

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

**MISC.CIVIL APPLICATION NO. 12 OF 2022**

*(Originating from Probate and Administration Cause No. 06 of 2012 High Court of  
Tanzania at Moshi.)*

**IN THE MATTER OF THE ESTATE OF THE LATE ALEXANDER ITAEL**

**AND**

**IN THE MATTER OF APPLICATION FOR REVOCATION OF LETTERS OF  
ADMINISTRATION ISSUED TO GLADNESS S/O ALEXANDER AND PETER  
ALEXANDER AS ADMINISTRATORS OF THE ESTATE OF THE LATE ALEXANDER  
ITAEL**

**BETWEEN**

**MARY ALEXANDER ITAEL KWEKA.....APPLICANT**

**AND**

**ALFRED ALEXANDER ITAEL KWEKA .....1<sup>ST</sup> RESPONDENT**

**GLADNESS S/O ALEXANDER.....2<sup>ND</sup> RESPONDENT**

**PETER S/O ALEXANDER.....3<sup>RD</sup> RESPONDENT**

**RULING**

14<sup>th</sup> & 27<sup>th</sup> March 2024.

**A. P. KILIMI, J.:**

One of the importance of writing a will is to set forth your wishes regarding the distribution of your property upon your demise. And indeed, to the benefit of heirs, this may solve a lot of problems and fights among them while enjoying the fruits of your sweats.

It was unfortunate, in this application the late **ALEXANDER ITAEL** left no will when he demised on 21<sup>st</sup> day of January 2012. Thus, the applicant and the respondents herein are both biological children of the late Alexander Itael therefore qualifies to be among the heirs of the deceased. Conflict started between heirs even before official appointment of the administrators, when Jane Alexander Kweka one of the widows of deceased accompanied by his son Alfred Alexander Itael Kweka lodged a caveat against the first petitioner to the estate of the deceased who were Thomas Itael Kweka, Gladness Alexander and Peter Alexander. Again, it was unfortunate one of caveator Jane Alexander Kweka died intestate on 6<sup>th</sup> October, 2013. From the remained contestants, their struggles were served when they entered negotiation and reached a consensus on 11<sup>th</sup> day of December, 2020 before this court and thus, the respondents namely; **ALFRED ALEXANDER ITAEL KWEKA, GLADNESS ALEXANDER** and **PETER ALEXANDER** were officially appointed as administrators of the estate of their late father in a Probate Cause No.6 of 2012.

However, to redeem the mission of the mention widow of the deceased had, Mary Alexander Itael petitioned to be administrator of her

deceased mother and was granted letters of administration in such respect on 26<sup>th</sup> May 2021.

Then, the three appointed administrators above, while on the course of their administration duty of their late father Alexander Itael, on 28/04/2022 the forgiven turmoil erupted again, when the applicant in this matter namely **MARY ALEXANDER ITAEL KWEKA** filed this application for revocation of their granted letters of administration of deceased father, and subsequently prayed to be appointed herself as a sole administrator of the deceased.

In support of her application, the applicant advanced several reasons in her affidavit for revoking the grant of letters of administration to respondents and the reasons were stated in paragraph 4,5,6,7,8,9,10 and 11 of her sworn affidavit. The summary of the grounds which I find it to be consolidated in two main reasons are that; the respondents failed to file inventory and accounts of the deceased estates within a prescribed time and that the respondents failed to perform their duties properly as they were negligent and were misusing the deceased properties under the umbrella of being performing their administration duties.



Responding the above, in their joint counter affidavit filed on 30<sup>th</sup> June 2023, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents vehemently opposed the applicant affidavit and replied that it was the applicant who was sabotaging and making it impossible for 2<sup>nd</sup> and 3<sup>rd</sup> respondents to administer the estate of their late father by listing some of the deceased estate properties as an estate of the late Jane Alexander Itael (who was the widow of the deceased) which led to the institution of the land case No.2 of 2022 between the applicant, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents both being administrators. Further, these respondents refuted the misappropriation of the deceased estate by stating that the applicant was making their administration impossible by holding necessary documents and properties of the deceased estate to herself such as Climbers and Karafuu title deeds and advocating in taking a large portion in that pending land case.

Furthermore, the 1<sup>st</sup> respondent filed his counter affidavit which he supported the applicant's application and stated that it was the 2<sup>nd</sup> and 3<sup>rd</sup> respondent whom after their appointment as administrators stayed with the deceased properties without accounting the same for no reasons. He further contended that the 2<sup>nd</sup> and 3<sup>rd</sup> respondent continued to use their lawyer Mr.Kipoko while for him, he was denied the access to such lawyer.

On the other hand the 1<sup>st</sup> respondent supported the applicant's application and stated that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents used false information while seeking extension of time in filing the inventory to this court and omitted his name by putting one Thomas Itael Kweka who was already deceased .

When the matter was called for hearing, Mr. John Lairumbe learned counsel from Precious Advocates and Legal Consultant appeared for the applicant whereas Mr. Elikunda Kipoko learned advocate appeared for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the 1<sup>st</sup> Respondent enjoyed the service of Mr. Leonard Mashabara learned counsel. With the consent of the court this matter was argued by the way of written submission.

In supporting the grounds for revocation, Mr. Lairumbe submitted that, the respondents were unable to fulfil their duties as administrators of estate as there were reasons adduced in the applicant's affidavit evidencing the need for revocation for letters of administration to the respondents. He revealed that the respondents never took any steps in filing the inventory, prepare the statement of the account or distribute the deceased estate to the beneficiaries as prescribed by the law which was within six months from the date of their appointment, then the counsel pointed out that the respondents were going against their oath as per section 66 of the



Probate and Administration of Estate Act Cap 352 R.E. 2019, hereinafter "PAEA" to which they promised they would have filed a full inventory within six months from the date of their appointment despite being extended time by this court on 28<sup>th</sup> day of July, 2021 to do the same.

The counsel further went on submitting that, the remedy available for such administrators was the revocation of their appointment and proceed to appoint another new administrator. To support his contention, the learned counsel referred the decisions of this court in **Daud Mahende Kichonge vs Joseph Mniko & Others** [2006] TZHC 103 and **Beatrice Brighton Kamanga and Another vs Ziada William Kamanga** [2020] TZHC 1428 (TANZLII).

In respect to misusing of the deceased properties in the umbrella of administering the deceased estate, Mr. Lairumbe submitted that the appointed administrators were collecting and eating the rental amount from the deceased houses as there were lease agreement of the deceased property. Further the counsel submitted that the respondents failed to pay land rent over the deceased properties over the years. Thus, they did not comply with section 107 of PAEA which provides for the transparency in keeping the beneficiaries informed through filing the accounts and

inventory. To bolter his assertion the counsel referred the cases of **Hadija Said Matika vs Awesa Said Matika**, PC Civil Appeal No. 2 of 2016, (HC Mtwara) and **Mbogo and Another vs. Shah** (1968) EA 93.

Responding for the 1<sup>st</sup> respondent Mr. Mashabara learned counsel supported the applicant's application and submitted that the obstacles he faced comes from the two other appointed administrators who are the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, because they went to court for extension of time for filing inventory and omitted his name and put the name of Thomas Itael Kweka a deceased. He submitted further that he was in support of revocation of letters of administration to the respondents because they were doing nothing and prayed to this court to appoint new administrator and a prayer to waive the costs on his side.

Representing response from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents Mr. Kipoko contended that a mere lapse of time to file inventory does not automatically warrant the removal of the administrators as one of their duties as administrators are manifestly in land case no 2 of 2022. To support his point the counsel referred the decision of **John Sylvester Ngutse and Others vs Anna Lori Sulle** [2021] TZHC 4246 (TANZLII).



The counsel further said that the aim of the applicant's application was to defeat the already existing suit between the applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents which is in land case no.2 of 2022. The learned counsel continued to submit that the applicant was sabotaging and making it impossible for the administrators to administer the estate of the deceased estate as the applicant was already been granted administration on the estate of her late mother one Jane Alexander Itael Kweka the widow of the deceased where in her administration she listed and indicated the properties of the late Alexander Itael as exclusive properties of the late Jane Alexander Itael Kweka.

The counsel submitted that the conduct of the applicant to attach the property of the late Alexander Itael as one of the properties of his late wife which then led to the institution of the land case number 2 of 2022 was a proof that the applicant was incapable in administering the estate of late Alexander Itael. The counsel submitted that the respondents were doing the administration in a good faith more than the applicant. The counsel then prayed for the application to be dismissed and the court to grant time for the current administrators to collect the deceased properties.



In her rejoinder the counsel for applicant briefly prayed this court to consider his submission in chief and further added that the applicant application has never instituted the case with intention to defeats Land Case No. 2 of 2022 as presented by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents the counsel then submitted that the records reveal and as presented by first respondent in his Counter affidavit that there were bad motives from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in instituting Land Case No. 2 of 2022 as they presented false information against him as a co-administrator. That was the end of the rival submissions between the parties.

Before going in depth in determining whether the application at hand is meritorious, I find it valuable to explain first the concern raised as ground number two by Mr. Kipoko while replying the applicant application that the names of the administrators/respondents named in the application were different from the respondents making the application incompetent as the chamber summons and affidavit did not show the names of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

I had time to peruse the record particularly an order in a probate Cause No. 06 of 2012 which granted letters of administration to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents and as per that records it shows that the one who

applied for letters of administration were Thomas Itael Kweka, Gladness D/O Alexander and Peter S/O Alexander where the said petition was objected by Jane Alexander Itael Kweka and Alfred Alexander Itael Kweka and upon negotiation and coming into agreement between the parties they agreed that Gladness D/O Alexander, Peter S/O Alexander and Alfred Alexander Itael Kweka be appointed as administrators of the estate of the late Alexander Itael Kweka. From that, this court by Mwenempazi, J. proceeded to appoint the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents as an administrator on a ruling delivered on 11<sup>th</sup> December 2020.

It is from such background the application filed by the applicant as rightly submitted by the respondent counsel did have different names of the administrators in which the application and an affidavit are titled the names of Gladness S/O Alexander and Peter S/O Alexander as administrators, the names which are different from the administrators appointed in Probate cause No.6 of 2012 which were 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>. In my considered view because the applicant in her sworn affidavit and submissions has referred the respondents as 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents means that there were no other respondents she was referring about except the respondents in this matter.



Be that as it may, the above issue of names raised above, according to the record, I must say that, Mr. Kipoko is trying to bring it again through back door, I am saying this because, on 30/6/2023 the date extended by this court to him to file joint counter affidavit, he filed the same together with notice of preliminary objection claiming that applicant has introduced strangers who do not appear on letters of administration. Further the record reveals that on 11/7/2023 the said objection together with other were discussed and resolved amicably. And for this purpose, I find it apposite to reproduce direction issued by my sister Simfukwe, J. in such respect as follows;

**"Court:** *The raised preliminaries have no qualities of being termed as preliminary objections. Counsels of both parties have been accorded an opportunity to deliberate on the so-called preliminary objections. Thus, the same cannot be argued and the application should proceed on merit"*

From the above excerpt, I am settled the raised issue above was discussed and settled by this court, this means this court is *functus officio* in order to maintain consistent of the decision of the court. Nonetheless, with respect, learned counsels as officers of the court must maintain their

professionalism for being honest, condor, and competent in order to help the court to reach a fair decision. (see **Mary Alexander Itael Kweka vs Alfred Alexander Itael kweka and 2 Others** [2023] TZHC 17894 (TANZLII) at page 7 referred the case of **Re Gruzman** (1968) 70 SR (NSW) 316, 313)

Now back home in the application at hand, the issue for determination is whether the applicant has adduced reasonable grounds for revocation of letters of administration to the respondents.

The provision relating to revocation of letters of administration in this court are under the **Probate and Administration of Estate Act Cap 352 R.E. 2019** and the reasons for revocation of letters of administration are provided for under section 49(1)(a) to (e) of the Probate and administration of Estate (supra). The said provision provides that;

*"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 in operative,*



*(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 provision of part IX or has exhibited under that part an inventory or account which is untrue in a material respect."*

From the above provision, the law empowers the High court to remove an administrator of the deceased estate who has failed to execute his duties by failing to exhibit in court the inventory and accounts of the deceased estates. The law further under section 107 (1)(2) of PAEA requires an administrator or executor to exhibit an account showing the assets which she has collected and are in his hands and how they have been applied or disposed of. Section 107(1) of the Probate and Administration of Estate Act provides that;

*"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 in all the credits and also 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."*

(See also **Godbless Mathew Naibala vs. Annet John M.N Lukumay**, Civil Application No. 119&142 CAT (unreported).

From the above provisions as guidance, in this application it is not disputed that the respondents were all appointed as co-administrators of the estate of late Alexander Itael who died intestate on 21/01/2012. The accusations raised in the applicant affidavit against the 2nd and 3<sup>rd</sup> respondents were delays to exhibit an inventory and accounts, refusal to distribute the estate to the beneficiaries and misuse of the deceased property by collecting rental amount and putting in to their pockets together with being negligent by failing to pay land rent of the deceased properties.



As stated above, Mr. Kipoko relying the case of **John Sylvester Ngutse and Others** (supra) argued that a mere lapse of time to file inventory does not automatically warrant the removal of the administrators. And further added that administrators are restrained from doing so due to claim collecting the estate of the deceased in the Land Case No. 2 of 2021.

I also subscribe with that position of **John Sylvester Ngutse and Others** (supra), but in my considered view the circumstances of this matter at hand are different from the above cited case. In that case this court hearing appeal from the District Court observed that the court has to consider the reasons that prevented the party from complying or omitting to do before his/her appointment is revoked, and found that there was no material evidence advanced by the appellants to warrant revocation, hence dismissed the appeal.

As I hinted above, each case must be decided on its own merits and the prevailing circumstances. In this matter, having considered the entire record and affidavit by both parties, guided by above law in relation to the circumstances, I find material factors evidencing safe impossibility for

administrators appointed to administer the estate of the late Alexander Itael due to the following reasons;

First, the respondents were granted letters of appointment on 11/12/2020, they laboured with that duty until on 28/7/2021 when applied to this court for extension of time, this court extended their tenure for another six months and ordered by the court to file inventory within such period, the record shows this application was filed on 28/4/2022, when the time given above was already expired and no extra extension sought to date.

Second, only two respondents namely Gladness Alexander and Peter Alexander have filed a Land case no. 2 of 2022 in this court suit against the applicant, without joining their fellow co-administrator one Alfred Alexander Itael Kweka, their reasons advanced therein was that is outside the country. In this matter Alfred Alexander Itael Kweka filed counter affidavit and at paragraph 11 deposed that the said case was filed without consulting him and he was present in the country, thus he said the above administrators did it with malice to lie this court with the bad intention of misusing the properties under the umbrella of administrators of the estate. In view of what I have grasped from this concern, it is my settled opinion,



the administrators themselves are not in trust in administering this estate, thus I can confidently say this is the evidence of misunderstandings between them.

Third, the heirs of this estate are divided, this is evidenced by the act of the applicant in this matter to take the shoes of her late mother Jane Alexander Kweka, as deposed by the joint counter affidavit of the second and third respondents hereinabove at paragraph 11, they averred that the Applicant has a move to take away major portion of the estate which culminated in Land Case No. 2 of 2022 in which the Applicant has expressly stated that Plot No. 10, Block D Moshi Municipality with CT No. 056039/16 and Farm No. 334/6 with CT No. 11917 are exclusive property of Jane Alexander Kweka who was one of the widows of the late Alexander Itael Kweka hence to be excluded from estate of the late Alexander Itael Kweka.

I am mindful Jane Alexander Kweka the late mother of the applicant, initiated the struggle of proving that she owned the said properties separately, I think the deceased mother was at the better place to prove the same otherwise being matrimonial assets other heirs may be entitled to inherit from deceased estate, however, it is noteworthy to understand this

court in this matter is neither dealing on how distribution of estate will be effected nor does direct administrators how to make distribution of estate.

Nevertheless, I find equally convincing to say that in regard to the administration of estate of spouse. it is now settled that when one spouse dies intestate as in this case, all assets falling in his hands can only be dealt with under the laws of succession. It is undoubted the Law of Marriage Act ceases to apply. The reasons being, first; what constitutes matrimonial assets is defined by the Law of Marriage Act to include the properties jointly acquired by the spouses during the pendency of their marriage under section 114. Second; for the properties to be divided between the spouses, each spouse has to prove and establish the extent of her contribution towards the acquisition of the same as in the case of **Bi Hawa Muhamed vs Ally Seif** [1985] TLR 32. Third; and perhaps more importantly, in the absence of one spouse, there won't be evidence to establish the contribution of the other deceased spouse, and fourth; when one spouse dies, the matrimonial properties jointly acquired and those in the name of the deceased definitely fall in the estate of the deceased to be distributed to the deceased beneficiaries. (See **Tumsifu Elia Sawe and In the Matter of Application for Letters of Administration**



**without Will by Agness Tumsifu Sawe and Jubilate Tumsifu Sawe and in the matter of Caveat by Tumainiel Tumsifu Sawe [2023] TZHC 20543 (TANZLII) at page 4).**

Moreover, in my view as observed above, since heirs have different mother, the evidence shows conflict of interest have been created from the heirs and administrators in their capacity too. For instance, in his reply to counter affidavit in this matter Alfred Alexander Itael Kweka as administrator, despite of being among administrators was not among insisted to be revoked by the applicant in this matter. This is also in accordance to chamber summons in this matter which portrays names of the second and third respondent be revoked.

Nonetheless, in his counter affidavit, the first respondent though is a co-administrator at paragraph 5 deponed that his fellow administrators have stayed with the deceased properties without exhibiting nor accounting the same without no sufficient reasons, and also at paragraph 9 of his counter affidavit avows that without his knowledge his fellow administrators in matter decided to enter into lease contract, collection and expenditure of the land rent's collection at Bomang'ombe properties and they decided to segregate other beneficiaries without any justification. He

further avers that over past years his fellow administrators have not been able to show or bring forward any income or expenses from the said properties of Bomang'ombe while there were 12 tenants, bars, guests house, movie hall and event's hall. Thus, this shows how the first respondent is not on the same line with his co-administrators.

I am aware that, Alfred Alexander Itael Kweka despite of being an appointed administrator but also is a child of the deceased from one mother with the applicant in this matter. Be that as it may, what he has averred above was under oath, therefore cannot be downgraded, but in my considered view this is clear evidence of clusters of heirs created in the administration of this estate, which as I said above has shown conflict of interest but more than is misunderstanding between them, first as administrators and second the same has been spoiled further to other heirs and administrators appointed inclusive.

From the above, I have endeavoured to highlight, I am of considered view, there is apparent strong contention between the beneficiaries, due to the fact that heirs were born from different mothers, but share the deceased as their father. Under these circumstances I am settled a neutral party to administer the deceased estate will serve the justice of this



probate and not otherwise. I have asked myself who is a neutral party; my answer is the one considered to have the reputation and capability of acting faithfully, diligently and impartially in administering the estate to the rightful owners. Therefore, Court can appoint any reputable person who is not even a member of the family or officer of the Court for that matter to be an administrator of the estate of the deceased. (See **Seleli Dotto vs Maganga Maige & Others** [2019] TZHC 2120 (TANZLII))

Having considered the evidence on misunderstanding shown above, and the nature of this matter, all three administrators appointed on 11<sup>th</sup> day of December, 2020 are hereby officially revoked from being administrators of the estate of deceased Alexander Itael from today.

Now, in order to safeguard the estate of deceased to be equitably distributed to the heirs under the circumstances of this matter, I hereby appoint the Administrator General under section 49(2) of the PAEA to administer the estate of the late Alexander Itael. The previous Administrators are ordered to surrender in this court within fourteen (14) days of this ruling the letters of administration issued to them in Probate and Administration Cause No. 6 of 2012 in terms of section 51 of the PAEA.

The court further orders that all assets currently in the possession of the said revoked administrators and any other beneficiaries shall be surrendered to the Administrator General forthwith. Furthermore, the Administrator General is ordered to file the inventory and accounts of the estate of the deceased Alexander Itael in this court within six months from the date of this appointment.

On the whole, the application is granted to such extent. In the circumstances and the nature of this matter, no order as to costs is granted.

It is so ordered.



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, positioned above the judge's name.

**A. P. KILIMI  
JUDGE**

**Court:** - Ruling delivered today on 27<sup>th</sup> day of March, 2024 in the presence Mr. Leonard Mashabara for the 1<sup>st</sup> respondent and also holding brief of John Lairumbe Kivuyo for the applicant. Mr. Elikunda Kipoko assisted by Lilian Mushi advocates for second and third respondents who are also present.



**Sgd; A. P. KILIMI**  
**JUDGE**  
**27/03/2024**

**Court:** Right of Appeal duly explained.

**Sgd; A. P. KILIMI**  
**JUDGE**  
**27/03/2024**