

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

**PROBATE AND ADMINISTRATION CAUSE NO. 223 OF 2022**

In the matter of the estate of the late

**CHARLES AUGUSTINE NYANSWE .....DECEASED**

**AND**

In the matter of an application for revocation of the  
letters of administration granted to Veronica Charles Nyanswe by

**KELVIN CHARLES NYANSWE .....1<sup>ST</sup> APPLICANT**

**HENRY AUGUSTINE NYANSWE .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**VERONICA CHARLES NYANSWE.....RESPONDENT**

**RULING**

Date of last order: 24/04/2024

Date of Ruling: 30/05/2024

**OMARI, J.**

Vide a Chamber Summons brought under section 49(1) of the Probate and Administration of Estates Act, Cap R.E 2002 and Rule 29 of the Probate Rules GN. No. 10 of 1963 the Applicants Kelvin Charles Nyanswe and Henry Augustine Nyanswe prayed to be heard on an application that this court be pleased to revoke the appointment of Veronica Charles Nyanswe as the

administratrix of the estate of the late Charles Augustine Nyanswe. The Chamber Summons is supported by an Affidavit of the Applicants. In the said Affidavit, the Applicants *inter alia* state that the 2<sup>nd</sup> Applicant was chosen by the clan/family members meeting to the administrator of the estate of his deceased brother. To that end he instituted proceedings for letters of administration in 2019 which did not materialize. The Respondent went ahead and petitioned and was granted letters of administration in Probate and Administration Cause No. 223 of 2022 despite not being the legal administrator so she wilfully, without reasonable cause fraudulently acquired the grant to be an administrator by forging minutes of a family meeting and the Death Certificate of the Deceased. They further deposed that the 1<sup>st</sup> Applicant was never informed about the proceedings rather he was given an order from the court. The Applicants further depose that the Respondent distributed the estate of the deceased for her benefit leaving out legal heirs. And, that she did not mention/include other properties belonging to the deceased including a farm in Kisarawe, Pwani a motor vehicle, make Toyota Noah with Registration No. T456 DCF which were sold by one of the deceased's wives before probate proceedings were initiated. This, according to the Applicants leaves doubts as to her intention towards the estate and

the heirs. That, the Respondent also included as part of the "declined" business Jamaica Pub and distributed the same to 1<sup>st</sup> Applicant who is the deceased's eldest son. The Respondent has also humiliated by chasing him out the 1<sup>st</sup> Applicant who was appointed the caretaker of the house at Mabibo charged to collect rent and distribute the same to the heirs and family members up to when the Respondent sold it.

The Respondent contested the Application through a Counter Affidavit to wit the Applicants also filed a reply. By order of this court the Application was heard by way of written submission and the parties complied with the scheduling order.

The Applicant's submissions were drawn and filed by Clevery Oswald Mlowe a learned advocate from Cosmic Attorneys while those of the Respondent were drawn gratis by Felister Rugazia a learned advocate from the LHRC Legal Aid Clinic.

To kick off his submission Mr. Mlowe gave an introduction of the Application then segued to the arguments and legal precedents. He pointed out that the consent of the 1<sup>st</sup> Applicant was not lawfully obtained neither was he made aware of the proceedings as provided by section 53,55, 56 and 57 of the

PAEA and Rule 39 (f) of the Rules. Counsel cited the case of **Limi Mussa Mbogo and 2 Others v. Christina Alexander Ntonge**, Misc. Civil Application No. 211 of 2020 wherein it was stated that consent of the heirs is a mandatory requirement subject to Rule 71 and 72 of the Rules. Counsel stated further that section 49 91) (a) (b) (c) and (d) of the PAEA provides for grounds for revocation of administrators, which according to him the Respondent's grant falls within the grounds mentioned for revocation. He further argued that in addition to lacking consent, the minutes attached to the Petition were not the ones obtained in the meeting of the family. To this cement his argument, he cited the case of **Radhia Hussein v. Abdul Kaisi**, Administration Cause No. 41 of 2022 TZHC 15438.

Counsel then submitted that the Respondent requested for another death certificate without consultation of family members while the 2<sup>nd</sup> Applicant had already procured the deceased's Death Certificate since 2018. Mr. Mlowe went on to reiterate the grounds as they were already stated in the Applicants' Affidavit and concluded that based on the strength of his submission he prays for the grant to the Respondent to be revoked.

When it was her turn Ms. Rugazia began with an elucidation of Rule 71(1) and 72 (1) of the Rules and explained that the Respondent had adhered to

the requirements of Rule 72(1) when she Petitioned for the letters of administration. She further went on to explain that in accordance with section 33(1) of the PAEA the Respondent is entitled to Petition for letters of administration of her late father's estate albeit not being appointed by the family meeting to petition. Moreover, she did so, after the person nominated to do so failed. Counsel referred to the case of **Angela Philemon Ngunge v. Philemon Nguge**, Probate Appeal No.2 of 2020 whereby this court observed that minutes of a family meeting is a matter of practice not law. She concluded her submission with a prayer that the Application be dismissed for being bad under the law.

Mr. Mlowe's rejoinder challenged Ms. Rugazia's reliance on Rule 72(1) stating that the Affidavit was not attached yet there was an unsigned consent form thus it is within the confines of 49(1) (b) and (c). He also brought up the requirement of a General Citation under Rule 73, 74 and 75 stating that it was for general awareness of the proceedings. Mr. Mlowe then emphatically stated that the Respondent is a married woman who belongs to another family, she forged the clan meeting minutes and got another Death Certificate showing she intentionally did a fraudulent act to obtain the letters

of administration for the late Charles Augustine Nyanswe contrary to section 49(1) (b) of the PAEA.

Having gone through the Affidavits and submission of the parties it is opportune for me to determine whether the Application is meritorious or otherwise and the ensuing way forward. Before delving into the Application's merits I shall commence with how the parties ended up at this Application by briefly explaining the Respondent's grant and the resultant proceedings.

The record depicts that on 04 November, 2022 the Respondent filed a Petition for grant of letters of administration. The said Petition is indeed annexed with a Certificate of Death. In paragraph 2 of the Petition, the Respondent stated her reasons for delaying in Petitioning for the letters of administration being that her elder brother had hold of the Certificate of Death and was refusing to cooperate with the family members due to the fact that he was using the properties left by the deceased for his own benefit. Further, the Petition stated the deceased left several heirs including the 1<sup>st</sup> Applicant. The Petition also enlists the estimated value of the estate including a 3 acre plot at Kisarawe and a vehicle (Noah). The Petition also stated that on 23 March, 2022 the family met and the Respondent was "appointed" to petition for letters of administration of the deceased's estate. Lastly the said

Petition in paragraph 10 stated there have been no proceedings for the grant of letters initiated anywhere else. Other than the Administrator's Oath as required by section 66 of the PAEA and Rule 65 of the Rules, the Affidavit accompanying grant of a sole Administrator under Rule 32 of the Rules, Affidavit as to the deceased's domicile as per Rule 64 of the Rules, the Administrator's Bond with sureties under section 67 of the PAEA and Rule 66; the Certificate as to the Surety's financial position as per Rule 69 of the Rules the Petition was accompanied by the consent of Augustino Charles Nyanswe, an Affidavit explaining the delay to petition for grant naming the 1<sup>st</sup> Applicant who withheld the Certificate of Death.

Further, the Petition is accompanied by an Affidavit of the Petitioner stating why there is no consent of an heir (the 1<sup>st</sup> Applicant). The said Affidavit states that the Respondent could not obtain the consent of the 1<sup>st</sup> Applicant who is one of the beneficiaries. It also states that the Respondent sought the assistance of the street chairperson (sic) but the 1<sup>st</sup> Applicant refused to grant consent. The Petition is also accompanied by the minutes dated 23 March, 2022.

An order for publication of a general citation was made on 15 November, 2022 and a hearing date was fixed. The said citation was published in the

Government Gazette No. 48 published on 16 December, 2022 at page 171 and Mwananchi newspaper of 08 February, 2022 at page 24.

At the hearing, the Respondent informed the court that the 1<sup>st</sup> Applicant had refused to grant consent and prayed for the same to be dispensed with. This court heeded to the prayer and did away with the requirement as per Rule 72 of the Probate Rules. Having complied with the legal requirements the Respondent was appointed on 24 February, 2023 and was *inter alia* ordered to file an inventory of the estate and a hearing date for the same was fixed. The 1<sup>st</sup> Applicant was absent on the day of the said hearing, the court was informed that he was aware of the proceedings but refused to attend. Upon scrutiny the inventory filed was found to be inadequate and an order for an amended inventory and accounts of the estate was entered and another hearing date was fixed. At the said date the amended inventory and accounts of the estate were confirmed and the Respondent began the procedures for transfer of the estate to the heirs (including the 1<sup>st</sup> Applicant) a process she was still proceeding when the Applicants brought this Application for revocation.



I have laboured to narrate what transpired so that there is better context which making it simpler to deal with the grounds as presented by the Applicants.

Simply, the Applicants want this court to revoke the grant given to the Respondent as per the provisions of section 49(1) (a) of the PAEA which states a grant may be annulled if it was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case. The Respondent is insisting that she did nothing wrong.

I shall begin with the issue of the minutes so that it is out of the way. The Applicants are claiming that the Respondent did not attach the original minutes of the 2017 meeting that took place after the burial and "appointed" the 1<sup>st</sup> Applicant, she instead attached the minutes of a later meeting which "appointed" her to petition for grant of letters which she did knowingly she is not the legal administrator. The Applicants did not present any evidence that the 23 March,2022 meeting never took place and therefore the Respondent conjured up the same then it is not this court's place to say they were forged. One can argue that the Respondent put herself on the edge of a precipice for not including the minutes that nominated the 2<sup>nd</sup> Applicant which the Applicants are arguing are the only valid minutes in so far as the

estate of the late Charles Augustine Nyanswe is concerned. This argument would be flawed in at least two ways. The first is that time and time again this court has held there is no legal requirement for minutes of a family meeting for a person who is petitioning for letters of administration. It is rather a matter of practice; see this court's decision in **Elias Madata Lameck v. Joseph Makoye Lameck**, Probate and Administration Appeal No. 10 of 2019 in which it was held that minutes of the clan meeting are an indication of consensus of the said family or clan but not a legal requirement for appointment of an administrator. The same position has been taken by this court in the cases of **In the matter of the estate of the late John Peter Silveira and in the matter of a Petition for Grant of Probate of the late John Peter Silveira by Francisca Haruweru Silveira, and in the matter of a Caveat by Gerald Francis Silveira and Solomon John Silveira**, Probate and Administration Cause No. 23 and 24 of 2019 and in **Adelicious Crispine Ngowi v. Ibrahim Mohamed Nawab** (Civil Appeal No. 17 of 2022) [2023] TZHC 17 (24 July 2023).

The second flaw is based on the fact that while it may be true that the 2<sup>nd</sup> Applicant was nominated by the family meeting. However, he did not Petition and get appointed to administer the estate of the late Charles Augustine

Nyanswe. What is annexed to the Applicants' Affidavit is Primary Court Mirathi Form No. II which is a citation for publication. He, in the Affidavit and submission only states that his application did not materialize without providing any further information for this court.

In other words, there was no Administrator appointed at the time the Respondent petitioned and was appointed. This negates the argument that it was the 2<sup>nd</sup> Applicant who was appointed as administrator. In my considered opinion a person who was proposed to Petition for grant letters of administration by a family meeting, yet took no action or was unsuccessful cannot use that fact as a defence against another person who took the legal steps to ensure the estate of the deceased is administered. The minutes of a family meeting do not in their own accord, give anyone power to act as administrator of the estate.

As regards the Certificate of Death of the deceased Charles Augustine Nyanswe the Applicants are complaining the Respondent had ill intention to go process a second Certificate of Death while there was an original one issued on 09 May, 2018. In her Petition the Respondent spoke to the Certificate of Death being a cause of delay since the 1<sup>st</sup> Applicant was withholding the same. This is augmented by Affidavit to explain the delay

which also gives the same reason. What the Respondent should be faulted for, in my view is the fact that she did not disclose that we went ahead and sought another Certificate of Death which would have suggested that the one she has is a duplicate.

In the instant case, the same is not marked duplicate by the issuing authority however, that is a discussion for another time. The Applicants have not provided any material to show the said Certificate of Death is a forgery or not issued by the relevant authority they are just complaining that she acquired the same without communicating with her relatives thus, did so fraudulently. At the same time, they have not given any reason for withholding the Certificate of Death and or not petitioning for grant of letters of administration. There being no evidence that she got the certificate by way of fraud I see this as an insufficient cause for revoking the grant since even if she had not made the mistake done by many and gotten a second certificate she could have invoked the provisions of Rule 63(3) of the Rules. Otherwise, the Applicants are asking this court to go into the processes and procedures for obtaining a duplicate certificate, the labelling and authentication of the same whilst not providing material for it to do so other

than the cause of death, as already stated this is a discussion for another day and forum.

This leaves the issue of the 1<sup>st</sup> Applicant being unaware, the properties that have been left out and the allegation that the Respondent is a married woman and belongs to another family.

As already stated, the 1<sup>st</sup> Applicant withheld his consent and even when the Respondent sought assistance from the local government he did not falter. The *Mtaa* Chairman wrote "amekataa" signed and stamped the said consent form.

The Respondent was forthright that the 1<sup>st</sup> Applicant had not consented to her application for grant of letters and the Petition was not published. I shall not go into the allegation of not having the Petition published by way of a general citation for it is not only an afterthought but also a misrepresentation since as already stated the Petition was published as per the law.

The 1<sup>st</sup> Applicant is complaining that he was unaware of the Petition and ensuing grant for he only received a court order. He has not explained when he received the said order, likewise what steps he took to approach the court as regards the proceedings after receiving the said order. The first time he

came to court was to prosecute this Application and not to follow up on whatever order of the court that he is alleging to have received from the Respondent.

At this juncture, I wish to digress and comment on why the law as regards consent is important but also has exceptions. The said laws are not so that a person entitled to the estate as an heir or beneficiary can withhold consent at whim because they are in a way benefiting from the estate not being legally administered. The 1<sup>st</sup> Applicant through paragraph 12 of the Affidavit deposed that he, as "caretaker" has been collecting rent from one of the deceased's properties and supposedly distributing the same to the heirs and family members. He did not state what law gave him the "caretaking status" over the deceased's properties and how he was not at the time in contravention of section 16 of the PAEA. In my opinion the laws were not made so that a few individuals can benefit from the estate of the deceased person not being administered since they would in turn lose their personal benefits to the rest of the heirs if it is. The laws were made to ensure that administrators claiming to have interest in the estate do not secretly petition and obtain grants unknown to the rest of the heirs. This should not be used by one uninterested heir who refuses to cooperate and withholds the

deceased's Certificate of Death so that a grant is not obtained by those interested.

I shall now move on ahead to the two remaining issues. The Applicants through their Affidavit and counsel's submission have alleged that the Respondent has left out some properties that belonged to the deceased while including those that do not. They listed a farm in Kisarawe, Pwani, a vehicle make, Toyota Noah, a Pub by the name Jamaica, and a property in Tarime.

Upon scrutiny of the record I discovered that the motor vehicle, make Toyota Noah that was listed in the Petition was neither in the inventory nor in the accounts of the estate respectively. As for the properties in Tarime the Applicants did not provide any particulars and materials for this court to work on and there being a property located in Tarime in both the inventory and accounts of the estate further and better particulars, if any are needed. The same applies to Jamaica Pub which has been bequeathed to the 1<sup>st</sup> Applicant. The only remaining issue, is the allegation that, and I quote the words of counsel:

*"...In addition, the respondent is already married which means she belongs to another family..."*

First of all, I must state this does not come out clearly in the Applicants' Affidavit it is rather something that they brought it in submission. My interpretation of this is that Mr. Mlowe and or the Applicants who are the son and brother of the deceased respectively, are trying to convince this court that because she is married and supposedly belongs to another family then the Respondent should not have petitioned for and granted with the letters of administration of her late fathers' estate. Counsel has not cited any law that bars this. Section 33 (1) of the PAEA states:

*"Where the deceased has died intestate, letters of administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate."*

This means, that unless the Respondent does not fit what is provided under section 33(1) of the PAEA then the fact that she is married and or not nominated by the minutes of the 2017 meeting does not disqualify her from petitioning for letters of administration of her late father's estate. To subscribe to such thinking would be subscribing to discrimination and bigotry founded on a person's marital status.



As stated earlier the administration of the estate is at an advanced stage where the Administratrix has already began transfers of the assets to the heirs. While I agree with all the decisions that the parties have cited for and against their arguments, I am also mindful that in cases like these, every case needs to be dealt with in its own circumstances. In the case of **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.'*

In my considered opinion part of the essence of the appointment process and what follows is supposed to protect the interests of the interested parties, beneficiaries as well as the estate of a deceased person. It is for the reasons already discussed that I conclude that it is neither in the interest of the estate nor the heirs to revoke the Administratrix. In that regard, the Application is not granted for it is misconceived and unmeritorious. However,

to address some of the issues pointed out by the Applicants I take refuge in section 65 of the PAEA which states:

*The court may give to an executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.* (emphasis supplied)

Therefore, to facilitate a smooth administration of the estate of the late Charles Augustine Nyanswe, I invoke the powers to give general or specific directions to the Respondent and order as follows:

1. The Administratrix is to obtain all information regarding all assets (if any) that have been left out of the administration from the 1<sup>st</sup> and 2<sup>nd</sup> Applicants and file an inventory (if any). The 1<sup>st</sup> and 2<sup>nd</sup> Applicants are hereby ordered to provide the list and information regarding the assets alleged by them to have been left out within 30 Days of this Ruling. And, upon receipt of the said information the Respondent herein is ordered to file an inventory of the assets within 30 Days therefrom.
2. If it shall not be part of part of the findings of No. 1, the Administratrix is ordered to report on the status of motor vehicle make Toyota Noah with Registration No. T 456 DCF.

This being a matter that emanates from a probate and administration cause

I make no order as regards to costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A.A. Omari".

**A.A. OMARI**

**JUDGE**

**30/05/2024**

Ruling delivered and dated 30<sup>th</sup> day of May, 2024.



A handwritten signature in blue ink, appearing to read "A.A. Omari".

**A.A. OMARI**

**JUDGE**

**30/05/2024**