

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

MISC. CIVIL APPLICATION NO. 981 OF 2024
(Arising from Probate and Administration Cause No. 56 of 2016)

**IN THE MATTER OF THE ESTATE OF THE LATE AHMED
MOHAMEDALI SIWJI**

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
REVOCATION OF LETTERS OF ADMINISTRATION GRANTED TO
AKBER AHMED SIWJI IN RESPECT TO THE ESTATE OF THE LATE
AHMED MOHAMEDALI SIWJI**

BETWEEN

NAUSHAD AHMED SIWJI.....APPLICANT

VERSUS

**AKBER AHMED SIWJI (as Administrator of
the Estate of the late
AHMED MOHAMEDALI SIWJI..... RESPONDENT**

RULING

Date of last Order: 28th March 2024
Date of Ruling: 12th April 2024

MTEMBWA, J.:

On **19th September 2023** when the matter was placed
before Honourable Deputy Registrar for orders, Mr. Gulam

Hussein Yusuph, the learned counsel for the legal heirs of the estate of the late **AHMED MOHAMEDALI SIWJI** requested the records to be remitted to the Honourable Judge for determination of the Application for revocation. Justifying the request, Mr. Yusuph submitted that, it is now more than seven (7) years since the commencement of the matter and yet nothing has been done in respect to the deceased's estate. Consequently, the records were remitted to the Honourable Judge as sought.

When the matter was placed before Hon. Kakolaki, J for orders on 18th October 2023, the Applicant was advised to file a formal application for revocation of the letters of administration against the Respondent. As such, this Application was filed on **18th January 2024** seeking for revocation of the letter of administration that was granted to the Respondent.

Briefly, the parties herein are siblings and or blood related brothers. They are all sons to the late **AHMED MOHAMEDALI SIWJI** who died testate on 18th August 2011 at Aga Khan Hospital in Dar es Salaam leaving ten (10)

surviving heirs. He left behind a Will bequeathing part of his estate to his four lovely daughters only. It was very unfortunate that he did not appoint any person to be an executor of the said Will. That upon Application by the Respondent for letters of administration, on **12th June 2017**, this Court in **Probate and Administration of Cause No. 56 of 2016**, granted it as sought. The Respondent was in addition ordered to file an Inventory and final Accounts of the estate as per the law. On 18th August 2017, the letters of administration was issued to the Respondent.

In his Affidavit, the Applicant insisted that, the Respondent has failed to administer the deceased's estate and in addition, that, he has failed to distribute the same to the surviving heirs. In his Counter Affidavit, the Respondent disputed the allegations and added further that, the Applicant together with other beneficiaries are blocking him from collecting the deceased's properties situated in Zanzibar. He added however that, he is in the final stage of accomplishing the duty to collect the properties and have the estate finally distributed to the heirs.

On **8th February 2024**, parties agreed to argue this Application by way of written Submissions. Having perused the records, I am satisfied that, parties adhered to the agreed schedule to which I personally subscribe. In the conduct of the Application by way of written submissions, **Mr. Hassan Salum Hassan**, the learned counsel, argued for and on behalf of the Applicant while **Mr. Haider Twahir Mwinyimvua**, the learned counsel, argued for and on behalf of the Respondent.

Staggering the floor, Mr. Hassan submitted in a very short way that, it has been more than seven years since the Respondent herein was granted with letters of Administration. That, having been so granted, the Respondent managed to file the Inventory of an account on 30th March 2022 which however was objected by the Applicant on ground of mistakes and lack of disclosure. He insisted that, the Respondent has failed to perform his duties as an administrator of the estate. To fortify, he cited the case of ***Beatrice Brighton Kamanga & Amanda Brighton Kamanga Vs. Ziada William Kamanga, Civil Revision No. 13 of 2020, High Court of***

Tanzania at Dar es salaam. Lastly, he implored this Court to grant the Application.

In reply thereof, Mr. Mwinyimvua adopted the Respondent's Counter Affidavit and proceeded to submit further that, as conceded by the Applicant, the Respondent is still collecting the deceased's properties located in Zanzibar. He added further that, the Applicant and other male heirs are blocking the Respondent from collecting the said properties. He cited ***Section 108 (1) of the Probate and Administration of Estate Act (supra)*** which provided, among others, the duties of an executor or administrator which include collecting of the deceased's properties.

Mr. Mwinyimvua continued to distinguish the cited case of ***Beatrice Brighton Kamanga & Amanda Brighton Kamanga Vs. Ziada William Kamanga (supra)*** and added further that, in the cited case, the issue concerned misappropriation of the deceased's properties which is not a case here. He condemned the Applicant for placing too much for the distribution of the estate while he is involved in blocking the Respondent from collecting part of the properties

in Zanzibar. He lastly beseeched this Court to dismiss the Application with costs.

Having dispassionately considered the arguments by the parties, I am now in the position to determine this Application. As said before, upon Application for letters of administration, on 12th June 2017, this Court granted it as sought. Consequently, on 18th August 2017, the letters of administration was issued to the Respondent. On 22nd March 2018, the Applicant, through **Mr. Gaspar Nyika**, the learned counsel from Imma Advocates, filed an Inventory together with Accounts of the deceased's estate.

The records reveal further that, the Respondent consulted **Ms. Grace Philotea Joachim**, the learned counsel from Joachim & Jacobs Attorneys who filed Accounts of the estate together with a six months report on 17th April 2019. It could appear, the Respondent in between, consulted also **Mr. Mwinyimvua**, the learned counsel from Derider Attorneys who filed Accounts of the Estate and six months reports on 25th March 2020 and 23rd September 2020.

The records reveal in addition that, on **28th September 2021**, the Respondent personally filed an Inventory and Accounts on the assets yet to come to his hands as an administrator.

On **30th March 2022**, the Respondent then filed Form No. 80 (Inventory of the Estate) together with Form No. 81 (Account of estate) both under ***section 107 of the Probate and Administration of Estate Act (supra)*** through **Mr. Gaspar Nyika**, learned counsel from Imma Advocates. By a letter dated 18th October 2022, the Applicant objected the accounts on ground of mistakes and lack of disclosure.

The Respondent further instructed **George Masoud**, the learned counsel from World Link Attorneys to make follow ups on the Bank Accounts No. 189250701002 and 189250701001 maintained by Standard Chartered Bank Tanzania. Consequently, the learned counsel requested from this Court a directive letter to the Bank by his letter dated **25th May 2023**. In response, the learned Deputy Registrar issued a letter to the said Bank directing it to transfer all the proceeds in the said Bank Accounts to Judiciary Bank Account

No. 9921169776 in the name of Judiciary Mirathi Electronic Account.

On **31st July 2023**, again, the World Link Attorneys requested the learned deputy Registrar for an introduction letter to the Registrar of the High Court of Zanzibar in order to make follow ups on the properties located in Zanzibar. In response thereof, the Deputy Registrar issued a letter to that effect dated 9th August 2023.

On **28th December 2023**, on behalf of the Respondent, Mr. Mwinyimvua, the learned counsel, filed Accounts on the properties not yet in his hands. Looking at it, all properties not yet in his hands situate in Zanzibar. He has also filed the same Account to this Court on 2nd April 2024.

I have taken trouble to go through the records of the respective file with the view to see how the deceased's estate has been managed by the Respondent. As said before, the Applicant has not been happy with the way the estate has been administered. He has now filed this Application for orders of revocation of the Respondent as an administrator

under ***Sections 49 (1) (a) and 49 (2) of the Probate and Administration of the Estate Act, Cap 352 R.E. 2019*** (hereinafter “the Act”) and ***Rule 29 of the Probate Rules***.

Indeed, this Court is mandated to revoke or annul the letters of the administration granted to any person on the grounds set out under Section 49 (1) of the Act. The section provides as follows;

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 by means of an untrue allegation of a fact essential in point of law to justify the grant, though 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 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.

The Court, if satisfied, may under subsection (2) of section 49 of the Act, suspend or remove an executor or administrator and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate.

The Court of Appeal of Tanzania in ***Ahmed Mohamed Al Laamar vs Fatuma Bakari & Another (Civil Appeal 71 of 2012) [2012] TZCA 22 (6 July 2012)*** noted as follows;

..... the High Court is vested with powers to revoke or annul the grant of probate and/or letters of administration for reasons stated in section 49(1) (a) to (e) of the Act. The word 'revoke' has its origin in a Latin word " revocare," which meant "to call again or back" In both legal and ordinary English language, this word means to cancel, withdraw, reverse, repeal, vacate, put to an end, etc. In our respectful opinion, both common sense and logic dictate that one can only annul, repeal, vacate, put to an end, etc, what was previously granted or passed and is still operative or existing. Nothing which has already come to an end can be put to an end or vacated, etc...

The only advanced reason for the cancellation of the letters of administration by the Applicant is failure by the Respondent to distribute the estate to the heirs. It was added further that, it is now more than seven years since the appointment of the Respondent as administrator of the estate of the late **AHMED MOHAMEDALI SIWJI** and still, the administration of it has not been completed. Basing on this, the Applicant is seeking for an order to revoke the Respondent's appointment as an administrator. The Respondent, on his part, denied the allegations on the ground that, the Applicant and other male heirs are blocking him from collecting the deceased's properties situated in Zanzibar. It was very unfortunate the names of the heirs were not disclosed.

In my scrutiny, I noted that, there are properties which were bequeathed to the four deceased's daughters by Will. In fact, the Will is in respect to amount of money in the Bank Account No. FDR 6662000495 operated by National Bank of commerce at Zanzibar. Other properties forming part of the estate were not included in the Will. They are therefore

administered by the Respondent as administrator of the estate. As said before, the Will did not state any person to be the executor of it.

In my further scrutiny, I noted that, the Respondent complied with sections 106 and 107 (1) and (2) of the Act by filing Inventory and the accounts respectively exhibiting the administration of the estate. The last Accounts on the properties yet to come to his hands was filed before this Court on 2nd April 2024

From what I have gathered, there are allegations that the Applicant and other undisclosed male heirs are blocking the Respondent to collect properties situated in Zanzibar. The allegations were first raised in the Respondent's Counter Affidavit. No reply to counter the allegations was filed by the Applicant. It was also insisted in the submissions in reply by the Respondent but I could not see the rejoinder thereof to deny the allegations. It follows therefore that, there is truth on it. I shall advise in due course by way of passing on this.

In this respect, considering the submissions by the Respondent which was not faulted by the Applicant, I find that, the administration of the estate late **AHMED MOHAMEDALI SIWJI** has not been completed to date because some of the properties situated in Zanzibar have not been collected and placed in the hands of the Respondent, the administrator. In the interest of other heirs who are not parties to this battle and considering the circumstances, the Respondent must be given an opportunity to complete the administration of the deceased's estate. In that stance, I refuse to revoke the letters of administration granted to the Respondent by this Court.

From what I have noted in addition is that, the Respondent has no idea on what it takes to be an administrator of the estate under sections 99, 100, 101 and 102 of the Act. In the case of ***Joseph Shumbusho Vs. Tigera & 2 others (supra)***, the Court said;

As a legal representative of the deceased's estates, all the deceased's estates are vested to him and has all the powers over the deceased assets as the deceased would have, save that he is acting in a

representative capacity. As rightly submitted by the learned counsel for the appellant, he is vested with the powers to sue in respect of all causes of action that survived the deceased, powers to recover debts due to the deceased at the time of his death, as the deceased had when he was living (section 100 of the Probate and Administration Act) and powers to dispose of property by way of sale, mortgage, leasing or otherwise in relation to immovable property (section 101 of the Probate and Administration Act). In addition, the law requires the legal representative to collect all debts due to the deceased and pay all the debts owed by the deceased

From the above quoted passage, it is crystal clear that, the administrator has powers to do anything in the course of administering the estate to which he was appointed to administer, regard be, the interest of heirs and justice. The allegations therefore that, the Applicant and other male heirs are blocking him from collecting the properties forming part of the estate located in Zanzibar are as a result of his failure to know his powers entrusted to him as administrator. The heirs are powerless before the legally appointed administrator in as far as the estate of the deceased is concerned. He can

even sue them before any Court of competent jurisdiction for any uninvited action for the detriment of the estate. He has powers also to evict them from the deceased's landed properties failure of which he can even seek the assistance of the state machineries like police force in order to meet the end of justice and in the interest of heirs.

From such ignorance on the part of the Respondent, the administration of the estate has not been completed to date, approximately now more than seven years since his appointment. To meet the end of justice therefore, the Respondent is hereby ordered to file the final Accounts in terms of the law exhibiting the distribution of the estate within six months from today unless time is so justifiably extended by this Court. The Applicant and all other heirs are to offer the due assistance to the Respondent if so requested, in order to aid him to accomplish his duties without further delay. I think this order will meet the end of justice as of now.

In a very short way, I wish to comment on the way the Respondent has been filing the Accounts. In fact, I am not

pleased with Statement of Accounts filed on 28th September 2021, 28th December 2023 and 2nd April 2024. First, the citation of section 197 of the Act is out of context although not fatal. It could appear also that, the Respondent has been mixing up two issues, that is, the inventory and the Accounts. The two are not synonymous. For future guidance, I should state here that, the two are not the same and in fact, each has a purpose to serve. A short passage from the case of ***Joseph Shumbusho Vs. Tigera & 2 others, Civil Appeal No. 183 of 2016, Court of Appeal at Dar es Salaam***, will save the day; thus;

Here, we wish to pose and revert back to the difference between the inventory and accounts. An inventory is described under section 107 of the Probate and Administration and rule 106 of the Rules whereupon a heir or an administrator is required to file inventory containing full and true estimates of all the properties which came into his possession as a legal representative, all the debts owing by any person, and all the credits. The format of it is provided in Form 80 set out in the First Schedule to the Rules. Therefore, the inventory is filed in order to show the assets and liabilities of the deceased whereas the accounts is filed in order to show the administration of the deceased's assets and its format is provided in Form 81 of the First schedule to the 18 Signature of Executor or Rules. Such

accounts must be filed within a period of not more than one year or within such further time as specifically appointed by the court whereas the inventory is required to be filed 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. In that regard, the inventory is not synonymous to the accounts as the parties would like this Court to take

Since the quoted passage is self-explanatory, common sense calls not to add anything. It suffices here to note that, the Respondent and heirs or litigants should take note of the observations of the neat and great minds of the Court of Appeal of Tanzania and have the inventory and statements of accounts correctly filed.

To that end, the Application to revoke the letters of administration granted to the Respondent by this Court is hereby refused. The Respondent is ordered to file the final Accounts exhibiting how the estate of the late **AHMED MOHAMEDALI SIWJI** has been administered within six months from today unless time is so extended by this Court. The heirs are advised to offer to the Respondent the required assistance if so requested in order to accomplish his legal

duty in respect to the estate. Since the parties are siblings,
there will be no order as to costs.

I order accordingly.

Right of appeal fully explained.

DATED at DAR ES SALAAM this 12th April 2024.



**H.S. MTEMBWA
JUDGE**