyabiri had nothing to re-examined DW5.

This marked the end of hearing of this hotly contested probate and administration cause and the case for the defendant was marked closed.

Immediately, the learned counsel for parties prayed to file their final closing submissions. I granted the prayer. As I am composing this judgement, I commend them for their input on this legal battle for grant of letters of administration to the estate of the late Elias Maliyatabu. I have been able to read each and every argument raised in their respective submissions but with due respect in the course of answering the main issue will not be able to reproduce each and every argument raised for avoidance of this already long judgment. However, they are noted and have been given the weight they deserved.

In the light of the deposition from both sides above and in the light of the final submissions by learned counsel for parties, I will now embark to determine the main issue which was framed at the commencement of



hearing of this petition. However, before going into that, I wish to stress and insist that appointment of an administrator/administratrix is regulated by the provisions of the Probate and Administration Act, [Cap 352 R.E.2002] read together with its Rules. Of relevancy at this stage, is section 33 of the Act relating to letters of administration on intestacy as in this case. The said provision for easy of reference provides as follows:

"Section 33(1) Where the deceased has died intestate, letters of administration of his estate may be granted to any person who, according to the rules of the distribution of estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased estate.

(Emphasis mine)

(2) where more than one person applies for letter of administration, it shall be in 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 interest in the deceased estate in priority to lesser or more remote interests. (Emphasis mine)

(3) Where no such person applies, letters of administration may be granted to a creditor of the deceased.



(4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to administer; and in every such case letter of administration may be limited or not as the court think fit.
(Emphasis mine).

From the above provision which is literally clear in its wording, I gathered four considerations that courts always when faced with application for letter of administration on intestate to consider in the appointment of the administrator of estate. These are:

1. First and foremost, as a general rule, ordinarily letters of administration may be granted to any person who, according to the rules of the distribution of the estate, would be entitled to **whole or any part of such deceased' estate**. This is to say, in my own considered opinion, one or more of the beneficiaries are naturally to be appointed unless proved otherwise to be unfit for one or more reasons. See the case of **Sekunda Mbwambo Vs. Rose**



Ramadhani [2004] TLR 439 in which it was held that an administrator may be a widow/widows, parents or child of the deceased or any other close relative; if such person is not available or if they are available but found to be unfit.

2. Where more than one person applies (as in this case by caveator opposing the petitioners' appointment), then, letters of administration, may at the discretion of the court, be granted to one or more person, **after taking into account greater and immediate interest in the deceased's estate in priority to lesser or more remote interests.** (Emphasis mine). The great and immediate interest, as stated in subsection (2) of section 33 of the Act, I wish to add, may be deduced from a number of ways such as the contribution, advice, supervision and development of the estate in issue.
3. That where no such application is made, but the deceased died intestate, then, letters of administration may be granted to the creditor of the deceased. In my considered opinion, the drafters of this provisions, intended, among others, creditors to apply as an exception to the general rule and was meant to protect a creditor where relatives may for their own reason refrains from applying for administration of estate to avoid paying debts out of the estate.



4. The fourth point is that, under sub section (4) of section 33 of the Act, gives powers to court to appoint, having regards to the consanguinity, the amount of interest, the safety of the estate and probability of proper administration, to appoint such other person outside the three above categories mentioned above. This point is where ordinarily the Administrator General comes in or any other fit person who can manage the administration of the estate.


It should further be emphasized that, the objective of appointing an administrator of the estate in any given situation is to have a faithful person who will, with reasonable diligence, collect all the properties of the deceased, collect debt due and debts owed to the deceased, distribute the same to the lawful heirs. See the case of **Sekunda Mbwambo Vs. Rose Ramadhan (supra)**.

With the above legal background in mind, and back to the instant suit, the main issue for determination of this legal wrangle was, thus, framed to read ***"who, between the petitioners and the caveator is more suitable to be appointed to administer the deceased's estate?"***

Mr. Runyemela strongly urged this court to appoint the petitioners on reasons that the 1st petitioner is the younger brother to the deceased and was proposed and endorsed by the family meeting as evidenced in exhibit P2. As to the second petitioner because she is the lawful widower of the



deceased, and was involved in acquiring the Mwilamvya secondary and the house at GTZ street at Murusi Kasulu urban. According to Mr. Rumenyela, the caveator was just a concubine and no way she could get married to the subsisting Christian marriage between the deceased and the second petitioner. Further the learned advocate for the petitioners argued that, the petitioner refused to recognize the 2nd petitioner and one child Cornell as lawful heirs. Also, that the caveator lied to court to have taken loan from CRBD Bank but which she failed to prove and has failed to produce audit report to demonstrate the really condition of the estate. Guided by the provisions of section 33 (1) and (2) of the Act, the learned advocate for the petitioners argued that the relationship between petitioners and deceased shows are more suitable than the caveator. In support of his stance, the learned advocate cited the case of **Raymond Babu Likwile Vs Vicky Kamata, Probate and Administration Cause No. 50 of 2021 HC (DSM) (unreported)** to buttress his point and urged the court to follow this holding that the caveator is unfit for reason of not having any valid and legally recognized marriage with the deceased. In strong terms, therefore, the learned advocate urged this court to find and hold that the petitioners are more suitable than the caveator and consequently proceed to appoint the petitioners who, according to him are more suitable than the caveator.



On the other hand of the caveator, Mr. Nyabiri strongly urged this court to appoint the caveator for reasons that she is credible, participate in their acquisition, advised the deceased, took care of the deceased during his lifetime and during his ailments, wishes of the deceased as evidence in exhibit D6 and D8, taking care of the children by using his employment to include them as beneficiaries in NHIF, continue manage the properties to date without any iota of misusing them, paying the loans and debts, construction of more buildings and developing the schools and proper management of the schools to date.

From the above submissions and evidence on record and guided by the provisions of section 33 (1) and (2) of the Act, in my respective opinion and as general rule, both the petitioners and the caveator qualify for an appointment to administer the estate of the deceased. However, the question that lingers in my mind is, who is more suitable than the other between the petitioners and caveator?


Having carefully considered the evidence on record, the final submissions of the learned trained legal minds of the parties' and guided by the above provisions of the law, with due respect to the petitioners and their learned advocate, I find the caveator more suitable than the petitioners. I will explain. **One**, as correctly testified by the caveator and argued by Mr. Nyabiri, I find the caveator has more and immediate interest in the



deceased estate in priority than the petitioners. This is evidenced in exhibits D6 and same is confirmed by the oral testimonies of the DW3 and D4. **Two**, the caveator has as well demonstrated that she was staying with the children of the deceased (who form more than 80% of the beneficiaries) during the lifetime of the deceased, and, thereafter, providing them with all necessary needs, education inclusive. The caveator demonstrated to be doing so to date save for Asante who was taken by force by his mother while studying in Uganda. Unfortunately, the 2nd petitioner is stranger to the management of the schools and to most of the properties acquired since 2006. **Three**, given the nature of the properties to be administered, which involve management of two schools with more than 800 children and in the absence of any evidence that the caveator has so far mismanaged them for the entire period the properties were put under her management in 2014 by the deceased as exhibited in exhibit 6, I find it risk to hand over the schools to person with no knowledge how to manage the said properties until the beneficiaries grew up and join in the management as beneficiaries. **Four**, this state of affairs that, the caveator is more suitable was supported by the testimony of DW3 who admitted under cross examination that the schools are performing well under the management of the caveator and not only that but it was DW3 who mentioned the additional of two school buses among



the properties as testified by the caveator to this court's opinion is an added advantage to the suitability of the caveator. **Five**, the 1st petitioner proved very unfit despite being close relative of the deceased because upon being cross examined if he will manage the schools, he categorically replied that he has no intention to manage the schools but to distribute them to heirs, who are under age or some are still studying. This is contrary to the wish of the deceased who wanted the schools to continue operating for the benefit of his children as exhibited in exhibits D6 and D8. **Six**, in my considered opinion, and looking at big picture and the nature of the properties (two schools) and the number of children schools (800) and putting them under the person with no or little knowledge to manage them is to trade their future at the hands of the petitioners who proved not even knowing how schools operates. The bigger interest in the nature of these properties should be looked beyond the beneficiaries but also to children studying in those schools. **Seven**, the caveator, in the circumstances of this petition, has demonstrated that upon given the chance to administer the estate, has probability to properly administer the nature of the properties and maintain sustainability of the schools for more years which was the wish of the proprietor of the schools. **Eight**, the arguments and reasons advanced by Mr. Rumenyela in his submissions most are extraneous matters that cannot be determined now



at this stage such as no audit report, marriage status just but few to mention, hence, rejected and the case cited is, with respect to Mr. Rumenyela, distinguishable for marriage alone is not factor to appoint a person and in the circumstances of this suit was not one of the issues.

Nine, the family meeting, the basis of which the petitioners relied and prayed to be the basis of their appointment (exhibit P2), leave a lot to be desired in that while the children of the caveator were mentioned therein as beneficiaries but considering their age no reason was given by the petitioners why their mothers were not invited at least to know the fate of her children. Strangely, PW1 and PW4 recognized children but blatantly denied to know the caveator. This was a day light lie in the circumstances of this suit and continued demonstration that the 1st petitioner is unfit in all respect because in Dar es Salaam, he recognized the caveator but before this court totally denied her. This change of colours by 1st petitioner leave a lot to be desired on his part and demonstrate his unfit to administer the estate.

In the totality of the above reasons, this court without much ado, and bearing in mind that each case must be decided on its peculiar facts, the facts of this case clearly dictate this court to find and hold the first issue in the affirmative that, the caveator is more suitable than the petitioners.



In the circumstances, the petition must be and is hereby fails and dismissed. The caveat succeeds for reasons explained above.

Next and consequential usual relief issue is '***what reliefs parties' are entitled to?***' This issue will not detain me much. Much as the petition has failed, consequently, the caveator is hereby appointed to administer the estate of the deceased. From the date of this judgement and should be granted letters of administration. And the caveator is thus ordered to sign a bond worthy Tshs. Two billion in compliance with rule 66 of the Rules. This to be done within two weeks from the date of this order.

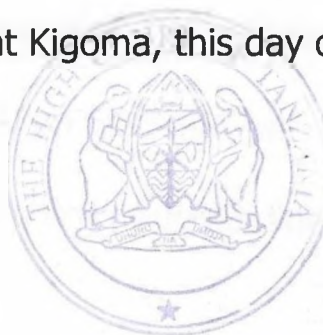
The caveator is given, considering the circumstances of this suit and that all properties are at Kasulu, within three months from the date of this order to file true inventory in this court.

By the way, I wish to point out that other extraneous matters of marriage and who is beneficiary or not will be dealt with in due course of these proceedings under the relevant laws after inventory is filed.

Given the relationship between parties, I make no order as to costs.

It is so ordered.

Dated at Kigoma, this day of 6th day of October, 2023.




S.M. MAGOIGA
JUDGE
06.10.2023