

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 346 OF 2023

(Arising from Probate and Administration Cause no. 11 of 2004)

**IN THE MATTER OF THE ESTATE OF THE LATE SEBASTIAN RUGAIMUKAMU
KAKOTI TIGWERA**

AND

**IN THE MATTER OF APPLICATION FOR REVOCATION OF JOSEPH
SHUMBUSHO AS AN ADMINISTRATOR OF THE ESTATE**

BETWEEN

GEORGE RUGAIMUKAMU KAKOTI APPLICANT

VERSUS

**JOSEPH SHUMBUSHO (As administrator of the estate of the late Sebastian
Rugaimukamu Kakoti Tigwera) RESPONDENT**

RULING

03rd & 14th Nov, 2023

KIREKIANO, J.:

Sebastian Rugaimukamu Kakoti Tigwera (the deceased) died intestate on the 8th day of December 2002. As he was laid to rest in peace, he left behind several properties of his estate and ultimately the respondent herein was appointed to the office of the administrator of the

estate. The administration has not been as smooth as expected, instead, the legal battle on the administration of this estate has engaged this court and the court of appeal in several cases.

In this application in particular, the applicant herein moved this Court under section 49 (1) (e) and (2) 107 (5) of the Probate and Administration of Estate Act Cap 352 [RE 2019] and section 95 Civil Procedure Code Cap 33 [RE2019] seeking this court to order removal or revocation of the letters of administration granted to the respondent issued on 29th April, 2008 and reinstated on 29th October, 2020.

According to the applicant's affidavit, the main complaint by the applicant is that the respondent/Administrator failed to discharge his duties according to his oath. The respondent contests this application taking a stance that he has vacated the office of administrator. This ruling thus is on the preliminary objection raised by the respondent on the following point;

"This application is incompetent and unmaintainable in law as it is an application for removal of the respondent from the office of administrator of the estate of the late Sebastian Rugaimukamu Kakoti Tigwera (the deceased) filed in this Court on 11/07/2023 while the documents attached to the application show that the office of administrator of the estate of the deceased was closed,

and the respondent ceased to be part of it, from as far back as on 30th November 2022.

Both parties were represented. Mr. Mbuga Emmanuel advocated for the applicant while Mr. Joseph Kemikimba Rugambwa appeared for the respondent. The hearing was by way of written submissions which were timely filed.

I wish at this point to appreciate the parties efforts in submission and the authorities cited in support of their opposing positions. For good reasons that will appear shortly, I shall not reproduce their submissions. According to what can be gathered from the parties' submission, it is common ground that;

- 1. The respondent was appointed the administrator of the estate on 29th April 2008 and following revocation, he was restored to office on 29th October 2020.*
- 2. The respondent's role was to administer the estate and ultimately exhibit to this court the inventory and account of the estate, showing the assets which have come to his hands and how they have been applied or disposed of.*
- 3. Once the administrator has discharged his duty of administration and has already exhibited the inventory and accounts in this court, there is no administration which can be can be revoked.*

The parties' point of departure is whether the respondent "exhibited" the accounts of the estate to this court and if the respondent was by order of this court discharged from the office of administrator of the said estate. The applicant maintains that there ought to be the order of court while the respondent in his submission maintains that accounts were filed on 30th November 2022 and took a view that filing account was sufficient

It is this state of affairs having examined the pleadings (affidavit and counter affidavit) the same could not resolve the controversy and thus tasked me to pause and consider whether the objection raised was a pure point of law.

The bottom line is that the objection must be the pure point of law which does not require evidence. This is a position fortified in several decisions including the landmark case of **Mukisa Biscuit Manufacturing Co Ltd v. West End Distributors Ltd [1969] EA 696** but also ***Hotels and Lodges (T) Limited v. The Attorney General (II) Chapwani Hotels Limited, Civil Appeal No. 27 of 2013, CAT (unreported)***

In the decision in Mukisa it was held;

"At the outset, we have shown that it is trite law that a point of preliminary objection cannot be

raised if any fact has to be ascertained in the cause of deciding it."

To find out whether the respondent filed the accounts as intimated and whether the same meant exhibition of accounts as required by probate rules this certainly needs to be ascertained from the registry and records of the probate cause no 11 of 2004 It is based on this reason; I overrule the preliminary objection. Considering this is a probate matter there will be no order as to costs at this stage.



J. KIREKIANO

JUDGE

14/11/2023

COURT: Ruling delivered in chamber in presence of Mr. Hans Mrindoko for applicant and in absence of the respondent.

Sgd: A. J. KIREKIANO

JUDGE

14/11/2023