

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 384 OF 2015
(Originating from Probate and Administration Cause no. 18 of 2014)
IN THE MATTER OF THE ESTATE OF THE LATE BENARD MULILI NZUI
AND
IN THE MATTER OF COMPLAINT BY NZILANI BENARD MULILI NZUI
AGAINST DEUSDEDIT KILEI BERNARD AS THE ADMINISTRATOR OF ESTATE
RULING

Date of Last Order: 02/11/2023.

Date of Ruling: 10/11/2023.

E.E. KAKOLAKI, J.

The complainant herein Nzilani Benard Mulili Nzui approached this court by way of letter dated 08th August, 2022 accusing the administrator of the estate of the late Benard Mulili Nzui one Deusdedit Kilei Benard to have failed to distribute to her the estate of the late Benard Mulili Nzui as ordered by this Court before Hon. Justice Mugetta in Misc. Probate Cause No. 384 of 2015, originating from Probate and Administration Cause No. 18 of 2014.

In the earlier sessions before the hearing date the complainant enjoyed the services of Ms. Lilian Apolinary, learned Advocate as on the date of hearing she appeared in person and prayed the Court to proceed in the absence of her advocate, while the administrator appeared in person. Both parties were heard viva voce. Submitting in support of her complaints, Ms. Nzilani adopted her letter of complaint and submitted that all the properties falling under the estate were existing but the administrator sold them. Even the house in which she is residing in now she argued, has never been handed to her as part of the estate. She therefore prayed the Court to intervene and order the administrator to divide to her the available properties of the estate as ordered in Misc. Probate Cause No. 384 of 2015 since she is entitled too as heir of the late Bernard Mulili Nzui.

The administrator on his part submitted that, the complainant has failed to establish to the court's satisfaction which part of the estate was disposed of and not divided to her. Meaning she has not given particulars of the properties allegedly disposed of and the evidence to that effect. In absence of such evidence he maintained, it cannot be said that he sold them while they are not existing. He therefore contested the assertion by the complainant that he sold unknown properties.

In her brief rejoinder the complainant maintained that she is not in a position to obtain evidence of the disposed off properties as she is unable to get their particulars due to the fact that the purchasers are unknown to her as she was not involved in the transaction. She thus implored the Court to intervene and assist her to get what she is entitled to.

Having keenly gone through both parties' submission as well as the complaint letter, the issue is whether the complainant has established her complaints against the administrator warranting this Court issue orders in her favour. The law under **sections 110(1) and (2) and 111 of the Evidence Act**, [Cap. 06 R.E 2022] is settled that, he who alleges existence of a fact is duty bound to prove it and the burden of so proving lies on the party who would fail if no evidence is given at all. Deliberating on the above cited provisions the Court of Appeal in the case of **North Mara Gold Mine Limited Vs. Josephat Weroma Dominic**, Civil Appeal No. 299 of 2020 (CAT)(Tanzlii), stated that:

"Indeed, in terms of sections 110 and 111 of the Evidence Act, Cap. 6 R.E. 2019 he who alleges the existence of a fact has to prove it and that the burden of proof lies on a person who would fail if no evidence were given at all."

See also the cases of **Geita Gold Mining Ltd & Another v. Ignas Athanas**, Civil Appeal No. 227 of 2017 and **James Makundi Vs. Permanent Secretary, Ministry of Lands, Housing and Human Settlements Development and others**, Civil Appeal No. 181 of 2021 (both CAT-unreported).

Back to the complaint at hand, it is the complainant who alleges that the administrator of the estate of the late Benard Mulili Nzui has sold all the properties falling under the estate and that, has failed even to hand over to her the house she is residing in now, whom the onus of proof lies. However, she has failed to demonstrate to the Court's satisfaction with evidence that the properties complained of in the letter were actually existing and formed part of the estate in which she is entitled to, leave alone the assertion that, the same were disposed of by the administrator. In absence of such evidence it is the finding of this Court that, complainant's assertion that there are properties falling under the estate disposed of by the administrator is unjustified with no legs to stand on. With regard to execution of the Court's order in respect of Misc. Probate Cause No. 384 of 2015, this Court is of the considered view that since the administrator was ordered to file the inventory and accounts of estate failure of which would attract his revocation, the

complainant is advise to take the necessary and appropriate legal actions if at all she feels that he has failed to comply with the Court's order.

In the meantime this Court finds that, it has been wrongly moved to grant the reliefs sought by the complainant in her letter as the same fall under the powers of the administrator. It therefore refrains from issuing any order as the complainant's complaints are hereby dismissed.

Since it is probate matter, I make no orders as to costs.

It is so ordered.

Dated at Dar es Salaam this 10th November, 2023.



E.E KAKOLAKI

JUDGE

10/11/2023

The Ruling has been delivered at Dar es Salaam today 10th day of November, 2023 in the presence of both parties and Mr. Oscar Msaki, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

10/11/2023

