

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC CIVIL APPLICATION NO. 152 OF 2022

(Originating from Probate Cause No.39 of 2016 High Court of Tanzania,
Dar es Salaam before Hon Justice E.J Mkasimongwa)

**In the matter of the Estate of the
late JOACHIM ROBERT MARANDUTHE DECEASED
BETWEEN**

In the matter of a letter administrator granted to
MRS. SUSAN JOACHIM MARANDUPETITIONER

AND

In the matters for Application for Revocation of letters of administration
by

1. STEPHEN JOACHIM MARANDU	} APPLICANTS
2. ROBERT JOACHIM MARANDU	
3. TIMOTH JOACHIM MARANDU	
4. MARY KATAMBALA	

RULING

15th March & 5th May 2023

MKWIZU, J.:

The applicants herein, on 13th December 2021 applied for revocation of a probate granted to the administratrix of the estate of the late JOACHIM ROBERT MARANDU, one **Mrs. SUSANA JOACHIM MARANDU** and appoint STEPHEN JOACHIM MARANDU herein to administer the same for

the interest of the beneficiaries. The application is brought under section 49(1)(b)(c)(d) and (e) of the Probate and Administration of Estates Act Cap 352, Rule 29 of the Probate Rules, 1963. It is supported by the joint affidavit sworn by the applicants herein.

This application was disposed of by written submission. The applicants' submissions are to the effect that the 4th applicant and the late Joachim Robert Marandu had a civil marriage contracted on 10/08/1965 Mzizima District Council in Dar es Salaam with a marriage certificate No .50793 and were blessed with three issues the 1st to 3rd applicants above before they separated without divorce in 1972 when the deceased married the respondent herein leaving their marriage intact to date.

They contended that paragraphs 2 and 3 of the respondent's counter-affidavit are admissions the 1st, 2nd, and 3rd applicants are biological children of the deceased and therefore she intentionally and unlawfully excluded them from benefiting from their father's estate contrary to Article 2(1) and (2) of the United National Convention on the right of Child and section 5(2) of the law of the Child Act prohibiting discrimination of a child irrespective of the child's or her parents or legal guardian's status and section 9 and 10 of the same Act that imposes parental duties to their children during their lifetime and the rights of a child to parental property after the parent's death. They insisted that being directly connected to the deceased, 1st, 2nd, and 3rd applicants are entitled to benefit from the deceased's estate, and the 4th applicant as a lawful spouse with a contribution to the said estate as well.

Applicants also condemn the respondent for falsifying the list of beneficiaries, excluding the applicants from the distribution of the

deceased estate, the inclusion in the estates of her son named Robert Marandu who went missing in 1983, and for failing to file an inventory within six months from 16/11/2016 to 23rd March 2022 when they last perused the court's records.

They argued that the respondent being an administratrix of the deceased's estate has failed to execute her main key functions prescribed under the Probate and Administration of Estate Act, Cap 352. They cited the case of **Beatrice Brighton Kamanga and Amanda Brighton Kamanga Vs Ziada William Kamanga**, Civil Revision No. 13 of 2020, **Ritha John Makala & Ngana Andrew Mziray Vs Chantal Tito Mziray and Enock Andrew Mziray**, Probate and Administration Cause No. 62 of 2014(unreported) (HC unreported) to bolster their arguments.

In response to the application, Mr. Yohana M. Kibindu counsel for the respondent submitted that the applicant's submissions diverged from the main application seeking revocation of the letters of administration of the estate of the late Joachim Marandu granted to her surviving wife Susana Joachim Marandu, to introducing matrimonial issues between the 4th applicant and the respondent. He said, should 4th applicant have any matrimonial claim with the deceased, she should have sorted the same before her husband died in 2014.

Regarding the point at issue, Mr. Yohana submitted that the respondent and the deceased had contracted a Christian marriage in 1980. He was proposed as an administrator immediately in a clan meeting held 40 days after her husband's burial ceremonies. That despite being aware of the meeting, the applicant opted not to attend. She petitioned for the probate

via probate and administration of the estate Cause No. 39 of 2016. Her petition was advertised in the local newspaper to allow objection and or caveat if any from any interested party, but none was presented, and the court proceeded to appoint her the administrator of the deceased's estate. And being aware that the applicants are part of the deceased's beneficiaries, the respondent distributed the deceased's proceeds to them vide a list and inventory filed in this court on 16th November 2018

Citing to the court the provisions of section 112 of the Evidence Act, (Cap 6 RE 2019), Mr. Yohana said, the applicants bear the burden of proving that, the respondent's son named Robert Joachim Marandu is dead. He lastly prayed for the dismissal of the application with costs.

The applicant's rejoinder submissions are essentially a repetition of their submissions in chief and therefore I will refrain from reproducing the same here.

I have examined the affidavit for and against the application, parties' submissions, and courts records in respect to Probate No. 39 of 2016. The main issue is whether there are good reasons raised by the applicants for revocation of the probate. As stated earlier, this application is premised on section 49 (1) (a) (b) (c) (d) and (e) of the Probates Act prescribing the grounds for revocation. The cited provisions read:

49 (1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) that the grant was obtained through an untrue allegation of a fact essential in point of law to justify the grant, though the such allegation was made in ignorance or inadvertently.

(d) that the grant has become useless and inoperative.

(e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or has exhibited under that Part an inventory or account which is untrue in a material respect.

Applicants have relied on two reasons, forgery of the minutes of the clan meeting and the list of the beneficiaries and failure by the respondent to file inventory and accounts of the deceased estate contrary to the court's order. Respondent on the other hand is insisting to have complied with all the procedures relating to the grant and that the process was not obstructed anyhow despite the advertisement made in a local newspaper. She is also claiming to have complied with the court order by filing the required inventory in which the applicants were also listed as beneficiaries of the deceased estate.

Having considered the registered complaints, and parties' submissions, I found it necessary to have a look into the proceedings in Probate No 39 of 2016, the genesis of this application. In that petition, the respondent's prayer was supported by a death certificate, a marriage certificate between the respondent and the deceased, and minutes of the clan

meeting dated 11/2/2015. Publication of general citations was made in the Government Gazette dated 8th July 2016. The court granted the probate after it was satisfied that there is no objection raised either by the relatives or any interested party. The respondent was by the grant order directed to file an inventory within six months from the date of the order that is, 16th November 2016. All the above notwithstanding, there are conspicuous imperfections in the proceedings at issue supporting the applicants' complaints.

One, the respondent petition did not state anywhere that deceased is survived by the 1st, 2nd, and 3rd applicants despite her admission in paragraph 3 of the counter affidavit that they are the deceased legitimate sons. Paragraph 3 of the petition filed by the respondent has a list of only three beneficiaries of the deceased estates; Robert Joachim Marandu, Ferdinand Joachim Marandu, and Francis Joachim Marandu without specification while the inventory- attached to the written submissions bears two individuals with the name of Robert Joachim Marandu, one senior and the other junior. The obvious conclusion here is that the original petition excluded the 1st 2nd and 3rd applicants from the estate. This justifies their 1st complaint.

Two, the respondent's deposition in the counter-affidavit that she has as ordered filed an inventory in court, was left unestablished. Proof of that fact was brought in court belatedly through written submissions, where copies of the alleged filed inventory, accounts of the deceased estates, and the receipts were attached. It is a common understanding that evidence in an application like this is introduced to the court through a sworn /affirmed affidavit/ counter affidavit. Written submissions come in

to elaborate on the already presented evidence. Respondent's counter affidavit ought to have contained the alleged inventory, documents of the filed accounts of the deceased estate, and the alleged receipts. Unfortunately, that was not done. The question arising is, what prevented the respondent from attaching the copies of the inventory and accounts allegedly filed in court in her counter-affidavit? It is the principle well established that submissions by the parties are not evidence and the court is barred from considering evidence brought through submissions. I am on this assisted by the Court of Appeal decision in **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Ltd Versus Mbeya Cement Company Ltd and National Insurance Corporation (T) Ltd** [2005] TLR 41 where it was observed:

"It is now settled that a submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence."

To make things worse, those documents are not in the court file. My perusal of the records in probate No 39/2016 has failed to find any information suggesting that the respondent had ever filed an inventory as directed by the court on 16th November 2016 and as claimed by the respondent's counsel in his written submissions. The records are empty, the last proceedings recorded in that probate case is the order dated 16/11/2016 granting the respondent letters of administration. There is no inventory filed thereafter except for a letter by the respondent dated 7th December 2016 requesting an original death certificate, Form No 68 extracted on 22 December 2016, and a letter for the perusal of the court records by the applicant dated 23rd March 2022.

All issues above raise strong suspicion against the respondent's petition and the administration of the deceased's estate giving credit to the applicant's complaints that from the beginning, the letter of administration was obtained fraudulently by concealing from the court material facts relating to the list of the beneficiary.

For this reason, the grant of probate to the respondent, SUSAN JOACHIM MARANDU is hereby revoked vide section 49(1)(b) and (e) of the Probate and Administrations Act. Whoever is interested, may file a fresh petition for a grant of probate.

Having considered the nature of the application and the relationship of the parties, I make no order as to costs. It is so ordered.

DATED at Dar es Salaam this 5th day of May 2023.



E.Y. MKWIZU
JUDGE
05/05/2023