

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

PROBATE AND ADMINISTRATION CAUSE NO. 55 OF 2021

IN THE MATTER OF THE ESTATE OF THE LATE
ROMAN SAIDI MOSHI

and

IN THE MATTER OF OBJECTION OF INVENTORY AND ACCOUNT OF ESTATE BY
PRIMI ROMAN MUSHI

between

RAJINDER KAUR SINGH.....1ST ADMINISTRATRIX

and

PRIMI ROMAN MOSHI.....OBJECTOR & 2ND ADMINISTRATOR

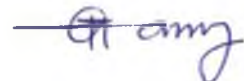
RULING

06th May & 3rd June, 2024

BARTHY, J.:

The deceased, Roman Saidi Moshi, died intestate on the 7th of February, 2019, leaving behind a wife, children, a grandchild, and various assets under his name. This prompted Prisca Roman Moshi and Proches Roman Moshi to petition for letters of administration before the High Court of Tanzania, Dar es Salaam District Registry, and on the 12th of August, 2021, they were appointed as co-administrators.

Later on, Rajinder Kaur Singh who showed an interest to the deceased estate as the woman who cohabited with the deceased for about 30 years lodged an application for revocation of letters of



administration issued to the administrators. Upon hearing the matter, the court then appointed Rajinder Kaur Singh and Primi Roman Moshi as the new administrators of the deceased's estate. In this matter they will be referred to as the first and second administrators, respectively.

In the course of administering the deceased's estate, the first administrator filed an inventory of the estate of the deceased. Upon the inspection of it, the second administrator on behalf of other beneficiaries raised some concerns with respect to the same. This prompted the court to invite the parties to address their objections regarding the same.

At the hearing, the first administrator was represented by Ms. Chresenscia Rwechungura, and the second administrator was represented by Mr. Tairo Innocent.

Arguing for objection, Mr. Tairo stated that the second administrator and the beneficiaries are contesting item No. 1(a) on Plot 372 at Mikocheni, whose title bears the name of Proches Roman Mushi, claiming that it does not form part of the deceased's estate.

Another contested item was listed as 1(b) over Plot No. 300, Block A at Kijitonyama, which is in the name of Proches Roman Moshi, the son of the deceased. Mr. Tairo argued that the title of the said land is in the possession of the first administrator, making it difficult for Proches to access the documents. He sought an order from this court to have the first administrator surrender the documents for inspection.

Additionally, he mentioned other properties listed as items 1(d) and (e), marked as a Plot and farm at Arusha Sombetini and Arusha Mbauda, which were said to be owned by the deceased's other wife in Arusha. The title of ownership was said to be with the first administrator, who used to cohabit with the deceased.

Mr. Tairo further challenged the inclusion of item 1(g) listed as a Plot in Arusha township owned by Tecla Moshi, the deceased's wife, and item 1(h) at Mile 6 in Tarakea Rombo, which is owned by the deceased's younger brother, Gasper Moshi, who lived on the Plot his entire life, sired five children, and was buried there with four of his children. Therefore, Mr. Tairo stated it was improper to include these properties in the list of the deceased's estate.

Furthermore, the objection extended to the item titled "partnership immovable properties," listed as items 2(a) and (b) for Mikocheni Light Area and Plot No. 371 at Mikocheni, which were personally registered in the name of Roman Saidi Moshi. He claimed that the partnership was not established and explained that partnership in land can be in two aspects: joint tenancy (right of survivorship) and tenancy in common (indicating shares of ownership). In this matter, there was no evidence of any form of partnership ownership, and the other partner was not known.



Mr. Tairo also objected to item 10(a) regarding the claim for medical treatment and support, which shows that Tsh. 153,770,000 was used for medical treatment without proof. Item 10(b), the liability for nursing care for physical and neurological support amounting to Tsh. 187,200,000, was not justified by any document.

Additionally, item 10(c), suggesting other medical expenses incurred, was also not supported by any documents. He further stated that the deceased was a retired bank director with various businesses, and his bank statements show that medical bills were paid from his account. He insisted that these debts were not disclosed in family meetings, and the creditors were not identified, thus praying to this court that the contested items be removed from the inventory.

Responding to the objection raised by the counsel for the second administrator, Ms. Rwechungura stated that it is settled law that if the title of the property bears the name of the deceased, it forms part of the deceased's estate, except for Plots No. 372 and 300, which are in the name of Proches Roman Moshi were also said to be the property of the deceased.

She insisted these properties were bought by the deceased when Proches was young, and the title did not state that he was holding those properties in trust for Proches, as the deceased intended them to be his property but used Proches' name for protection under the Arusha

Declaration. She insisted that Proches was never given those properties even after he got married. Regarding the house at Sombetini, she regarded it as being in the deceased's name.

Responding to the partnership properties, Ms. Rwechungura contended that the deceased separated from his wife for about 34 years and lived with the first administratrix, with whom he had one child. During this period, she contributed towards the acquisition of two Plots. Further to that Ms. Rwechungura insisted that her contributions should be considered and that this was the reason she was appointed as administratrix of the deceased's estate.

Regarding the objection over medical expenses, Ms. Rwechungura counter submitted that the deceased started to fall sick in the year 2006, suffering from Parkinson's disease. The first administratrix had to hire a nurse to take care of him and raise funds for his treatment. She further stated that the bank accounts of the deceased were intact as the medical bills were paid by the first administratrix, the circumstances making it difficult to keep receipts.

She suggested that the court should consult the hospital for proof. In conclusion, she prayed for all listed properties in the inventory to form part of the deceased's estate.

In his rejoinder submission, Mr. Tairo reiterated his initial arguments, which will not be reproduced here.

Before delving into the determination of the objections raised regarding the filed inventory, I wish to state at the outset that, once the court appoints an administrator or administratrix of a deceased estate, he or she is entrusted with specific duties as outlined under Section 108 of the Probate and Administration of Estate Act, Cap 352, R.E 2019. This provision mandates the administrator/administratrix with the following noble duties;

*"The executor or administrator shall, with reasonable diligence, **collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of administration, and distribute the estate to the persons or for the purposes entitled to the same or to trustees for such persons or for the purposes entitled to the same or to trustees for such persons or purposes or in accordance with the provisions of this Act, as the case may be**". [Emphasis is supplied].*

In that context, it is evident that only the deceased's assets, interests, or shares will be included in the estate for the purposes of administration. This means that any property, investments, or other financial interests solely owned by the deceased at the time of death will be managed and distributed according to the terms set forth in the





probate process. Other properties or interests not owned by the deceased will not be considered part of the estate.

Having heard the arguments from both sides and gone through the titles provided to the court, it is now the court's responsibility to determine whether or not the contested properties should be included in the deceased's estate.

Mr. Tairo had argued that the purported partnership landed properties and medical expenses are lacking proof, thus should not form part of the estate. he also asserted that there were landed properties that were not owned by the deceased and also not forming part of his estate. In contrast, Ms. Rwechungura contended that all listed properties in the inventory should be included in the estate for administration.

I will address each contested item/property for a clear determination. I will begin with item 1, followed by item 2, and finally item 10.

The objected properties listed under item 1 include immovable properties, specifically:

- Item 1(a): Plot 372, Mikocheni Medium Density
- Item 1(b): Plot 300, Block A, Kijitonyama
- Item 1(d): Plot and farm at Arusha Sombetini
- Item 1(e): Plot at Mbauda
- Item 1(h): Plot and farm at Maili Sita, Tarakea Rombo

With respect to property on item 1 of the inventory, Mr. Tairo argued that item 1(a) (Plot 372 at Mikocheni) and item 1(b) (Plot 300, Block A at Kijitonyama) are registered in the name of Proches Roman Mushi, the son of the deceased. Ms. Rwechungura presented the certificates of title for these properties. Indeed, Plot 300, with certificate of title No. 32265, and Plot 372, with certificate of title No. 31727, bears the name of Proches Roman Mushi.

It is an established practice that in probate matters involving land disputes, the court does not directly determine land ownership but may state who appears to be the owner based on the title. In the case of **Amina Maulid Ambali & 2 Others vs. Ramadhani Juma**, Civil Appeal No. 35 of 2019, the Court of Appeal at Mwanza held that;

"In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained". [Emphasis is supplied].

On page 7 of the same decision, the Court case continued to state that;

*"In the case of **Leopold Mutembei** (supra) cited by Mr. Mutalemwa, the Court cited with approval the following excerpt from the book titled **Conveyancing and Disposition of Land in Tanzania** by Dr. R.W. Tenga and Dr. S.J. Mramba, Law Africa, Dar es Salaam, 2017 at page 330: -*




*"the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. **Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title**". [Emphasis is supplied].*

In addition, the provisions of Section 35 of the Land Registration Act, Cap 334 R.E 2019, clearly state that the owner of landed property must have a certificate of title. Section 40 of the same Act indicates that the certificate of title will be used as evidence. As I reproduce section 40 for clarity it states:

"A certificate of title shall be admissible as evidence of the several matters therein contained."

Based on the above observation, the names contained in the certificate of title were of another person, not the deceased. This court cannot consider the intention of the deceased that he did not intend to pass the title to Proches Roman Moshi, his son, as the registered title was not changed by the deceased himself.

Turning to item 2(a) and (b) of the inventory, these relate to properties claimed to be partnership properties, specifically the property



at Mikocheni Light Industrial Area and Plot No. 371 Mikocheni Medium Density.

Mr. Tairo argued that these properties belonged to the deceased, as evidenced by the titles, and there was no proof of partnership nor indication of any partner. Conversely, Ms. Rwechungura contended that the first administrator, being the long-time companion of the deceased, had invested in those assets as a companion partner and is therefore entitled to a share.

Since the titles of these properties are in the name of the deceased, the first administratrix cannot claim joint ownership of the said property. This principle was stressed in the case of **Sprendors T. Ltd vs David Raymond D'Souza & Another** (Civil Appeal No. 7 of 2020) [2023] Court of Appeal at Dar es salaam, TZCA 23, where the court observed that the person holding the title is considered the lawful owner.

Should the first administratrix wish to prove any form of contribution to the assets acquired under the deceased's name, the appropriate avenue is not the probate and administration cause. This principle was well stated in the case **Stephen Maliyatabu & Another v. Consolata Kahulananga** (Civil Appeal No. 337 of 2020) Court of Appeal at Tabora (TanzLII) [2023] TZCA 132. Also, it was stated by this court in the case of **In the Matter of the Estate of the Late Tumsifu Elia Sawe And**

In the Matter of Application for Letters of Administration without Will by Agness Tumsifu Sawe and Jubilate Tumsifu Sawe And In the Matter of Caveat by Tumainiel Tumsifu Sawe (Probate And Administration Cause No. 83 of 2020) TanzLII [2023] TZHC 20543, in a decision by Rwizile, J, which I am persuaded to accept. This court held that;

it is now settled that when one spouse dies, intestate as in this case, all assets falling in his hands can only be dealt with under the laws of succession. I have no doubt in my mind, the Law of Marriage Act ceases to apply. The reasons for holding so are simple, one what constitutes matrimonial assets is defined by the Law of Marriage Act to include the properties jointly acquired by the spouses during the pendency of their marriage under section 114. Two, for the properties to be divided between the spouses, each spouse has to prove and establish the extent of her contribution towards the acquisition of the same as in the case of Bi Hawa Muhamed vs Ally Seif [1985] TLR 32. Third, and perhaps more importantly, in the absence of one spouse, there won't be evidence to establish the contribution of the other deceased spouse, and fourth, when one spouse dies, the matrimonial properties jointly acquired and those in the name of the deceased definitely fall in the estate of the deceased to be distributed to the deceased beneficiaries...

Without any document to prove joint ownership of the two properties, the court finds that the titles presented are sufficient proof

that they belonged to the deceased. Hence, they do form part of his estate for administration.

The other properties objected to in item 1 concern the plot and farm at Arusha Sombetini and Arusha township. These properties should similarly be included in the estate since their titles are in the name of the deceased. As such, they clearly form part of the deceased's estate.

As for the plot and farm at Maili Sita Tarakea Rombo, there is not enough proof from either side regarding its ownership. Whether it was owned by the deceased or his younger brother, who lived there and was buried there along with his children, should be determined by the appropriate tribunal. Without sufficient evidence, it cannot be said to form part of the deceased's estate.

Turning to the objections related to item 10(a) to (c), which cover various medical expenses:

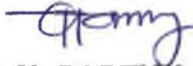
The inclusion of medical expenses at this stage is premature and therefore the objection is misguided. According to Section 107 of the Probate and Administration of Estates Act, the administrator is first required to file a list of all assets collected in the form of an inventory. Subsequently, the administrator must file the final accounts of the estate, detailing the true nature of the accounts and specifying how any liabilities will be paid. This must be supported by evidence of the liabilities or claims from creditors. Thus, it is premature to address


medical expenses before the final accounts are filed and properly documented.

Having said so, I hereby order that the filed inventory be amended to exclude properties not owned by the deceased and not in the name of the deceased. If there is contention as to ownership, the parties are free to bring the matter before the appropriate authorities.

It is so ordered.

Dated at Dar es Salaam this 3rd day of June, 2024.


G. N. BARTHY
JUDGE



Delivered in the presence of the first administratrix and second administrator in person, Ms. Chresencia Rwechungura advocate for the first administratrix and Mr. Tairo Innocent advocate for the second administrator.