

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
TEMEKE HIGH COURT SUB – REGISTRY  
(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**PROBATE AND ADMINISTRATION CAUSE NO. 25936 OF 2023**

In the Matter of the Estate of the Late

**MELCHISEDECK SANGALALI LUTEMA..... DECEASED**

**BETWEEN**

In the Matter of Application for Letter of Administration by

**ALISTIDIA ALEX MUTAYABALWA.....1<sup>st</sup> PETITIONER**

**DAUDI LUTEMA NG'WANDU.....2<sup>nd</sup> PETITIONER**

**AND**

In the Matter of a Caveat by

**MWAJUMA ABDALLAH WAZIRI.....1<sup>st</sup> CAVEATOR**

**LUTEMA MILELE MWANDU.....2<sup>nd</sup> CAVEATOR**

**NDALLO MAPEMBE NHUNGE.....3<sup>rd</sup> CAVEATOR**

**JUDGMENT**

*Last Order date: 12.03.2024*

*Judgment Date: 24.04.2024*

**M. MNYUKWA, J**

Death is an unexpected upheaval that no one knows when will strike, until it strikes, thus, people are urged that, when they are still healthy and alive to inscribe as to how their estate should be administered after death, which as a matter of fact will reduce a lot of conflicts and confusion among beneficiaries. As for this case at hand, deceased Melchisedeck Sangalali Lutema died intestate on 11/8/2023 leaving behind his wife and six children, four of his children were from his



marriage and the other two were born out of wedlock, begotten with the 1<sup>st</sup> caveator. He also left his parents who are the 2<sup>nd</sup> and 3<sup>rd</sup> caveators. He left several properties forming part of his estate.

According to the records, it is undisputed fact that after the burial of the deceased, his family and clan members convened a meeting whereby, deceased's widow and her brother-in-law (deceased's young brother) were appointed as administrators of the deceased's estate and petitioners of the same in this court. It is undeniable fact that petition was filed in this court on 22/11/2023 but the same was encountered with a caveat filed on 8/2/2024 and affidavits in support of the caveat were filed altogether.

Initially, learned advocate for the caveators filed a caveat for three caveators and two affidavits in support thereto. One of the affidavits was sworn by the learned counsel himself on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> caveators who were the deceased's parents. However, on 11/3/2024 learned advocate told this court that he wished to proceed with a caveat of the first caveator only, and instead he prayed for time to file a new caveat for the 1<sup>st</sup> caveator, a prayer was granted, and a caveat for the 1<sup>st</sup> caveator with the affidavit in support thereto was uploaded to the case management system on the same day.



Therefore, to put the record clear, it has to be noted that, having the caveat which included the 2<sup>nd</sup> and 3<sup>rd</sup> caveators withdrawn and a new caveat for the 1<sup>st</sup> caveator being filed with an affidavit thereto, the case is now between the petitioners against the 1<sup>st</sup> caveator.

In the affidavit, the caveator averred that being a mother to two of the deceased's children who are minors, is bound to protect their interest in the estate of their father. Her protest to the petitioners was caused by what she averred in paragraph 4 to 9 that, petitioners approached and persuaded her to accept some of the properties by convincing her to sign a contract (annexure MW1) before they were appointed by the court, an action which the caveator doubted the petitioners' integrity visa vis an equality in distribution of deceased's estate to heirs, her children being among the said heirs.

It has to be noted that, since the 1<sup>st</sup> caveator entered appearance by filing her affidavit objecting the petition, this matter turned contentious and conducted in the manner stated under section 52(b) of Probate and Administration of Estate Act, Cap 352 R.E 2002 (PAEA).

At the hearing the parties were represented, for the petitioners (plaintiffs) he was Mr. Joseph Kiyumbi Sungwa learned counsel while the 1<sup>st</sup> caveator enjoyed services of Mr Nehemia Geoffrey Nkoko. The agreed



issue for determination is, **whether the petitioners are suited to be appointed administrators of the deceased's estate.**

The hearing started with **Alistidia Alex Mtayabalwa (PW1)** who testified that she was the deceased's wife by virtue of their Christian marriage. She stated that after the burial of the deceased they convened a clan meeting of which she was appointed administrator of the deceased's estate together with her brother-in-law, she tendered annexure which was admitted as exhibit P1 to substantiate her assertion. It was her testimony further that, she is aware of the deceased's children born to the 1<sup>st</sup> Caveator and she included them in the petition.

Her testimony concerning a caveat by the 1<sup>st</sup> caveator, she asserted that she is a fit person to be appointed as administrator since she was a deceased wife, and added that, she will fairly distribute the estate of the deceased to the beneficiaries. Testifying to the claim by the 1<sup>st</sup> caveator that she was given a contract by the petitioners, PW1 contended that she never promised the caveator the distribution of the estate before filling of this case, rather she was called to sign an affidavit of dependants on behalf of her children.

As for **(PW2) Daudi Lutema Mwandu**, he stated that he is a deceased's young brother who was appointed at the family meeting as co



– administrator, so that he can assist PW1 in administration of the estate. He testified that, deceased has left six children, among them, two were born by 1<sup>st</sup> caveator out of wedlock. He added that, he has never promised the 1<sup>st</sup> caveator distribution of the deceased's estate before. He asserted further that, he will not discriminate any child of his share to the deceased's estate. He then prayed for the caveat to be dismissed and the court appoint them as administrators of the estate of the deceased.

After the plaintiffs' testimonies, the case was closed on their part since they had no other witnesses. It was therefore the defendant (caveator) turn to keep the ball rolling. Caveator was the only witness.

It was the defendant's testimony that, she had sexual relationship with the deceased as a result twin children were born, and deceased was responsible for maintaining them as their father. She testified further that, after the deceased's burial, a meeting was convened where, plaintiffs were appointed as administrators of deceased's estate. Further, she said, her reason for objecting the petitioner is the fact that she does not trust them since they convinced her to take some of the estate before filing of this case. Again, she claimed that she was told by the plaintiffs (petitioners) to sign a contract which was tendered and admitted as exhibit D1 for the said distribution. According to her, that was an action



to prejudice her children's share to the estate of their father. She also said, since the first plaintiff does not recognise her and the second plaintiff refers her children as illegitimate children, she is therefore worried if at all her children interest will be considered fairly. She therefore prayed for this court to appoint her as the co-administrator so that she can protect interests of her children.

As I said before defendant was the only witness, so after her testimony her case was closed.

Having considered testimonies of the parties and evidence on record, the only issue for determination as stated hereinabove is *whether the petitioners are suited to be appointed administrators of the deceased's estate.*

To begin with, the law is settled that when a person dies intestate, letters of administration shall be granted to any person who, according to the rules of distribution would be entitled to the whole or any part of deceased's estate. Section 33(1) of Probate and Administration of Estate Act, Cap 352 R.E 2019 (PAEA) is expressive to that effect. However, the law provides also for other category of people who would be granted letters of administration on intestacy to include; those with greater and immediate interest ~~interest~~ *visa viz* those with lesser or more remote interest



which is subject to court's discretion as per section 33(2) of the PAEA. A creditor of the deceased as per section 33(3) of the PAEA and lastly, any other person after having regard to consanguinity, amount of interest and safety of the estate, section 33(4) of PAEA.

Going by the foregoing section it is without doubt that petitioners are fit to the persons stated by the law. However, as far as this case is concerned, whether they are suitable to be appointed is subject to determination of the caveat filed.

It is on record that, the 1<sup>st</sup> caveator has accused the petitioners for distributing the deceased's estate before they filed this case. Her allegation based on exhibit D1 which she claimed that, it is a contract given by the petitioners for her to sign so that she can be given some of the properties and Tsh. 200,000,000/= for her children. According to her, this conduct brings doubts as to their integrity which disqualifies them for the post.

This allegation was persistently being denied by the petitioners who claimed that they have never gave the caveator the said contract rather they had given her an affidavit to sign on behalf of her children. This rivalry between the parties compelled me to have a keen scrutiny of exhibit DI which is titled, *Makubaliano ya kupokea sehemu ya urithi wa*



*mirathi ya marehemu Melchisedeck Sangalali Lutema.* This contract has terms which shows the distribution of the deceased's estate as alleged by the caveator, but the same was not signed by the parties to it. The question which came to my mind is whether this contract has any legal value.

It is my firm view that the answer to the above question is in negative for the reasons that, since it is allegedly that this contract was given by the petitioners before filing of this case, it means, petitioners were incapable of entering in any agreement in respect of the estate of the deceased since they were yet to be granted letters of administration which gives power to the office of administrator to deal with the estate of the deceased. Therefore, it follows that, as far as this allegedly contract is concerned, petitioners were incompetent persons to contract, contrary to section 10 of the Law of Contract Act, Cap 345 R.E 2002 which provides that all agreements are contracts if, among other factors, they are made by free consent of *parties competent to contract*. While section 11(1) of Cap 345 R.E 2019 defines who are competent persons to contract, among them is a person who is not disqualified from contracting by any law to which he is subjected to.





My interpretation of the above section as far as the estate of the deceased is concerned, people are disqualified by the law of Probate to deal with the deceased's estate except when they are appointed as executors or administrators thereto. Similarly, to the petitioners, if the allegations were true, it could have been a waste since they were not administrators at the time of contract.

Again, this contract was not signed by the parties to it, hence shatters its authenticity which renders the same unenforceable. To me exhibit D1 is just a written paper with no legal effect, therefore it cannot prove what was stated and alleged by the caveator.

Relatively, it is undisputed fact that caveator's children were mentioned in the petition as deceased's children and petitioners have referred them as such, it follows therefore that a claim by the caveator that, her children were referred as illegitimate children and they might be discriminated during distribution, is unjustifiable claim which based on speculation.

Before I pen off, I must state that, among the duties of the administrator when granted letters of administration is to collect all the deceased's properties as per section 108 of the PAEA. Properties to be collected by the petitioner will be those which are known to her and those



which will come to her knowledge in the course of her administration. That's why under the provision of section 107 of the PAEA, he/she is required to exhibit inventory of all the properties and distribute the same to the respective beneficiaries. The duties of the administrators will be subject to court directions. Section 65 of the Act provides that;


*The court may give to an executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.*

After that being said, I humbly hold that, the caveat has no merit it is hereby dismissed. Petitioners are appointed as administrators of the deceased estate. Letters of administration to be issued to them.

I make no orders as to cost since this is a probate matter.

It is so ordered.



  
**M. MNYUKWA**  
**JUDGE**  
**24/04/2024**

**Court:** Judgment delivered on 24<sup>th</sup> April 2024 in the presence of the advocate Joseph Kiyumbi Sungwa for petitioners who also hold brief of Nehemia Nkoko for 1<sup>st</sup> Caveator who also appeared in person, 2<sup>nd</sup> and 3<sup>rd</sup> caveators were absent.

  
**M. MNYUKWA**  
**JUDGE**  
**24/04/2024**