

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

**MISC. CIVIL APPLICATION NO. 104 OF 2023**

*(Arising from Probate Cause No. 6 of 2023 at the High Court of Tanzania, Mwanza)*

**IN THE MATTER OF ESTATE OF THE LATE MUSHONI GEORGE MUSHONI  
AND  
IN THE MATTER OF APPLICATION FOR REVOCATION OF PROBATE  
GRANTED  
TO STEVEN CHARLES NGOSHA AND MSAFIRI MUSHONI**

**STEVEN MAHONA MUSHONI ..... 1<sup>ST</sup> APPLICANT  
KILASI KING VICTOR MUSHONI ..... 2<sup>ND</sup> APPLICANT  
TONNYCLIFF MUSHON MAYWILL ..... 3<sup>RD</sup> APPLICANT  
DAVID MPUYA MUSHON ..... 4<sup>TH</sup> APPLICANT  
ROSEMARY UPENDO MASALU ..... 5<sup>TH</sup> APPLICANT**

**VERSUS**

**STEVEN CHARLES NGOSHA ..... 1<sup>ST</sup> RESPONDENT  
MSAFIRI MUSHONI ..... 2<sup>ND</sup> RESPONDENT  
(EXECUTORS OF THE ESTATE OF THE  
LATE MUSHONI GEORGE MUSHONI)**

**RULING**

14/11/2023 & 9/2/2024

**ROBERT, J:-**

This matter pertains to an application brought forth by the applicants, namely Steven Mahona Mushoni, Kilasi Kingvictor Mushoni,

Tonnycliff Mushoni Maywill, David Mpuya Mshoni, and Rosemary Upendo Masalu, challenging the validity of the death certificate and the Will used to grant letters of probate to the respondents in Probate Cause No. 6 of 2023. The applicants allege fraud and irregularities in the grant of probate, specifically contesting the death certificate's authenticity and the inclusion of certain properties belonging to the 5<sup>th</sup> applicant, Rosemary Upendo Masalu, in the deceased's Will. The respondents, in turn, argue that the application is deceitful and contains false statements.

The applicants, who are the biological children and divorced wife of the late Mushoni George Mushoni, were caveators in Probate and Administration Cause No. 06 of 2023 filed by the respondents herein. However, their caveat and joint affidavit were struck out for being tainted with untruths, and the court proceeded to appoint the respondent as Executors of the Estate of the late Mushoni George Mushoni. Consequently, the applicants filed this application challenging the validity of the death certificate and the Will used to grant the letters of probate to the respondents in Probate Cause No. 6 of 2023, alleging fraud and irregularities in the grant of probate.

During the proceedings, the Applicants were represented by Ms. Chali Erasto, learned counsel, while the Respondent was represented by

Mr. Constantine Mutalemwa, learned counsel. The hearing of the application proceeded by way of written submissions, as requested by the parties.

Applicants' submissions were drawn and filed by Rose Edward Ndege, learned counsel who submitted that the death certificate presented by the Respondents for the grant of letters of probate was obtained fraudulently. She contended that the certificate in question (No L158/2023) (annexure RSM-2) was discredited by the issuing authority, the Registration, Insolvency and Trusteeship Agency (RITA), as confirmed in a letter written to the first applicant by the Registrar of RITA at Magu District dated 5<sup>th</sup> April 2023, indicating that the certificate in question was not issued or recognized by their office. She maintained that the authenticity of the death certificate should be proved by the issuing authority, citing the case of **Aful Selemani Maganga vs Amina Hassan Maganga**, Civil Appeal No. 18 of 2020.

Furthermore, the learned counsel asserted that the Will used to grant probate was invalid as it did not include the last child of the deceased, David Mpuya Mushoni, without stating reasons for not doing so. She also argued that properties awarded to Rosemary Upendo Masalu (5<sup>th</sup> applicant) during divorce proceedings were wrongly included in the

Will as they rightfully belong to her per the judgment of the court in matrimonial cause No. 46/2017 between Rosemary Upendo Masalu and Mushoni George Mushoni at Mwanza Urban Primary Court.

She argued that these properties were wrongly listed in the deceased's Will as properties of the deceased subject to inheritance. She maintained that the respondents were aware of the division of the said matrimonial properties prior to the filing of the application for the grant of probate but concealed it from the court. Hence, she prayed for the letter of probate granted to the 1<sup>st</sup> and 2<sup>nd</sup> respondents to be revoked, citing the decision in the case of **Sara Tumvile Kaponola vs Abia Meshack Nsuhuzwa and Another**, Misc. Application No. 41 of 2019.

In response, Mr. Mutalemwa, learned counsel for the respondents, disputed these claims, stating that this application is deceitful in its nature and contains false statements. He submitted that an affidavit tainted with untruths is no affidavit at all and cannot be relied upon to support an application, citing the case of **Mbeya Cement Co. Ltd vs Ambwena Mwamakula & 2 others**, HCT, Commercial Case No. 126 of 2005 and **Ignasio Messina vs Willow Investment SPR & L**, CAT, Civil Application No. 21 of 2001. He pointed out that the 5<sup>th</sup> applicant had sold the said properties to the deceased after being divorced. More particularly,

he submitted that the sale agreement for the landed property (annexure R-3) shows that the 5<sup>th</sup> applicant sold to the deceased the landed property described as plot No. 437, Block A, North Buswelu, CT No. 18493 LR Mwanza, and, therefore, the said property was rightly included in the deceased's Will and forms part of his estate. Therefore, he urged the Court to strike out the applicants' joint affidavit for being tainted with false statements.

Responding on the merit of this application, he submitted that the letter issued by RITA purporting to discredit the death certificate presented by the respondents is a mere conjecture since there is no evidence sworn by the RITA official in support of the present application. With regards to the decision in the case of **Aful Selemani Maganga vs Amina Hassan Maganga** (cited by the applicants), he argued that the court decided in that case that the authenticity of the copy of the death certificate is well established through inquiry for having tendered the copy of the death certificate by the issuing authority and upon being cross – examined.

Coming to the alleged invalidity of the Will due to exclusion of the name of the last child of the deceased, David Mpuya Mushoni, and inclusion of the properties of the 5<sup>th</sup> applicant, the learned counsel

submitted that the said David Mpuya Mushoni, as belatedly named in the submissions of the counsel for the applicants is not expressly so named in the affidavit as the last born of the deceased. He maintained that submissions made by a counsel is not evidence in law hence, the contention that David Mpuya Mushoni was the deceased's last born and unjustifiably excluded from the relevant inheritance is an afterthought. He also faulted the applicants' attempt to amend their cause of action by moving the Court to invalidate the deceased's will which is not amongst the prayers sought in the chamber summons.

As for alleged inclusion of the 5<sup>th</sup> applicants properties in the deceased's Will, he maintained that this is undisputedly stated in the respondents' counter-affidavit that, the property such as Plot No. 437, Block A, North Buswelu, CT No. 18493 LR Mwanza was granted to the 5<sup>th</sup> applicant through the decision of the Court in Matrimonial Cause No. 46 of 2017. However, the properties were later reverted to the deceased based on the agreement between the deceased and the 5<sup>th</sup> applicant. Therefore, he maintained that, the circumstances in the case of **Sarah Tumvile Kaponola** (supra) are distinguishable from this case.



In her rejoinder submissions, counsel for the applicants reiterated her submissions in chief. She argued that the alleged sale of properties, particularly the landed property, is not adequately substantiated.

She argued that the thrust of the applicants' argument lies in the claim that the properties in question rightfully belong to the 5th applicant and should not be part of the deceased's estate. She asserted that the respondents' counter affidavit contains false statements regarding these properties, echoing legal principles that emphasize the importance of truthful affidavits.

Drawing parallels with relevant precedent cases, particularly SARA TUMVILE KAPOMOLA VS ABIA MESHACK NSUHUZWA, the learned counsel urged the court to consider the revocation of the respondents' grant of probate.

Addressing the exclusion of the deceased's last child from the Will, she asserted that the mentioning of the said child's name is not an afterthought. She maintained that the applicants' affidavit mentions the deceased's last child as the legitimate heir. She requested the court's intervention to rectify what she perceived as an injustice.

Before making any determinations on the merit of this application, the court wishes to address the point of law raised by the counsel for the

respondents, contending that the applicants' joint affidavit is tainted with untruths, rendering it unreliable and insufficient to support their application. The respondents rely on the principle that an affidavit tainted with untruths is no affidavit at all, citing the case of **Mbeya Cement Co. Ltd vs Ambwena Mwamakula & 2 others** (supra).

The court is tasked with determining whether the applicant's affidavit can be considered valid in light of these allegations. The court notes the serious nature of the allegations regarding the applicant's affidavit. The principle that an affidavit tainted with untruths is not admissible is well established. However, the court must carefully examine the documents presented by both parties to determine the veracity of the statement in question.

The respondents have provided annexures, such as sale agreements and payment slips, to support their contention that certain properties were sold by the 5<sup>th</sup> applicant to the deceased after divorce. On the other hand, the applicants have raised concern about the lack of specific evidence, such as motor vehicle registration cards and property ownership certificates, in the respondents' counter – affidavit.

The court acknowledges the applicant's concerns. However, it should be noted that while annexure R-2 (payment slip for the



outstanding debt of a tractor) and annexure R-4 (car purchase agreement between the deceased and the third party named AZIZ JUMA SAYUKA) may not indicate directly if the deceased purchased the said properties from the 5<sup>th</sup> applicant, annexure R-3, on the other hand, is a copy of the sale agreement showing that the 5<sup>th</sup> applicant sold the landed property described as plot No. 437 Block A North Buswelu CT No. 18493 LR Mwanza to the deceased. The Court notes that, the applicants' rejoinder does not expressly deny the existence of the sale agreement for the landed property (annexure R-3) between the 5<sup>th</sup> applicant and the deceased. The applicants challenge the legal significance of the document, contending that it does not qualify as a sale agreement due to the absence of a stipulated purchasing price.

Upon consideration of the sale agreement attached as annexure R-3, the court notes that it indicates a purchase price of TZS 5,000,000/=. Despite the applicants' argument that the document lacks clarity on the purchasing price, the court finds that a specific amount is indeed specified in the agreement. Therefore, the sale agreement qualifies as an indication of a transaction between the 5<sup>th</sup> applicant and the deceased for the mentioned property.

Having recognized the existence of the sale agreement (annexure R-3) between the deceased and the 5<sup>th</sup> applicant, the court finds that the applicants' assertions in their affidavit regarding the inclusion of the 5<sup>th</sup> applicant's properties in the deceased's will were not entirely truthful. The mere contention in the rejoinder that the sale agreement omits the purchase price does not negate the fact that the applicants misrepresented the existence of the sale agreement and the alleged inclusion of the 5<sup>th</sup> applicant's properties in the deceased's will.

Given the acknowledgment of the sale agreement (annexure R-3), the court determines that the joint affidavit submitted by the applicants is tainted with falsehoods. This Court is aware that, an affidavit tainted with untruths holds no credibility and cannot serve as a reliable basis for supporting an application, as exemplified in the case of **Mbeya Cement Co. Ltd vs Ambwena Mwamakula & 2 others** (supra).

In light of the compromised integrity of the applicants' joint affidavit, the court deems it necessary to strike it out. With the absence of a credible affidavit, the court refrains from proceeding to make a determination on the merits of the application. Consequently, this application is hereby strike out. Each party is directed to bear its own costs in this matter.

It is so ordered.



*[Handwritten Signature]*  
K. N. ROBERT  
JUDGE  
9/2/2024

