

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

TEMEKE HIGH COURT SUB – REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO 4941 OF 2024

(Originating from Probate and Administration Cause No. 70 of 2023)

In the Matter of the Estate of the Late

SHANTILAL KARAMCHAND KANJI.....DECEASED

BETWEEN

In the Matter of Application for revocation of Letters of Administration by

CHANDRIKA SHANTILAL CHOHAN.....APPLICANT

AND

VIJAY SHANTILAL CHOHAN *(Administrator of the Estate of the late*

Shantilal Karamchand Kanji).....RESPONDENT

RULING

19/04/2024 & 04/06/2024

M.MNYUKWA, J.

This application was filed under certificate of urgency, and was preferred under section 3 and 49(1) (b) and (c) of the Probate and Administration of Estate Act, Cap 352 R.E 2002 (**the Act**) and Rule 29(1) of the Probate Rules,



GN No. 10/1963 (**the Rules**). In the chamber summons, applicant is seeking for orders that;

1. *This honourable court be pleased to revoke letters of administration granted to Vijay Shantilal Chohan the respondent with respect to the estate of the late Shantilal Karamchand Kanji.*
2. *This honourable court appoint the applicant as administratrix of the deceased's estate.*
3. *Respondent be condemned to pay costs of this application.*
4. *Any other relief(s) this honourable court deems fit and just to grant.*

The main complaints of the applicant as averred in her affirmed affidavit are two; **first**, she averred that, she was not included in the petition as an heir to the deceased's estate and that she did not give consent to the filing of the same since the respondent did not seek her consent, as stated under paragraph 5 of the affidavit. **Second**, she claimed that, applicant has fraudulently obtained letters of administration by concealing the fact that, a property subject of his administration was solely owned by the deceased while he was aware of the fact that, the same was owned by the deceased with another person, one Bwagwaji Karamchand Kanji as occupiers in common as per paragraph 6, 7 and 10 of the affidavit. But, these averments



were disputed by respondent who contended that he listed the applicant in the petition and account of estate which he filed in court.

Before going further, I think, I should address on the rejoinder affidavit of Denis Ukaka Mpwenku which was filed on behalf of the applicant. With all due respect I think, the same was improperly filed as rejoinder affidavit, as it ought to be filed with the application. I am convinced to hold so due to the fact that, filing it as rejoinder affidavit denied respondent his right to respond on the same. That being said, the said affidavit is therefore unworthy of consideration in this matter, it is hereby struck out of the record.

Now, coming to the gist of this application, it can be appreciated if background facts leading to the same are narrated. For what it is worth, I shall briefly narrate what has transpired in the records. It is in record that, respondent was appointed by this court and was granted letters of administration in respect of the deceased's estate. And the property which formed part of the deceased's estate as stated in the petition is one house with 4 rooms and 7 shops located at Plot No. 1432/23 with title No. 239, ID 12344 in Ilala Municipal Council, Dar es Salaam. In the petition, respondent listed 8 survived relatives of the deceased, of which applicant was not listed. As I stated earlier on, respondent was granted letters of administration, and



he later on filed inventory and account of estate which were yet to be confirmed due to this application at hand.

At the hearing parties were represented, applicant enjoyed legal services of Prof. Edward Hosea, learned advocate who was assisted by Caroline Hosea and Dennis Ukaka, both are counsels, while Mr. Alpha Mchaki rendered his legal services for the respondent. Hearing was done by way of written submission.

Supporting the application, learned advocate for applicant adopted the applicant's affidavits and his submission was not far from what applicant contented in her affidavit. It was his argument that, respondent concealed material facts during his petition for letters of administration for excluding her as one of the deceased's legal heirs, and his failure to inform the court that, the property subject of his administration was owned by two people as occupiers in common with equal shares. To buttress his argument, he cited the cases of **Re Late Clement Norman Mfuko**, Misc. Civil Application No. 593/2021 HCT, **Cathbet Stanley Kipuyo vs Suzan Boniface Mdesa**, Misc. Application No. 338/2021, HCT and **Re Estate of Late Selemani Omary Kipwimbwi**, Misc. Civil Application No. 783/2016 HCT.



The learned counsel for applicant went on to submit that, respondent failed to seek applicant's consent contrary to Rule 71 of Probate Rules. His contention was, since the law mandates for consent of heirs to be procured first before filing petition in court, it was therefore the learned advocate view that, respondent ought to have procured the applicant's consent which he failed to do. Therefore, learned advocate argued that, since respondent did not adhere to the requirement of the law, he was not a fit person to be granted letters of administration, henceforth, letters granted to him has to be revoked. To support his argument, he cited the cases of **Sabina Sendama Ntembanda vs Happy Ibrahim Ntembanda**, Probate and Administration Cause No. 3 of 2023 HCT, **Tabu Ramadhani Mattaka vs Fauziya Haruni Saidi Mgaya**, Probate and Administration Cause No. 15/2017 HCT. He then prayed for the application to be allowed and applicant to be appointed as administrator of the deceased's estate.

Disputing the application, Mr. Mchaki the learned counsel argued that, respondent filed an affidavit in accordance with Rule 72 of Probate Rules when he failed to procure applicant's consent. He therefore said, a fact by applicant that her consent was not sought is unfounded.



Learned counsel argued further that, since applicant preferred this application under section 49(1) (b) of the Act, she ought to have proved the same beyond balance of probability as required in normal civil suits. According to the learned counsel, since fraud and concealment was alleged by the applicant, particulars of the same were ought to be stated and proved as per section 110 (1) (2) of the Evidence Act, Cap 6 R.E 2019. Henceforth, failure to do so, it renders this application with no merits. To support his argument, he cited the cases of **Ratilal Gordhanbhai Patel vs Lalji Makanji** [1957] E.A 314, **City Coffee Ltd vs The Registered Trustee of Iloilo Coffee Group**, Civil Appeal No. 94 of 2018 CAT and **Twazihirwa Abraham Mgema vs James Christian Basil** (*as Administrator of the Estate of the Late Christian Basil Karia, Deceased*) Civil Appeal No.229 of 2019, CAT at Dar es Salaam. He then prayed for the application to be dismissed to allow the respondent to discharge his duties.

In rejoinder submission, learned advocate reiterates what he submitted in chief.

Having considered the submissions of the parties and the records, the only issue for consideration and determination is whether this application is merited.



To begin with, since this application was preferred under section 49 (1) (b) and (c) of the Act, for clarity and ease of reference, the same is herein reproduce;

(1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons–

(a) N/A

(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

Guided by the above provision, it is in record that applicant is complaining that, respondent when petitioned for letters of administration he did neither include her as an heir to the deceased's estate nor sought her consent. While on the respondent's side, this fact was disputed by respondent who alleged that, applicant did not show cooperation due to her denial to give consent when sought by him. According to the learned advocate for the respondent, that was a reason respondent filed an affidavit as required under Rule 72 of Probate Rules.



On my part, this contention between the parties led me to peruse the record where, I realized that, it was true that applicant was not listed in the petition as among the relative or beneficiaries of the deceased. Surprisingly, respondent filed an affidavit under Rule 72 of Probate Rules where he mentioned the applicant being among the beneficiaries who refused to give consent.

As a matter of law, consent of heirs is a mandatory requirement for whoever filing a petition for letters of administration in court. The law is expressive that, petitioner has to seek consent of heirs before filing a petition. Rule 39 (f) and 71 of the Rules are to that effect. And as far as this requirement is concerned, I humbly think seeking consent depends on who was mentioned as deceased's relative or beneficiaries in the petition, as required under section 56(b) of the Act. Therefore, since applicant was not mentioned in the petition, an inference can be made that, even her consent was not sought. Worse still, respondent in his counter affidavit insisted that he mentioned applicant in his petition while he knows by the fact that he didn't. Yet, records are silent as to whether failure to include applicant in the petition was by accident or intention, and it is unfortunate that even respondent did not address the same in his pleadings. Therefore, considering what I have stated above, it is without doubt that respondent's petition for



letters of administration contravened section 49(1) (c) of the Act when respondent alleged in his affidavit that, applicant refused to give consent while he did not mention her as an heir to the deceased's estate.

Another complaint by the applicant was the fact that, respondent concealed an information that the property forming part of the deceased's estate is owned by two persons as owners in common. Learned advocate argued that this information was material to the court which respondent ought to have been disclosed. It is unfortunate that, respondent and his learned advocate did not submit on the same, which leaves me with a view that, this information was known to the respondent who refused to disclosed in his petition nor in this court.

Holding so, I am convinced by annexure CSC – 2 which is a certificate of occupancy of Plot No. 1432/23 of which the deceased and Baghwanji Karamchand Kanji are owners in common with equal shares. So technically, a house stated in the petition being owned by the deceased is in fact not solely owned by him rather he owned 50% of the same. While the other half is owned by Mr. Baghwanji Karamchand Kanji who is also a deceased. That being the case, I am in agreement with the learned counsel for the applicant that this was a material fact ought to be disclosed by the respondent during



his petition for letters of administration. Failure to do so contravened section 49(1) (b) of the Act. And to be clear, with all due respect to the learned counsel for the respondent, I humbly think this subsection (b) gives two scenarios, which are, *first* if the grant was obtained fraudulently by making false suggestion and *second*, if the grant was obtained by concealing from the court something material to the case.

Therefore, a word 'or' in the provision above plays a disjunctive role, whereby, either of the scenarios stated can be established in court. Contrary to what Mr. Mchaki's submission on the same suggested. And as far as this case is concerned, applicant's contention is based on the second scenario. It is therefore that this complaint has merit.

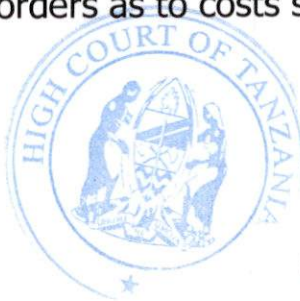
Having said what I have said above, it is with no doubt that all these omission by the respondent during the petition for letters of administration went to the root of the case, since the provisions which laid the foundation of what a petition should consists or contains are in a mandatory nature of which, none adherence to the same renders a petition defective. Reference is made under section 56 (1) of the Act and Rule 39 and 72 of the Rules. Therefore, this application is allowed. Letters of administration granted to



the respondent are hereby revoked. The same should be returned to the Registrar within 7 days from the date of this Ruling.

Before I rest my pen, I must say, I am aware by the prayer of the applicant that she should be appointed as administrator of the deceased's estate. I refrain myself from granting this prayer at the moment due to the fact that, she stated in her affidavit that, she has been living in the said house for 24 years now, I wonder why she did not petition for letters of administration for all those years. And unfortunately, reasons for this question were not established by the respondent. However, if she wishes to petition, she has to file a fresh petition. Otherwise, anyone with interest should file a fresh petition.

I make no orders as to costs since parties are relatives. It is so ordered.




M.MNYUKWA

JUDGE

04/06/2024.

Court: Ruling delivered in the presence of the parties and the counsels of the applicant.


M.MNYUKWA

JUDGE

04/06/2024