

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 266 OF 2022

(Originating from Probate and Administration Cause No. 117 of 2012; and Misc. Cause No. 205 of 2016)

IN THE MATTER OF THE ESTATE OF THE LATE HUSSEIN NASSER SHERIFF

AND

**IN THE MATTER OF THE APPLICATION FOR REVOKING THE LETTERS OF
ADMINISTRATION AND REMOVAL OF THE ADMINISTRATOR BY NILUFFER
AZIZ NASSER AND SHAHNAAZ AZIZ NASSER**

RULING

04th October & 30th November, 2023

BWEGOGGE, J.

This is an application for revocation of the letters of administration of the estate of the late Hussein Nasser Shariff granted to Sadrudin Hussein Nasser Shariff, the respondent herein, filed by the above-named applicants. The application herein has been brought under sections 49 (1) (2) and 49 (2) of the Probate and Administration of the Estates Act [Cap. 352] and supported by the joint affidavit of the applicants herein.

The factual background of this case, as depicted by the pleadings and annexures filed by the parties herein may be stated, albeit briefly, as follows: The deceased person herein namely, Husein Nasser Shariff, was the owner of the landed property located on Plot No. 1561/73 FLUR II, herein Dar es salaam. Upon his demise, his son namely, Aziz Hussein Nasser was appointed to administer the deceased's estate. The same died in 2011 before he could discharge his legal obligation and close the probate proceedings. Later, in 2014, one Sadrudin Hussein Nasser Shariff, the respondent herein was appointed by this court to administer the deceased's estate. Likewise, the same could not discharge his legal obligation timely. Alleging lack of cooperation from some of the deceased beneficiaries, on 3rd November, 2017 the respondent sought and obtained an order of this court allowing him to sell the deceased property and distribute the proceeds of sale to the beneficiaries of the deceased's estate. The evaluation report of the deceased property was made to that effect. However, for reasons better known to the respondent, to date, the deceased property is yet to be sold and the deceased's beneficiaries, the applicants inclusive, are yet to receive their entitlements. Hence, this application.

The applicants herein were represented by Ms. Cathleen Kiiza, learned advocate, whereas the respondent was represented by Mr. Victor Mhoru, learned advocate. The application herein was argued orally by the parties hereto.

Ms. Kiiza, in substantiating this application, submitted that the applicants herein pray for revocation of the administrator of the deceased's estates on following grounds. **One**, failure of the appointed administrator (respondent) to exhibit inventory and final accounts of the estate; **two**, poor administration of the estate; and **third**, misappropriation of funds.

With regard to the 1st ground, the counsel argued that the administrator was appointed in 2014. For consecutive 9 years now, the administrator has failed to file inventory and final accounts contrary to section 107 (1) of the Probate and Administration of Estates Act. That the provision of 49 (1) (e) of the Act provides for circumstances upon which the administrator of the estates may be revoked, that is, failure to exhibit inventory and final accounts, among others. The counsel cited the cases; **Joseph Mniko & Others vs. Daudi Mahende Kichonge**, Probate & Administration Cause No. 48 of 1996, HC

(unreported) and **Billionaire John Mkeu vs. Moza Gilbert Mushi & Another**, Civil Appeal No. 174 of 2019 HC (unreported) to buttress her point.

Regarding the 2nd and 3rd grounds, the counsel argued that the administrator of the deceased's estate has not acted faithfully contrary to the law. That the same has been refusing to distribute the proceeds of the estate, neither furnishing record of his expenses. Likewise, the counsel alleged that the respondent doesn't provide any record pertaining to the reserve fund. That it is only the respondent who has access to the bank account of the estate. And, he collects rent from the deceased properties of which he doesn't account.

Further, the counsel charged that the respondent herein has been obliging the beneficiaries to sign letter of indemnity to receive disbursement of their financial entitlements from the deceased estate which further casts suspicion in his conduct. The counsel directed the mind of this court to the case of **Sekunda Mbwambo vs. Rose Ramadhani** [2004] TLR 439 to be guided as to the standard of operation expected of a good administrator.

On above grounds, the counsel prayed that the administrator of the deceased's estate, the respondent herein, to be revoked for the benefit of the beneficiaries of the estate.

In reply, Mr. Mhoro submitted that one Aziz Nasser, the father of the applicants herein, was appointed to administer the estate for consecutive 22 years whereas the same died in 2011 without concluding the probate proceedings. And, the counsel enlightened this court that the applicants herein are grand-daughters of the deceased person. Further, the counsel submitted that the respondent herein namely, Sadrudin Hussein Nasser Sharrif, was appointed in 2014 whereas the applicants had been objecting him without sound reasons whereas attempts to revoke him failed. The counsel opined that the allegation of failure to file inventory and final accounts are misconceived for reason that, to his knowledge, the respondent filed the relevant documents in 2016, and the applicants had failed to challenge the same.

In tandem to above, the counsel contended that the allegation of poor administration is unfounded. That efforts were made to provide information (statement of affairs) to the applicants but the effort ended in vain as the

same refused to receive the report. That the only report of the estate which was not processed is in respect of 2022. However, the proceeds of rents had been distributed to the beneficiaries though they refused to acknowledge the receipt of fund.

Apart from the above, the respondent's counsel enlightened this court that previously, the respondent herein lodged an application to sell the deceased property for reason that the deceased's beneficiaries were refusing to collect their share of the proceeds from the respondent whereas the application was duly granted but the property has not been sold on the ground that the buyers fail to meet the price reflected in the valuation report and the same cannot be sold at the throw-away price. Therefore, the counsel opined, the applicants should patiently await until the property is sold so that they may get their lawful shares.

Otherwise, the counsel contended that the cases referred to by the applicants' counsel to bolster her arguments are distinguishable from this case. That in the respective cases, the administrators of the deceased's estates had failed to file inventory and final accounts whereas the respondent herein filed the respective documents in 2016.

And, in response to the allegations of misappropriation, the counsel responded that the allegation is unfounded as no proof of the alleged misappropriation has been provided.

Conclusively, the counsel asserted that there are no cogent grounds advanced for removal of the administrator of the deceased's estate herein. He prayed this court to find the application herein without merit and dismiss the same.

In rejoinder, the applicant's counsel contended that the inventory and accounts had been filed in 2016 whereas the respondent was appointed in 2014; to date, the probate has not been concluded. And, in respect of the explanation given to justify the delay of the sale of the property, the counsel responded that it is the respondent herein who has occasioned the delay by frustrating the potential buyers.

Likewise, the counsel contended that, unlike the respondent herein, the earlier appointed administrator of the deceased's estate failed to discharge his legal obligation in time due to the trade dispute which involved the property. Hence, the failure was not deliberate. This is all about the submissions by counsel herein.

The issue for determination by this court is whether the applicants herein have furnished sufficient grounds for grant of revocation order.

Based on the pleadings and record filed in this case, it is uncontroverted fact that the respondent was granted letters of the administration of the deceased's estate in 2014. To date, approximately nine years now, the respondent has not discharged his legal duty of distributing the deceased's estate to the lawful beneficiaries. Likewise, it is the uncontroverted fact that the applicants herein are beneficiaries of the deceased's estate who have been receiving periodic payment from the proceeds of deceased's estates.

As aforestated, grounds advanced for revocation of the respondent from the administration of the deceased's estate are the respondent's failure to exhibit inventory and final accounts of the estate; poor administration of the deceased's state; and misappropriation of funds. The respondent's counsel vehemently disputed all allegations and accused the applicants for being impatient pending the process to sell the deceased property for the common good of all the beneficiaries.

Primarily, I find it pertinent to restate the obligation imposed by law upon the administrator of the deceased's estate. The provisions of Section 107(1) of the Probate and Administration of Estate Act provides as under:

"S. 107

1. *An executor or administrator shall, **within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint or require, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and in the manner in which they have been applied or disposed of.** (Emphasis mine).*

The provision reproduced above was appositely amplified by the Apex Court in the case of **Godbless Mathew Naibala vs. Annet John M.N. Lukumay**, Civil Application No. 119 & 142, CA (unreported) as follows:

*"It should be noted that section 107(1) (of the Probate and Administration Act, Cap. 352 R.E 2002 of the laws) requires a grantee of probate or letters of administration to perform two functions within set time limits. **The first function is to***

exhibit in the appointing court an inventory of a full and true estimate of the estate within the six months of the grant, and the second function is to exhibit an account of the estate showing the assets which have come into his/her hands and how he/she has applied them or disposed of them." See also the decisions of the Apex Court in **Shumbusho vs. Mary Grace Tigerwa & 2 Others**, Civil Appeal No. 183 of 2016 [2020] TZCA 1803 in this respect.

The provision of the law and restatement by the Apex Court reproduced *verbatim* above, in no uncertain terms, instructs that the appointed administrator of the deceased's estate is vested with a mandatory legal duty to exhibit in the court that granted the letters of administration of the estate an inventory containing a full and true estimate of all the property fallen into his possession, among others. Likewise, the same is required to discharge the duty mentioned above within a prescribed period of six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate may provide. Further, the law instructs that the administrator of the deceased's estate is likewise, obliged to exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of, within one

year from the grant or within such further time as the court may from time to time appoint.

Apart from the above, the law enjoins the court with the power to revoke the granted letters of administration of the deceased's estates based on prescribed grounds stated under the provision of section 49 (1) of the Probate and Administration of Estates Act. The relevant provision provides as under:

"S. 49

1. The grant of probate and letters of administration may be revoked or annulled for any of the following reasons-

(a) N/A

(b) N/A

(c) N/A

*(d) that the grant **has become useless and inoperative;***

*(e) that the person to whom the grant was made **has willfully 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." (Emphasis mine).*

As I said earlier, for nine years now, the respondent has failed to distribute the deceased's estate to the lawful beneficiaries. Admittedly, it is in record of this court that the respondent filed inventory and statements of accounts in court in 2016. The applicants herein were entitled to a share equivalent to a quarter of the value of the real property comprised in the deceased's estate. Further, it is in record of this court that in 2017, the respondent sought leave of this court to sell the deceased's estate and distribute the proceeds of sale to the beneficiaries. This court granted the prayer on condition that the respondent to cause evaluation of the property be conducted before the intended sale and the copy thereof be filed in court for perusal of interested parties before the sale was effected. This order was not complied with until 2018 when the first evaluation report was conducted followed by inaction on part of the respondent. It is until this application was filed that respondent filed the 2nd evaluation report dated 21st April, 2023. The reason for failure to act given by the respondent's counsel is lack of interested buyer and, or that the property cannot be sold at a throw-away price. The applicant's counsel alleged that the respondent herein has been discouraging potential buyers for his own personal interests. Thus, on account of above, it can be concluded that the grant of probate to the

respondent has become useless and inoperative in terms of the provision of section 49 (1) (d) of the Act.

Likewise, based on the fact that the respondent had filed final account purporting to have distributed the deceased's estate to the beneficiaries whereas in fact the property remains in his possession, it may be concluded that the same has exhibited the untrue account of the estate. The respondent's failure to discharge his legal obligation is exacerbated by the allegation of misappropriation and lack of transparency.

The respondent counsel has shielded the respondent on pretext that the applicants herein are not direct heirs of the deceased person; hence, they have no mandate to question his administration, let alone moving this court for his revocation. However, the purported final accounts filed by the respondent in 2016, mention the applicants herein as one of the lawful beneficiaries to the deceased's estate. Likewise, the counter affidavits filed herein speak volumes in that the applicants have been refusing to accept periodic payments from the deceased's estate, occasioning challenge in administration of the estate to the extent that he sought leave of this court to sell the property and distribute the proceeds of sale to the lawful beneficiaries, the applicants inclusive, which was granted. Thus, the

respondent cannot be heard purporting that the applicants herein are strangers to the deceased's estate.

Otherwise, I am of the settled view that, based on the pleadings filed hereto and submissions made before this court, the allegation of misappropriation has not been substantiated in strict legal sense.

The pertinent question arising now is whether the letters of the administration of the deceased's estate granted to the respondent herein may be revoked.

In resolving the above question, I have taken into consideration of the following facts: **One**, the probate was granted to the respondent in 2014, it is now nine years. The revocation of the respondent from administering the deceased's estate would further delay the distribution of the deceased's estate to the lawful beneficiaries; **two**, the respondent has already sought and obtained court order to sale the deceased's property and distribute the proceeds of sale to the beneficiaries. Likewise, two valuation reports have been executed with the latter being most recent reflecting current market situation. Thus, the respondent is better placed to conclude his legal

obligation and close the probate proceedings than a newly appointed administrator/administratrix of the deceased's estate.

In view of the foregoing, I find that the application herein is merited. It is obvious that the grant of probate to the respondent herein has been rendered useless and inoperative. However, I am of the considered opinion that instead of revoking the respondent from the administration of the deceased's estate, the same be instructed to discharge his legal obligation within the time prescribed hereinafter. Thus, I hereby enter orders thus:

- 1. The respondent to discharge his legal obligation by effecting sale of the property constituting the deceased's estate and distribute the proceeds of sale to the beneficiaries within clear 90 days from the date of this order.*
- 2. Upon failure by the respondent to discharge his legal obligation by the 02nd March, 2024, the grant of probate shall cease to be in force.*
- 3. Upon the grant of probate ceasing to be in force, on the date mentioned above, any of the beneficiaries of the deceased's estate, or*

a relative and, or any fit person duly appointed by the same, may petition for grant of letters of administration of the deceased's estate.

So ordered.

DATED at **DAR ES SALAAM** this 30th day of November, 2023.




O. F. BWEGOG
JUDGE