

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

PROBATE AND ADMINISTRATION CAUSE NO. 45 OF 2023

In the matter of the estate of the late

SADALLAH PHILIPO NDOSSY.....DECEASED
AND

In the matter of letters of administration *pendente lite* granted to

SOPHIA SADALLAH NDOSSY.....1ST APPLICANT

MACCA SADALLAH NDOSSY.....2ND APPLICANT
AND

In the matter of objection to the inventory of the estate by

SAID SADALLAH NDOSSY.....1ST OBJECTOR

ISMAIL SADALLAH NDOSSY.....2ND OBJECTOR

ABRAHAM SADALLAH NDOSSY.....3RD OBJECTOR

ERICK SADALLAH NDOSSY.....4TH OBJECTOR

RULING

Date of last order: 07/12/2023

Date of Ruling: 09/02/2024

OMARI, J.:

Following the objections on the exhibited inventory being found meritorious by this court on 28 August, 2023 the Administratrixes *pendente lite* (the Administratrixes) were given 30 days from the date of the Ruling to exhibit an amended inventory. Upon experiencing delays at the bank(s), the



Administratrixes' counsel sought for additional time to file the amended inventory. This court ordered the same to be filed by 27 October, 2023 to which the Administratrixes complied and filed an amended inventory on 27 October, 2023.

A hearing was scheduled for 10 November, 2023. At the hearing, the Administratrixes were represented by Messrs. Obeid Mwandambo and Iddy Kassi while the 1st, 2nd and 3rd Objectors had the services of Mr. Elinihaki Kabura and Ms. Joyce Sojo the 4th Objector had the services of Mr. Joseph Paulo.

All of the Objectors' counsel vehemently objected to the inventory being confirmed. The counsel registered an array of reasons as to why the amended inventory should not be confirmed. I summarize them as follows:

1. The inventory has not complied with the requirement of the law and the court's order dated 28 August, 2023 for:
 - (a) It is not a true inventory as it left out some bank account(s) of the companies; that is S.S Concrete, Saba General Enterprises and Star Investment Limited all of which are in the Affidavit for the Application for letters of Administration *pendente lite*.



(b) In the filed inventory, the Administratrixes have only, indicated the balance of the accounts which does not depict the transactions as regards the said accounts. They have not appended bank statement(s) for the accounts.

(c) The Administratrixes were able to file booklets related to taxes from the Tanzania Revenue Authority and other creditors yet were unable to obtain bank statement(s) for the accounts.

2. The Administratrixes have not exhibited through the inventory their hand in the day-to-day operations of the businesses including stocks, income and expenditure as well as cash flow of the companies. Therefore, concealing the true nature of the estate handed to and being handled by them.

It is because of these misgivings that the Mr. Kabura prayed that this court invoke section 49(1) (e) of the Probate and Administration of Estate Act, CAP 352 RE 2002 (the PAEA) and revoke the grant to the Administratrixes for they violated the section when they exhibited an untrue inventory. Furthermore, as per section 107(4) of the PAEA, counsel prayed for this court to order an investigation by the Registrar as regards to what was done during the pendency of the grant. Lastly, counsel prayed for the court to invoke its



powers under section 49(2) of the PAEA to appoint another person to be the administrator or administratrix *pendente lite*. Mr. Paulo on the other hand prayed for the grant *pendente lite* to be revoked and an order be made so there can be an interrogation into the bank accounts named in the Affidavit filed in support of the Application. He also prayed that the accounts be blocked for the pendency of this and any other Application before the court. In reply, Messrs. Mwandambo and Kassi protested that the Objectors' counsel made strong but untrue allegations against their clients. They gave reasons for their argument, which I shall also endeavor to summarize as follows:

1. The bank accounts that have been omitted in the exhibited amended inventory were in the previous inventory, they were objected to by the Objector's counsel thus, their being omitted in the amended inventory. Therefore, it cannot count as concealment on the part of the Administratrixes while in their Affidavit in support of the Application the Administratrixes prayed to manage the accounts of S.S Concrete Ltd at Bank of Africa (Tanzania) Ltd and S.S Concrete Ltd at NBC Bank Ltd and not those of SABA General Enterprises or Star Investment.



2. The lack of bank statement(s) is not concealment as there was no order to file bank statement(s) as regards the account(s) thus no willful omission. Additionally, the letters are what the bank provided and they state why is not a measure of concealment.
3. The prayer to have the account(s) blocked is strongly objected to, if it is sought for the companies account(s) as they do not solely belong to the deceased. Thus, such an order will not be just to the other shareholders as well as the going concern of the companies. Counsel also faulted the prayer for not being supported by a legal provision.
4. The prayer to invoke section 107 (4) of the PAEA is misplaced since there is no evidence of the inventory being intentionally false as the accounts that were omitted were objected to by them thus, their omission and is not in any way concealment.
5. As for the prayer of an investigation of what transpired from appointment up to the time of such order is misplaced as the court has not been properly moved so the prayer should be rejected.
6. The tax liabilities were part of the reason for the Application for the grant *pendente lite* as can be seen in paragraph 13.5 of the Affidavit of in support of the Application thus, the Administratrixes cannot be faulted



for including the demand notices and related documents from the Tanzania Revenue Authority and the other creditors.

Counsel concluded by stating that the amended inventory does not depict ill will or intention to conceal anything as the inventory that was objected to (the first inventory) was rather laden with information that could have been kept from the Objectors, if at all the Administratrixes had ill will. Generally, they prayed for the inventory to be confirmed and the prayers for revocation and those and section 49(2)(e) of the PAEA to be rejected.

In rejoinder Mr. Kabura insisted that the Administratrixes are running the day-to-day of the three companies thus, they have control over all affairs of the companies and not just the accounts listed. As for the prayer regarding the investigation counsel defended this stating that the Administratrixes have not said what was done in the companies. Counsel then questioned why they were refused the bank statement(s) and dismissed the assertion as words from the bar since they are signatories; thus, the concealment as the letter just shows figures not the transactions. Therefore, according to Mr. Kabura the Administratrixes have failed to account for what has been done. On the lack of enabling provisions Mr. Kabura reiterated that it is section 107(4) of the PAEA which in his view gives this court power to issue such order. Ms.



Sojo also sought to rejoin, she explained that the annexed letters (from the bank) defies the essence of an inventory which should have shown the balance at the death, the operations of the administrators and what is the balance. By showing only the balance they concealed the rest of the information, thus raising suspicions.

In rejoinder, Mr. Paulo reiterated his submission in chief and went on to state that failure to attach bank statements makes the application incompetent. He faulted the Administratrixes for being able to collect a booklet of debts from the Tanzania Revenue Authority yet failing to get bank statements. He urged this court to punish the Administratrixes for they have committed a mistake thus, section 107(4) of the PAEA needs to be invoked as they are enjoying the estate while the Objectors are not.

Having gone through the arguments by both sides there is only one issue for my determination; that is whether the inventory exhibited by the Administratrixes is worthy of confirmation by this court. In determining this issue, I shall consider the objections raised by counsel for all the Objectors. And, since the inventory at issue is amended, I shall occasionally refer to the 28 August, 2023 Ruling of this court as regards objections on the inventory exhibited of the same estate.



First and foremost, I would like to briefly comment on Mr. Paulo's remarks that the Administratrixes are enjoying the estate while the Objectors are not. An Administrator *pendente lite* is appointed under the provisions of section 38 of the PAEA which states:

*'Pending the determination of any proceedings touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of such deceased person, **who shall have all the rights and powers of a general administrator other than the right of distributing such estate**, and every such administrator shall be subject to the immediate control of the court and shall act under its direction.'* (Emphasis supplied)

The above section is clear, the powers of an administrator *pendente lite* are limited, they cannot distribute the estate and they are under the direct control of the court. Therefore, it is my considered view that the Administratrixes cannot be enjoying the estate as they have no powers to distribute the same. This can also be discerned from the objections raised to the first inventory as the Administratrixes had sought to administer the estate not part of the *pendente lite* grant. On this question, the 28 August, 2023 Ruling could not have been clearer, I quote from Page 15:



*'Since there is nowhere in his submission where counsel stated the other properties were all part of **the companies (sic)** then it is not only wrong for the Administratrixes to administer the said properties but also wrong to do so under the current grant for pendente lite. Thus, the Administratrixes are to refrain from doing so until otherwise directed by this Court.'*
(emphasis supplied)

This means the Administratrixes are only empowered to administer what the grant *pendente lite* was for. This steers to canvas the issue of the omitted accounts and all other information as submitted by the Objectors' counsel. In the 28 August, 2023 Ruling I stated:

*"In that regard I find the Objector's objections meritorious to the extent that **the inventory needs to be for the properties which concern the grant of letters of Administration pendente lite and to be specific the Companies (sic) as named in the Affidavit supporting the Application**"*

The above demonstrates that it is this court that held that the inventory should concern the specific company as named in the Affidavit supporting the Application. Having said this, I also find it prudent to once again visit the Affidavit. In paragraph 12 of the said Affidavit the Administratrixes averred



why there was need for the continued grant *pendente lite*. I would like to reproduce a passage of what I stated in the 28 August, 2023 Ruling on page 13 through to page 14 for purposes of reflection and context of the current objections as follows:

'Moreover, if one goes through the Affidavit in support of the Application for the pendente lite they would come across various averments that would make any reasonable person believe that the Application was centred on the companies and operations of the same. Even though counsel conveniently omitted reference to paragraph 12 and 15 when he was submitting, I will start with Paragraph 12 which I reproduce in part as follows: "That while the 2nd Pendente lite was issued by Hon. Ismail, J. on 15th February, 2023 in respect of ensuing(sic) the assets constituting the assets for the estate are conserved and business operations are not paralyzed pending hearing and determination..."(emphasis supplied) Paragraph 13 set out the reasons for the Application which I will not reproduce in whole due to length but wish to refer counsel to paragraphs 13.1 and 13.2 then reproduce 13.3 as follows: "That S.S.Concrete Company Limited is required to proceed with its day -to-day activities management, operations payments of bills, salaries



and all other related expenses legally required to run the company and manage contracts that need to be executed and /or renewed.” (emphasis supplied)’

The above depicts that the Application was made and granted for the running of the company as stated in the Affidavit. The said Affidavit in paragraph 13 set out the reasons for the Application as was observed in the passage above. For better clarity it is S.S Concrete Company Limited that the Applicant have referred to in paragraphs 13.2, 13.3 and 13.5 of the Affidavit. Paragraph 13.4 of the Affidavit refers to S.S. Concrete Company Limited where Sophia Sadallah Ndossy is the remaining director and SABA General Enterprises Limited where Macca Sadallah Ndossy is a company secretary. The paragraph contains a statement:

‘they are all signatories of the Companies and they have experience in managing the aforementioned day- to-day operations.’

The above was an elucidation of the then Applicants ability to act as Administratrixes *pendente lite*. In that regard, I am inclined to agree with the Administratrixes counsel that the grant was limited to the running of S.S. Concrete Company Limited and anything related to its day -to-day activities, management, operations payments of bills, salaries and all other related expenses legally required to run the company and manage contracts that



need to be executed and /or renewed as was stated in the Affidavit. The only way the grant would extend to the other companies that is SABA General Enterprises and Star Investment Ltd or any other company and or entity is if it intersects and is related to S.S Concrete Company Limited. Having clarified this, I now move on to the question of the Administratrixes being able to compile a long list of creditors with respective documentation inclusive of the Tanzania Revenue Authority yet were unable to obtain bank statements on the accounts. I shall not belabor on this since the fact that there are creditors the Tanzania Revenue Authority included was deposed in the Affidavit in support of the Application. It is stated in paragraph 13.5 of the said Affidavit that S.S Concrete Company Limited has "several" tax liabilities and there are annexures of various notices and correspondence with the Tanzania Revenue Authority to that effect thus, the tax liability was known and is one of the reasons for the Application for a grant *pendente lite*.

As for the remaining list of creditors which the Administratrixes have included in their amended inventory, I see no fault in doing so as it is part and parcel of the duty and function of any administrator to identify and collect all the property in possession, and all the credits, and also all the debts owing by



any person to which the executor or administrator is entitled in that character as provided for under section 107 (1) of the PAEA. And, this is the essence of the whole exercise of exhibiting an inventory and all ensuing procedures. See also the Court of Appeal decision in **Joseph Shumbusho v. Mary Grace Tigerwa, James Rugaimukamu and David Rugamukamu**, Civil Appeal No. 183 of 2016.

With regard to the missing bank statements and whether that would amount to concealment adequate to warrant a revocation of the grant. The amended inventory has listed bank accounts in the name of the S.S Concrete Company Ltd. The Objectors are faulting the same for not being backed with the bank statement(s) as the inventory is only accompanied by letters from the bank(s) that do not contain the transaction details of the said accounts. The letter dated 24 October, 2023 from the Bank of Africa (T) Ltd is addressed to the court following the Deputy Registrar's letter to the bank and the same goes for the NBC Bank Ltd letter. Both Letters partly explain the Administratrixes' failure to annex the bank statements and in addition Mr. Mwandambo referred to the fact that there was no order for the Administratrixes to append bank statements to the inventory, which if one wants to be pedantic is true as no order was specifically made. And, even if



one was to argue none needed to have been made the Administrators can only supply what is provided by the Bank(s) so if it is faulting them then it should be for not pressing harder for the banks to issue statements or give a reasonable explanation as to why they are unable to, since the letters do provide the balances. The Objectors' counsel are adamant they want the grant revoked as well as an investigation into the Administratrixes actions and for the accounts to be blocked meanwhile.

I shall first deal with the call to invoke section 49 of the PAEA as well as section 107. Section 49 of the PAEA provides the grounds for revocation of an Administrator. Section 49 (1) (e) which the Objectors advocate sought to get the court to invoke states as follows:

*'(1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons— (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.**'*
(emphasis supplied)



Furthermore, the Objectors' counsel sought this court to invoke its powers in section 49 (2) of the PAEA which states:

'Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the High Court may suspend or remove an executor or administrator (other than the Administrator-General or the Public Trustee) 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.' (emphasis supplied)

For this court to act on the Objectors' prayers that the Administratrixes be revoked under this section they need to provide material to satisfy this court that the Administratrixes have done something that warrants revocation as prescribed in under section 49(1) of PAEA or the court is satisfied that there is reason to do so as per section 49 (2) of the PAEA.

This means where an administrator has exhibited an inventory which is untrue in material respect and the court is satisfied that the said inventory is untrue then it may revoke the grant to the said administrator. For clarity, I also wish to refer to section 107 of the PAEA, which provides for the



mandatory requirement to exhibit the inventory and accounts of the estate in the time prescribed. Section 107 (1) provides:

*'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 all the credits, and also all 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.*** (emphasis supplied)

As already stated and as the record depicts that the Administratrixes exhibited an inventory as ordered and after hearing the Objectors objections they were ordered to file an amended inventory which they did. Albeit the said amended inventory lacking in some aspects nothing has been submitted that would serve in convincing this court that the Administratrixes



intentionally submitted an untrue inventory contrary to section 107 (5) of the PAEA.

All the same I agree with the Objectors' counsels that the inventory does not give a full description and or depiction of the company as well as the operations by the Administratrixes as regards the deceased's stake in the said company. While the liabilities have been extensively listed it is not clear what is the deceased's stake in the same is that is; to what extent the assets and liabilities constitute the estate of the deceased Sadallah Philipo Ndossy. However, the lapse cannot, in this particular case, be found to be intentional concealment or intentional exhibiting of false or untrue inventory.

It is also my considered view all of the Objectors' complaints are the whole essence of exhibition of an inventory and the ensuing hearing. See **Joseph Shumbusho v. Mary Grace Tigerwa, James Rugaimukamu and David Rugamukamu** (*supra*). I do not hold the view that every time an administrator exhibits an inventory that is lacking in some aspects whether of form or content then the administrator should be revoked for wilfully omitting to exhibit an inventory or filing an inventory that is untrue in a material respect. In **Abraham Ally Sykes & Another v. Mluguru Paula Sykes & Khwemah Ally Sykes** (administrators of The Late Zainabu



Sykes) & 2 Others, Misc. Civil Application No. 85 of 2020 this court had this to say:

'It should be noted, here and now, that revocation of a grant of probate is such a weighty and agonizing decision that cannot hinge on sketchy or flimsy grounds which are lacking in any concrete proof of the executors 'wrong doing or ill motive that borders on breach of fiduciary duties.'

I am persuaded by the above observation because an inventory filed by an administrator is not *fait accompli*, and if it were there would be no need for exhibition or hearing of the same. In my considered opinion part of the essence of the exhibiting and hearing process is to enable interested parties to raise concerns or objections, if any. Nonetheless, it is also meant to allow a court to make the necessary orders including amendment of the inventory for instance, to facilitate inclusion or removal of a property as the case may be. This is supposed to protect the interests of the interested parties, beneficiaries as well as the estate.

Having discussed as above, I find it prudent to refrain from revoking the Administratrixes at this juncture nor do I see value in appointing another person or adding or co-administrator into an already complicated



administration. The Objectors' counsel have not convinced me it would be in the interest of the estate.

As already stated above, I hold this view since an administrator *pendente lite* has all the rights and powers of a general administrator other than the right of distributing the estate. This means, when the Administratrixes were appointed on 14 April 2023, it was to only for limited purposes as already discussed above, to ensure the part of the estate does not waste from the halt of the company's operations thus, injurious to the estate and beneficiaries.

Mr. Mwandambo and Kassi urged me to dismiss the objections and confirm the inventory as the inventory of the estate of the late Sadallah Philipo Ndossy as it pertains to the grant *pendente lite*. In the interests of the estate and that of the interested parties and or beneficiaries, I also find it prudent not to confirm the inventory for reasons I have already explained. In that regard, I hold the objections meritorious only to the extent explained above.


One of the three conditions for a grant *pendente lite* is that the administrator should be under the direct control of the court. I therefore invoke this court's powers to control the Administratrixes and order that they exhibit another




inventory (amended) that gives full description and depiction of the deceased's stake in the company including but not limited to the assets and liabilities encapsulating what I have described in this Ruling on or before 29 March, 2024. This being a probate matter I make no orders as to costs.

Order accordingly.




A.A. OMARI
JUDGE
09/02/2024

Ruling delivered and dated 09th day of February, 2024 in the presence of Messrs. Obeid Mwandambo and Iddi Kassi appearing for the Administratrixes *pendente lite* who are also present in person, Mr. George Masoud and Ms. Joyce Sojo appearing for the 1st, 2nd and 3rd Objector with the 1st Objector appearing in person, Joseph Paulo appearing for the 4th Objector who is also present in person.


A.A. OMARI
JUDGE
09/02/2024