

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

**AT TEMEKE**

**MISC. CIVIL APPLICATION NO. 7451 OF 2024**

*(Originating from an order of this Court on Probate and Administration Cause No. 50 of 2021)*

In the Matter of the Estate of the late

**BASIL PESAMBILI MRAMBA.....DECEASED**

**AND**

In the Matter of application for Review by

**GODFREY BASIL MRAMBA.....APPLICANT**

**RULING**

*Date of Last Order: 03/05/2024*

*Date of Ruling: 20/05/2024*

**M. MNYUKWA, J**

A memorandum of Review was filed in this court, to review its own order in respect of Probate and Administration Cause No. 50 of 2021. This application was preferred under section 78 and O. XLII Rule 1 of the Civil Procedure Code, Cap 33 R.E 2019 (the Code).

To appreciate the gist of this application, it suffices to narrate facts leading to the same. Records shows that, applicant was once appointed by this court as administrator of the estate of the late Basil Mramba. Thereafter,



he was ordered by this court to file inventory and final accounts of the estate, which he did.

After the court was satisfied, of course after the assurance from the applicant's advocate Mrs. Nakzael Tenga, together with the administrator who is the applicant in this application and beneficiaries who entered appearance on 17/8/2023 that, the duties of administration were completed and they had no objection to the closure of the probate case file, the court therefore closed the case file and discharged the applicant from administration duties. Unfortunately, later on the applicant realised that, he did not transfer all the landed properties to respective heirs as the same are still remained in the deceased ownership, also there are monies in the deceased's bank accounts which are yet to be distributed to the named heir(s).

He therefore armed this application with one ground that;

- 1. This court erred in law and fact by marking Probate and Administration Cause No. 50 of 2021 closed and discharged the applicant from his administration duties without satisfying itself if all landed properties and monies in the banks had already been transferred to the heirs.*



He then prayed for an order of this court to vacate its order dated 17<sup>th</sup> August 2023 and allow the applicant to proceed with the duty of administration and finally complete administering deceased's estate by transferring landed properties and monies in banks to respective beneficiaries.

At the hearing, applicant was represented by Hamis Mfinanga learned advocate assisted by Mrs. Nakzael Tenga learned advocate. Application was argued orally.

Supporting the application, learned advocate Mfinanga was very brief as he submitted that, Probate Cause No. 50 of 2021 was closed prematurely without the court being satisfied that, all landed properties and monies were transferred to the heirs. It was his argument further that, it is clear that the same is an apparent error on the face of the record which needs to be reviewed. To support his argument, he cited the case of **Chandrakant joshubhai Patel v R** [2004] TLR 218. He then prayed for this application to be granted.

After considering the submission and the records of this case, I must say this is a rare application, when it comes to the closure of probate case



files. I say so, because, the applicant in this matter is seeking to re-open a probate case which was already been closed.

Basically, as a matter of law, when an administrator is discharged from his administration duties, he can no longer act in that capacity unless, he undergoes again the whole process of appointment as provided by law. But, in this matter applicant is alleging that, his discharge from his duties and a closure of the case file was done prematurely causing an error on the face of record which needs to be reviewed. The issue for determination then is, whether this application has merit.

To start with, the law is very clear that in case of an error on the face of record, an aggrieved party may apply for review. For ease of reference, O. XLII Rule 1 of the Code states;

*1.-(1) Any person considering himself aggrieved-*

*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred;*

*or*

*(b) by a decree or order from which no appeal is allowed,*

*and who, from the discovery of new and important matter or evidence which, after the exercise of due*

*diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.*

Now, having the above provision in mind, and considering this application at hand, it is undisputed that, Probate Cause No. 50 of 2021 was closed and applicant was discharged from his administration duties. Then, the question to be asked would be, whether the same was an error stated under the provision above. The answer to this question is in affirmative, since, the law is expressive that any error resulting in miscarriage of justice, is worth to be reviewed.

Likewise in this case at hand, when an order for closure of Probate Cause No. 50/2021 was issued, beneficiaries were prejudiced of their landed properties and monies which were yet to be transferred to them by the administrator. Essentially, it is a matter of law that, when it comes to deceased's estate, a full administration of the same is of essence. Section 108(1) of Probate and Administration of Estate Act, **Cap 352 R.E 2002**, is


clear that, administrator is required to collect all the deceased's properties and distribute to the entitled heirs. It follows therefore that, when the same is not achieved, the closure of a case file, as in this case at hand, serves no useful purpose.

That being said, I am in agreement with Mr. Mfinanga and hold that, this application has merit and the same is granted. An order of this court of 17<sup>th</sup> August 2023, which closed a Probate Cause No. 50/2021 is hereby been vacated. Applicant (administrator) to resume to his administration duties in respect of transfer of landed properties and monies accordingly. Letters of administration to be re - issued to the applicant who is ordered to accomplish transfer process within six months from the date of this Order.

Having this application arose from Probate, I make no orders as to costs.

Order accordingly.



  
**M.MNYUKWA**  
**JUDGE**  
**20/05/2024**

**Court:** Ruling delivered in the presence of the applicant's counsel.



A handwritten signature in blue ink, appearing to be "M. Mnyukwa", is written above the printed name.

**M.MNYUKWA**

**JUDGE**

**20/05/2024**