

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

**PROBATE AND ADMINISTRATION CAUSE NO. 31 OF 2021
IN THE MATTER OF THE ESTATE OF THE LATE CHANA UKA MODHWADIA
AND
IN THE MATTER OF APPLICATION FOR GRANT OF LETTERS OF
ADMINISTRATION BY NATHA CHANA MODHWADIA
AND
IN THE MATTER OF CAVEAT RAISED BY JASHU JETHA (Administratrix of
the estate of JETHA CHANA MODHWADIA) AND RADHIKA JETHA
MODHWADIA**

NATHA CHANA MODHWADIA..... PLAINTIFF

VERSUS

**JASHU JETHA (Administratrix of the estate
of JETHA CHANA MODHWADIA)1ST DEFENDANT
RADHIKA JETHA MODHWADIA2ND DEFENDANT**

JUDGMENT

01st August & 31st October, 2023

KAMUZORA, J.

Natha Chana Modhwadi is petitioning to be appointed administrator of the estate of his late father Chana Uka Modhwadia who demised in May, 2008. The late Chana Uka Modhwadia was survived by two female children and three male children; Nirmladev Odedra, Urmila Odedra,

Davishi Chana Modhwadia, Natha Chana Modhwadi, the plaintiff herein and Jeta Chana Modhwadia (the husband to the 1st defendant and the father to the 2nd defendant herein). From the records, no probate matter was instituted by his heirs until one of his sons, Jeta Chana Modhwadia passed away in 2015. After Jeta's demise, Jashu Jeta petitioned and was appointed administratrix of the estate of her late husband Jeta Chana Modhwadia in Probate Cause No. 14 of 2015. In 2016, Natha Chana Modhwadia instituted a probate matter before the primary court of Babati, Probate No. 45 of 2016 and was appointed administrator of the estate of the late Chana Uka Modhwadia. However, the proceedings and decision of the Primary court in that case was nullified for want of jurisdiction by the district court in Revision No. 11 of 2021.

Following nullification of the primary court proceedings, Natha Chana Modhwadia brought the current probate cause petitioning to be appointed administrator of the estate of his late father Chana Uka Modhwadia. His petition is objected by way of caveat by the wife and daughter of his late brother Jeta Chana Modhwadia who are Jashu Jeta and Radhika Jeta Modhwadia. Among the reasons advanced in their objection is that, the Plaintiff is not a trustworthy person as he is trying to deprive the defendants of their rights over the properties of the late Jeta by including in the estate of the late Chana Uka Modhwadia, the

properties belonging to the estate of the late Jeta Chan Modhwadia. On his part, the plaintiff believe that he is a fit person to administer the estate of his late father as he has interest to his father's estate and he is capable of faithfully and justly administer the deceased's estate.

Following the caveat raised by the Defendants herein, this matter turned into contentious proceedings thus, this court invoked the provision of section 52 (b) of the Probate and Administration Act Cap 352, RE 2002, which requires the matter to take form of a civil suit. In that regard, the petitioner was treated as the plaintiff and the caveators were treated as the defendants. This procedure also embraced the Court of Appeal position in **Monica Nyamakere Jigamba Vs. Mugeta Bwire Bhakome & Another**, Civil Application No. 199/1 of 2019 [2020] TZCA 1820 (16 October 2020) (Tanzlii), where it was held: -

"Where a Caveator appears and opposes the petition for probate or letters of administration, then sub-section 3 of section 59 of the Probate and Administration requires the Court to proceed with the petition in accordance with paragraph (b) of section 52 of the Probate and Administration which provides:- in any case, in which there is contention, the proceedings shall take, as nearly as may be the form of a suit in which the Petitioner for the grant shall be a plaintiff and any person who appears to oppose the proceedings shall be the defendant"

For purpose of satisfying itself if the caveat worth merit, this court called upon parties to submit evidence to support their positions. The Plaintiff in the caveat presented two witnesses while the Defendants in caveat presented four witnesses. As matter of legal representation, the Plaintiff was represented by Mr. Jeremia Mjema and Mr. Ombeni Kimaro, both learned counsel while the Defendants enjoyed the service of Mr. Mpaya Kamara and Mr. Daudi Saimalie, both learned counsel.

PW1, Natha Chana Modhwadia testified that he was approved by family members to petition for appointment as administrator of the estate of his late father Chana Uka Modhwadia. He claimed to have received the death certificate from his late brother Jeta Chana Modhwadia. Although its authenticity was doubted by the defence side, it was admitted as exhibit PE1. PW1 further testified that he petitioned for letters of administration and was appointed at Babati Primary court in 2016 but his appointment was challenged by his sister-in-law Jashu Jeta who claimed that the farm called Dudumela Plantations which was listed for administration did not belong to the late Chana Uka Modhwadia. His appointment was revoked in 2021 by Babati District court for want of jurisdiction hence, this current petition. The judgments for both primary and district court were admitted as exhibits. The Plaintiff seek for this court indulgence in appointing him administrator of the estate of his father

Chana Uka Modhwadia so that he can collect and distribute accordingly the estate of the deceased to the beneficiaries.

Responding to the caveat raised, PW1 strongly object the accusation that he is not capable to faithfully administer the estate. He testified that nothing justifies unfaithfulness on his part as he is yet to perform administration duties. To him, all his family members consented and approved him to become administrator of the estate of his late father as opposed to the Defendants who were not approved by family members. He testified further that he omitted the name of his late brother Jeta from the list of their father's heirs because at the time of filing this probate matter, Jeta had already demised.

PW1 also mentioned three properties which he intends to administer which are one landed property with a house located at Malangi and two properties at Magugu. His estimated gross value of the estate is about one billion shillings. He prayed for this court to appoint him as administrator to allow him to perform administration duties.

On being cross examined, PW1 added that he is a British UK citizen and he is in the country under class C residence permit which permit him to stay in the country for purpose of attend court case. When asked for family minutes which appointed him, he confirmed that he had none. He mentioned that apart from his brother Jeta, his other siblings were

residing in the UK. He admitted that his late brother Jeta was the one around all time and was the one looking after the farm. That, after their father's death, there was no need to do anything as Jeta being the eldest son was looking after the farm of their late father as one of the directors and they all agreed to that arrangement.

PW1 testified further that his sister-in-law objected the inclusion to the estate of Chana Uka Modhwadia, the land registered as Dudumela Plantations with 3114 acres located at Malangi area within Babati District and two properties in Magugu, a house and a plot. That, after his appointment by the primary court, he was not granted access to the farm although he knows that there is farming activities taking place in the farm. That, he was doing farming activities with his father from 1988 to 2004 and Jeta started working in the farm in 1996 until he died. He agreed that there was an appeal regarding the dispute on land that was filed in the high court and it is still on its way to the court of appeal.

PW2 Devish Modhwadia testified that he is the youngest son of the late Chana Uka Modhwadia. He supported the appointment of Natha Chana Uka Modhwadhia stating that he is extremely loyal, trustworthy and honest. He added that all siblings agreed to appoint him as an administrator of the late Chana Uka Modhwahia in their meeting that was conducted at Nirmaladevi Odedra's house. He explained that form No 56

was signed by members of the family by e-signature and was witnessed on-line by advocate Mr. Allan Godian.

PW2 believe that the objection is unjustified because Natha is loyal, trustworthy and honest person. He thinks that the accusations against Natha from Radhika and Jashu are unfounded as there is no proof to suggest that his character will cause any harm to the estate. PW2 described the defendants as untrustworthy people hence, he objects to Radhika being appointed co-administrator. He explained that there is direct conflict of interest because on one hand, Radhika is fighting to take the entire estate of Chana Uka Modhwadia and transfer it to her immediate family possession and on the other hand, she wants to be co-administrator to evenly distribute the estate of the late Chana Uka Modhwadia amongst the living heirs.

On being cross examined PW2 added that the late Chana was survived by three sons and two daughters. That, when their father passed away, they did not need an administrator because Jeta was alive and was looking after the estate of Chana Uka Modhwadia and he kept the family informed of all development. He however claimed that Jeta was not appointed administrator of Chana but was the surviving director after their father's death. To him, there was no need for the administrator as there was a member of the family who happened also to be the director. He

added that there is pending case before the Court of Appeal of Tanzania which is Land Application No. 66 of 2021, **Jashu Jeta** (administratrix of the estate of the late Jeta Chana Modhwadhia) **Vs. Natha Chana Modhwadia** (the administrator of the estate of the late Chana Uka Modhwadia).

For the defence case, Pantaleo Furia Mollel testified as DW1. He is a retired District Administrative Secretary but from 1998 to 2012 he worked at Babati as registrar of birth and death. He testified that he was responsible for signing all certificates and acknowledged the name in the death certificate admitted as Exhibit P1 as his name. He however denied the signature on it on account that it was forged. He tendered the health insurance ID which shows his name as Pantaleo Furia Mollel and the same was admitted as Exhibit DE1. On being cross examined he added that as registrar of birth and death, he was the only person responsible to sign death certificates.

DW2, Radhika Jeta testified that they object the Plaintiff from being appointed the administrator of the estate of the late Chana because, Natha Chana who is her uncle is unemployed and with no any form of income. That, he does not leave in this country and he has been submitting fake documents to get what he wants. That, he has petitioned to be an administrator while he has failed to list Jeta Chana Modhwadia

as one of the beneficiaries of the estate of the late Chana Uka Modhwadia. That, he has added more properties in this petition in comparison to the probate he filed before the primary court. DW2 believes that the Plaintiff copied the list of properties which her mother listed for the estate of Jeta Chana Modhwadia. DW2 insisted that the Plaintiff Natha is not only untrustworthy, dishonest and a person of poor and bad character but he is also an aggressive and cruel man. She explained that in September 4th 2021 the Plaintiff locked DW2 and her mother out of their home in Babati Manyara without court order or notice.

DW2 further testified that the Plaintiff's refusal to her appointment as co- administrator demonstrate that he will not be fair. She pleaded to this court not to appoint the plaintiff an administrator because that will be putting powers into dangerous hands. She tendered the death certificate of the late Chana Uka Modhwadia and was admitted as exhibit DE2. She insisted that the Plaintiff presented fake death certificate which is Exhibit PE1. That, the Plaintiff also tempered with the proceeding of the primary court of Babati in Probate and Administration Cause No. 45/2016. That, as per Exhibit PE3, Application for Revision No 11 of 2021 before the district court of Babati nullified the whole proceedings and quashed the judgment of the trial primary court. That, the Plaintiff primary court

proceedings as it shows that Nirmala Devi Odedra and Urmila Odedra were not in Tanzania and testified for him before the primary court while he admitted before this court that in 2016, they were not in Tanzania. For her, there were impostors who testified before the primary court.

DW2 testified further that she is also entitled to the estate but PW2 tried to discredit her because her father Jeta Chana Modhwadia passed away and they her uncles and aunties wish to take her father's properties and force it into her grandfather's estate. That, PW2 is just trying to slander her with no legitimate basis. She was of the view that they all have interest and that is the reason they are in court. She insisted that for interest of justice, if the Plaintiff is appointed, she should also be appointed a co-administrator because the Plaintiff had already demonstrated untrustworthiness. That, if appointed a co-administrator, she will be able to prevent him and contain the abuse of the office of administrator. She believes that prayer to be a joint administrator will be helpful and she promise to comply to the directions of the court. She insisted that the Plaintiff is not a fit person to be left alone to administer Chana's estate.

On being cross examined DW2 added that she was the one issued with the death certificate for her grandfather after processing for the

same. That, she was informed that the death certificate was not yet issued and she applied and was supplied with the official death certificate for her grandfather. She further added that there are on-going court cases showing that Natha was trying anything possible to swindle her mother, Jashu Jeta. That, DW2 applied for a copy of the death certificate so that she could apply to be administrator of her grandfather's estate to stop her uncle from misusing that position. She insisted that the Plaintiff submitted fake documents in court as proved by Mr. Mollel.

DW2 also added that before he passes away, her grandfather had nothing as he had distributed all his properties. That, before he distributed them, he had a house in the UK at 62 with five bedrooms and a farm at Babati district, 3000 acres with one house. That, after his passing, no one was appointed as his administrator because all the properties were distributed prior to his death. DW2 was not sure if there was any document to prove the distribution by her grandfather but she insisted that the Plaintiff's conducts intend to leave them homeless. She acknowledged existence of land case that was prior filed before the District Land and Housing Tribunal at Babati and an appeal to the High court which declared the farm as her grandfather's property. She however claimed that they have preferred an appeal to the court of appeal. She

maintained that Dudumela Plantation was given to her father when the properties were distributed by Chana. That, Natha took money and the property in the UK and left to start business of his own. That, Davish also took money and the property in the UK and left the farm to her father. She believes that through her father, she would be the beneficiary of Chana Uka Modhwadia.

DW3, Parbat Ghela Sisodiya is the resident of Masware area in Magugu within Babati district. He testified that before moving to Masware he was residing at Kiru within Babati District in Manyara region and in Arusha. That, his father had a farm at Kiru thus, he was residing at Kiru since 1980. He is also a member of community called Maher. That, Maher community live as a family and solve all problems facing their community as a family. DW3 know the late Chana as they lived as relatives and Mzee Chana took care of him. That, the family of Mzee Chana and his family belong to Maher community. He explained that Mzee Chana distributed all his properties in 1996 before his death thus, there was nothing to distribute. That, he distributed his house in Leicester England to Natha and Davish and the farm at Dududmela was distributed to Jeta who was also assigned duty to take case of Mzee Chana. That, Jeta was asked to give some money to Natha and Davish and Jeta was assigned duty to

supervise and control the company. That, since 1996 until Chana passed on 2008, the late Jeta was the one residing in the farm. That, Nimla and Ulmiradev received their shares when they got married. That, Natha after receiving his share of money, started his business at Babati with the company called Manyara Intertrade Company. That, he was residing at Babati town at his brother-in-law one Sanjay Maldev Vhatti at Kiru, Gorowa estate. That, he was not residing at Dudumela because the farm was handled to Jeta thus, he decided to reside at Babati. That, Natha's businesses were closed in between 2003 and 2004 and he sold everything.

That, after Jeta's death, they had family meeting with Natha, Davish and Jashu who is the wife of the late Jeta and their children, Radhika and Vaishali. That, Natha claimed that he was worried of the safety of his sister-in-law Jashu and her girls while at the farm since they are women and that they cannot run farm business. That, DW3 was against his idea and told him that Jashu was running the farm business for 30 years with her husband thus, she could run farm business. That, all members of the community supported the idea that Jashu could take care of herself and the farm. That, Natha admitted to them during the meeting that he received all his inheritance from his father and he had no claim but still claimed that the farm belongs to his father. That, Natha promised to

ensure that Jashu and her children will not live in that farm as he was the one to run the farm.

DW3 added that, before Jeta passed away there was no any conflict between the siblings over that farm as no one ever claimed farm when Jeta was still alive. That, during the meeting they settled the matter and asked Jashu to continue with her business but Natha went to the farm and chased away all employees and locked Jashu and Radhika outside the house. That, the matter was reported at Babati police station and the police ordered Natha and his brother-in-law Sanjey to open for Radhika and her mother to have access to their house. That, they called for the 2nd meeting where Natha again admitted to have received his part of inheritance but claimed that he was worried of the safety of those women. That, Natha maintained his position that the farm belongs to his father and he was the one to run the farm. That, Natha later phoned DW3 asking for two million Dollars so that he could let Radhika and her mother run the farm.

DW3 added that the history shows that Natha had never performed well in any business and he closed all his businesses. To him, Natha cannot afford to run the farm which belongs to the late Jeta. That, since their community have male dominance, Natha wanted to take chance as

a man against the Defendants who are women. He explained that, according to their customs in Maher community, they do not record their meetings. He however acknowledged being informed by the late Chana on the distribution in which Natha also received his share in 1996. That, Mzee Chana died 12 years after that distribution and Natha had claimed nothing. That, after Chana's death Jeta was in ownership of the farm and no claim was raised and the claim started after Jeta's death.

On being cross examined, DW3 added that the farm title bears the name of Chana Uka Modhwadia but Jeta inherited the farm which was family property thus, he had no reason to change the name. That, DW3 and other community members are witnesses to the fact that the farm was given to Jeta. That, other Chana's children received their share which are a house and money. That, Natha has shown interest to the farm while he has no right to claim the farm as he received his share.

DW4, Jashu Jeta Modhwadia, prayed to adopt her affidavit as part of her evidence. She also testified that she was the wife of the late Jeta Modhwadia and the daughter in law of the late Chana Uka Modhwadia. That, her father-in-law died in May, 2008 while her husband died in 20th November, 2015. That, her husband was among five children who survived Chana Uka Modhwadia but in application filed by Natha Chana,

only four children were listed in exclusion of Jeta. That, she decided to file a caveat to object the appointment of Natha Chana because he will not be fair. She claimed that Natha has informed this court that he has no job and no source of income. That, Natha is desperate to take her husband's properties as he is a lazy person since back then. PW4 explained that, she had known Natha since 1994 when she married Jeta and Natha was 18 to 19 years old. That, because of his laziness, Natha did not want to work in the farm thus, he asked for his share from their father's properties so that he could do his business. That, before he died, her father-in-law distributed the farm at Dudumela to Jeta and gave money and house in England to Natha and Davish. That, after distribution, Jeta and her were taking care of the farm and living with her father-in-law because all other children had left to abroad. That, Jeta was supposed to give money to Natha so as to take full ownership of the farm but he became sick and stayed in hospital for one year thus, delayed in paying. That, Natha claimed for interest and her husband paid him the money and interest. She insisted that she was living and working in the farm before and after the demise of Chana and Jeta and the farm has been their source of income all their lives. She supports the appointment of Radhika as co-administrator so that she can protect Jeta's property which Natha has included in Chana's estate. DW4 explained that, on 4th September,

2021 Natha tried to evict them from the farm without any notice as he locked them outside the house until the police ordered him to open the house. She believes that if Radhika is appointed, she will ensure that Natha will not use his powers to misuse her husband's property.

DW4 further testified that, Natha agreed during family meeting and before elders that he had already received his share but he wanted to stay with them in the farm. That, when they disagreed to his idea, he decided to file a probate matter before the primary court. DW4 consider Natha as dangerous because he petitioned for probate without including her husband's name. She maintained that her father-in-law distributed all his properties before he demised thus, she is the one to administer her husband's properties. That, since her husband's property was included in the list of properties in Chana's probate, she expected her name to be included as well on behalf of her husband.

DW4 also testified that Natha lied before the primary court for showing that his sisters attended the proceedings while he agreed before this court that they were never in Tanzania during that time. That, Natha also forged the death certificate for her father-in-law. She therefore pray for this court not to appoint Natha as administrator of the estate of the deceased Chana because he will make their lives miserable as they have

been living in hard condition since her husband's death. In alternative, DW4 prays for this court should consider appointing Radhika as co-administrator as Natha is not a trustworthy person.

On being cross examined DW4 added that Natha agreed that he had no right over the farm in the presence of all people and the elders during meeting. That, the farm at Dudumela is registered in the name of her father-in-law Chana Uka Modhwadia but the same was distributed by Chana Uka Modhwadia to her husband in 1996 when they were both still alive. She believes that since the same was distributed to her husband, it is no longer the property of her father-in-law. DW4 is aware of Land Appeal No 14 of 2020 to which this court declared Dudumela farm as the property of Chana Uka Modhwadia. On re-examination she added that there is an appeal to the court of appeal against the decision of this court in Land Appeal No 14 of 2020.

When the matter was scheduled for hearing, the following were proposed and agreed issues: -

- 1. Whether the plaintiff is a fit person to administer the estate of the deceased.*
- 2. If the 1st issue is in negative, whether the second defendant can be appointed to act as joint administrator.*

- 3. Whether Jeta Chana Modhwadia is among the beneficiaries who survived the late Chana Uka Modhwadia.*
- 4. Whether death certificate presented by the plaintiff is a genuine document.*
- 5. To what reliefs are parties entitled.*

In considering the record and evidence in totality, it is my observation that what seems to be the main contention in this matter is the inclusion in the list of the properties of the late Chana Uka Modhwadia, the farm namely Dudumela Plantations located at Malangi area within Babati District in Manyara region. While the Plaintiff herein claims the farm to be part of the estate of the late Chana Uka Modhwadia, the Defendants strongly believe that the farm belongs to the estate of the late Jeta Chana Modhwadia who was the son of the late Chana Uka Modhwadia. The basis of such belief is that the late Chana Uka Modhwadia distributed all his properties before he died and Jeta received the said farm as his share.

From the evidence and submissions, both parties agree that there was land case filed before the DLHT regarding the dispute over ownership of the same farm and the appeal therefrom to this court. Parties also agree that this court held that the farm in question is the property of the late Chana Uka Modhwadia. It is also alleged that there is a pending appeal before the court of appeal intending to challenge the decision of this court. For that reason, issue of ownership of the farm is not a matter

to be determined in this petition. Since the same was pursued as a normal civil suit/land case, the final determination will necessitate the determination as to whom among the two deceased, Chana Uka Modhwadia or his son Jeta Chana Modhwadia, the farm will be administered.

Despite the claim by the Defendants that the late Chana Uka Modhwadia left nothing behind, the Plaintiff believes that apart from the farm, the deceased left other properties which need to be administered. At this juncture, this court cannot determine the competency of the Plaintiff based on the Defendant's allegation that there is nothing to be administered. It must be noted that at the time of filing the probate and administration cause, the Plaintiff only points out the properties or value of the properties he is likely to administer in case he is appointed. The list or value is not a conclusive proof of what is to be administered as it is expected that after being appointed, the administrator is bound to make a thorough search of the deceased's properties. Through that search, he is likely to discover more properties and even discover that some of the properties listed were not part of the deceased's estate. Thus, his inventory and final account will cover the true list of the properties of the deceased.

In the matter at hand, the Plaintiff listed what he believes to be the properties likely to come to his hand for administration but that cannot be regarded as conclusive list of the deceased's properties. What need to be done is for him to verify the same if appointed administrator of the deceased's estate. Thus, at this juncture, it cannot be concluded that the late Chana Uka Modhwadia left nothing to be administered.

Having said so, it takes me to the determination of the first issue on whether the Plaintiff is a fit person to administer the deceased's estate. This will also go together with the determination of the 4th issue on whether death certificate presented by the plaintiff is a genuine document. It was contended by the Defendants that the Plaintiff's conduct before filing this petition demonstrate that he is not a trustworthy person to administer the deceased's estate. Among the Plaintiff conducts include; one, that the Plaintiff instituted a probate matter before the primary court without notifying the Defendants. Two, that the Plaintiff forged the death certificate of the late Chana Uka Modhwadia. Three, that the Plaintiff locked the Defendants out of their family house without any notice or court order. Four, that the Plaintiff excluded Jeta Chana Modhwadia from the list of beneficiaries of the late Chana Uka Modhwadia and five, that the Plaintiff is unemployed with no means of income hence desperate to snatch the farm from the Defendants.

The above allegation touches the acceptable qualities of the administrator. It is a settled principle of law that a person petitioning to be appointed administrator of the estate must have interest to the estate, see, section 33 of the Probate and Administration of Estates Act, Cap 352. The question as to who can be appointed administrator has been discussed in a number of decisions by this court and the court of appeal. In the case of **Sekunda Mbwambo vs Rose Ramadhan [2004] TLR 439** It was held that: -

"An administrator may be a widow or widows, parents or child of the deceased or any close relative; if such people are not available or if they are found to be unfit in one way or another, the court has the power to appoint any other fit person or authority to discharge this duty".

In determining as to who among the listed people can properly fit for appointment different decisions have expounded that apart from having interest to the estate one must also show that he is faithful and trustworthy person and will act unbiasedly in the whole process of administration.

The Defendant herein does not dispute the fact that the Plaintiff has interest to the estate as the son of the late Chana Uka Modhwadia but they contended that he is not a trustworthy person as his previous conducts suggest that he will not be fair to them. Their worries are that,

if appointed the Plaintiff is likely to throw them on the street as he tried to do so before when he was appointed by the primary court. The Defendants alleges to have been locked out of their family house without any notice or court order.

The Plaintiff did not deny his attempt to evict them from the house in the farm. But there is no doubt that parties have been battling over the ownership of the farm to which they allege eviction. That even triggered land case between the parties for purpose of determining the real owner of the farm in question. What need to be determined in this matter is not the ownership of the farm, rather whether the Plaintiff is a fit person to be appointed administrator of the estate. Such allegation therefore cannot stand as ground for disqualifying the Plaintiff.

On the argument that the Plaintiff instituted a probate matter before the primary court without notifying the Defendants, the principle of the law requires notice to be issued before the grant. If the Defendants claims that they were not issued with notice, that goes with unprocedural irregularity in the proceedings which appointed the Plaintiff. It is in record that the Defendants successful challenged the proceedings of the primary court *vide* Revision No 11 of 2021 before the district court. The primary court proceedings were nullified on point of jurisdiction and nothing was

raised in relation to failure to issue notice. That being the case, this reason cannot stand for disqualification of the Plaintiff.

On argument that the Plaintiff forged the death certificate of the late Chana Uka Modhwadia, there is no sound ground to justify such claim. Apart from the evidence of the former registrar of birth and death nothing was presented to justify that the death certificate tendered by the Plaintiff was a forged document. Two death certificates were tendered in this matter; one by the Plaintiff and another by the Defendants. The signatures on the certificates are more or less similar save that while one certificate shows that the signatory was signing in his capacity as district registrar, on the other certificate, the signatory signed for the district registrar. Parties knew of the existence of two death certificates as the alleged forged certificate was attached to this petition. It is unfortunate that no report was made for the same to be investigated. Thus, the claim by DW1 which is not backed by the registrar's official records cannot in itself justify the allegation for forgery.

It must be noted that when forgery is alleged in any suit of civil nature, the person alleging it had duty to prove so and its standard of proof exceed that in civil cases although not necessarily equivalent to proof under criminal proceedings. I am therefore inclined to conclude that there is no proof for forgery. This court is convinced that there is

possibility that the same authority issued two certificates and in the absence of evidence to the contrary, this court cannot make conclusion that any of those documents is a forged document.

On the argument that the Plaintiff excluded Jeta Chana Modhwadia from the list of beneficiaries of the late Chana Uka Modhwadia, that fact is undisputed. However, the plaintiff acknowledged the fact that Jeta is among the children that survived the late Chana Uka Modhwadia. According to his testimony as well his closing submission, Chana was not listed in the petition because he was not alive at the time of filing the petition in court. From the assessment of his evidence and submission, he acknowledges the right survived to Jeta from the estate of the deceased. He explained that Jeta's exclusion in the list of children was based on the requirement of the law that the listed surviving children must give consent to his appointment. That, since Jeta was the decease, he could not list him for it could not be easy to procure his consent. To him, Jeta's right still could be determined at the time of distribution which could take place after appointment.

The Plaintiff's evidence and closing submission speak loudly that he acknowledges that Jeta's beneficiaries have right to the estate of the late Chana which is acquired through Jeta. That being the case, I agree with the Plaintiff that non-inclusion of Jeta's name in the list of surviving

children of the deceased Chana does not make the Plaintiff untrustworthy person in the administration of his father's estate.

On the argument that the Plaintiff is unemployed with no means of income and desperate to snatch the farm from the Defendants, I find the same baseless ground for determining the competency of the Plaintiff in administration of estate. There is no law which imposes a requirement for the person petitioning to be appointed as administrator to be employed or be well economically. The law requires the petitioner to the administration office to sign the administration oath and promise to faithfully administer the deceased's estate by exhibiting a full and true inventory of the estate and render a true account of administration within the given time. The petitioner is also bound to have sureties and sign the administration bond. That was well complied with in this matter as one Sanay M Bhatti appeared as surety for the Plaintiff and he signed the administration bond of Tanzanian Shillings two billion. Thus, whether, the Plaintiff had any means of income or not, that is not a bar to his appointment as he was able to comply to the legal requirement and he was also approved by other beneficiaries to Chana's estate. Concluding this issue, this court is satisfied that the plaintiff is a fit person to administer the estate of his deceased father, the late Chana Uka Modhwadia.

The first issue being in affirmative, it defeats the second issue on whether the second defendant can be appointed as co-administrator. The 2nd Defendant is the granddaughter of the late Chana Uka Modhwadia and she, and her mother (the 1st Defendant herein) have clearly stated the reason for their request for co-administration. The defendant's fear is basically on the inclusion of Dudumela farm in Chana's estate while they believe that the same belong to Jeta's estate. It is without doubt that the purpose is protect their interest over Dudumela farm. The said interest is based on the claim for ownership which is not our issue for determination in this matter. The circumstance in this case does not in any way attract co-administration because doing so is likely to cause more chaos. There is no likelihood for the Plaintiff and the 2nd Defendant to work together peaceful in performing administration duties in considering that they have dispute over the farm. In my view, appointing them jointly is likely to cause more delay in the administration of the estate of the decease. I therefore conclude the second issue in negative.

On the third issue on whether Jeta Chana Modhwadia is among the beneficiaries who survived the late Chana Uka Modhwadia, such fact is not disputed by the Plaintiff. As well pointed out while discussing the first and fourth issues, the Plaintiff acknowledge that the late Jeta survived the

late Chana. He also admitted to have not included his name in the list of beneficiaries because of the requirement to seek for consent from the beneficiaries. That fact is also found in his closing submission at page 5 to 6 in which the Plaintiff insisted that not mentioning Jeta's name is not a conclusion that he will not distribute the estate to Jeta's beneficiaries.

Legally, Jeta being the deceased could not be listed as surviving child of the deceased at the time of filing the probate cause. However, he has right that accrued for surviving his late father and the same can be administered by his administrator. It is therefore my conclusion that Jeta survived Chana and his right which could have transferred to him by virtue of his survivorship before his death, should revert to his surviving beneficiaries.

The last issue is the reliefs to parties. From the above discussion and analysis, this court is satisfied that the plaintiff is a fit person to administer the estate of the deceased Chana Uka Modhwadia thus, his petition should proceed on determination. This court finds no reason for appointing the second defendant as co-administrator. It is also the holding of this court that Jeta Chana Modhwadia survived the late Chana Uka Modhwadia and his right accrued over his survivorship shall be administered by his administrator. Having held that the Plaintiff is the fit

person to be appointed administrator of the late Chana Uka Modhwadia, the caveat is found to have failed hence dismissed. Since the matter involve family members, I will not make order for costs.

DATED at ARUSHA this 31st Day of October, 2023



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora", is written over a circular stamp.

D.C. KAMUZORA

JUDGE