

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

PROBATE AND ADMINISTRATION CAUSE NO. 44 OF 2020

(Arising from Probate and Administration Cause No. 44 of 2020)

In the Matter of the Estate of the Late

CHRISTINA NYAIKOBÉ NYESU.....DECEASED

AND

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

CHACHA SIMON MATOGORO.....1st APPLICANT

JULIUS SIMON WEREMA.....2nd APPLICANT

VERSUS

JOSEPH SIMON MAHINDI (Administrator of the Estate of the

late Christina Nyai Kobe Nyesu).....**RESPONDENT**

RULING

25/04/2024 & 07/06/2024

M.MNYUKWA, J.

By chamber summons supported by a joint affidavit of the applicants this application was filed. The same was preferred under the provisions of section 49 (1) and (2) of the Probate and Administration of Estate Act, Cap 352 R.E 2002 (**the Act**) and Rule 29(1) (2) and (3) of Probate Rules, GN No. 10/1963 (**the Rules**) where applicants sought for orders that;

- i. This honourable court may be pleased to revoke the grant of letters of administration granted to Joseph Simon Mahindi and appoint*



Julius Simon Werema and Chacha Simon Matogoro as administrators of the estate of the deceased Christina Nyaikobe Nyesu.

ii. Cost of the application.

iii. Any other relief that the court may deem fits and equitable to grant

In the applicants' affidavits they averred that proceeding which appointed respondent as an administrator of the deceased estate was defective in substance for the reasons that letters of administration were granted to a stranger to the deceased's family. They referred him as Josephat Simon Mahindi instead of Joseph Simon Mahindi.

They averred further that, there was no family meeting which appointed respondent as administrator of the deceased's estate. Also, they claimed that, respondent did not include in the inventory a deceased's house which is at Nyairasa village, in Tarime nor file account of the estate in court. Moreover, they alleged that a person who was said to have signed the administrator's bond during petition by respondent did not actually sign the same.

These averments were disputed by the respondent who averred that, he was lawfully appointed by this court and granted letters of administration since there was no caveat that was filed in court.



At the hearing the parties were represented. For the applicants was Mr Henry Kusekwa learned counsel, while Mr Lusajo Mwakasege assisted by Dorice Kafuko both counsels represented the respondent. Hearing was done by way of written submissions.

Supporting the application was Mr. Kusekwa who submitted that, respondent failed to exhibit accounts of estate as required by law, and there is no leave of the court to expand time to file the same. According to learned counsel this is a valid ground for this court to revoke letters of administration which were granted to him.

Disputed by the learned counsel Mwakasege who contended that, applicants' supplementary affidavit of which an issue of account was averred, was unprocedural filed in this court. His reason was, the same was filed without leave of the court hence cannot be considered by this court. However, he submitted further that, applicants are the ones obstructing administration of the estate by filing caveat against disposition of the deceased's estate.

Submitting further, Mr Kusekwa argued that, inventory filed in this court by the respondent was untrue for not disclosing that a house located at Plot No. 59 Block 32 G, Kinondoni belonged to their father, the late Simon Mahindi Matogoro, and not their mother the late Christina Nyaikobe



Nyesu. Learned counsel asserted that, the late Christina was an administrator of her husband who never completed her administration duties of which the said house was not distributed.

This argument was also contested by the learned counsel for the respondent who argued that, the fact by the applicant that the said house belonged to the late Simon Matogoro is a fallacy. Learned counsel went on to contend that, even the 1st applicant when petitioned for in the Probate Cause No. 25/2020 at Kinondoni Primary court, he mentioned the same property as belonged to the deceased, Christina Nyesu. He referred to annexure TA3 and MH3.

Furtherance, learned advocate for the applicants argued that, the grant was obtained by false suggestion as the person who was a surety, one Valentina Andrew, was not aware of the same. Learned advocate stated further that, an affidavit verifying that she did not sign administration bond is filed as annexure TA – 8.

Disputed by Mr Mwakasege learned advocate with his submission that, there was no fraud in purported document which was signed by one Valentina Range. Learned advocate contended that, the said bond was truly signed by the said person.



Last but not least, learned advocate for the applicants submitted that, letters of administration of the deceased's estate were granted to the stranger who is not the deceased's son. He argued further that, even when deceased petitioned for letters of administration in respect of her late husband's estate, she did not mention respondent as deceased's son. Learned advocate prayed for this application to be granted by revoking letters granted to the respondent

On the part of the respondent, learned advocate contested the argument by Mr. Kusekwa by submitting that, respondent is also called Marwa Mahindi Matogoro who is not a stranger rather a deceased's son. According to the learned counsel, allegations by the applicants that respondent is a stranger are mere words which intended to waste the time of the court. He therefore prayed for this application to be dismissed with costs.

In the rejoinder, learned advocate for the applicants reiterates what he submitted in chief.

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



To begin with, it is not disputed that this application is preferred under section 49(1) and (2) of the Act, whereby in respect of the said provision, applicants have submitted four grounds of revocation, of which I shall start with a complaint about failure to file account of the deceased estate. This ground is provided under sub section (e) of the above stated provision.

Indeed, I am in agreement with the learned advocate Kusekwa that, the law mandate the appointed administrator to file account of estate within one year from the date of his appointment as provided so under section 107(1) of the Act which states;

*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 is mine]

Considering the foregoing provision, it is undisputed that records show that, respondent did not exhibit account of the estate. However, learned advocate for the respondent when submitting on the same he claimed that, applicants are the ones hindering his administration duties since they impeding the disposition of the deceased's landed property especially a house at Plot No. 59 Block 32 G Kinondoni.

With all due respect to the applicants, after my perusal to the records in this matter, I was surprised as to what has transpired in the records where, I realised that, the first applicant was reported by the respondent (administrator) of being violent by not letting the respondent dispose of the property by sale, since he is the one who has been living in the said house. Worse enough he did not even comply with the court summonses which were sent to him to make appearance in court. Though, on 24/04/2023 records show that, 1st applicant told this court that he will cooperate with respondent in making sure that the deceased's house is sold.

However, annexure MH3 attached to the respondent's counter affidavit show that, 1st applicant registered a caveat against a deceased's



property on Plot No. 59 Block 32 G, Kinondoni. Having all that in record, of which, I definitely sure that, the first applicant is aware of his actions towards the deceased's estate, I am asking myself where do the applicants find the audacity to condemn the respondent for failure to exhibit the account of estate while they are the ones who are impeding the disposition of the deceased's property. This complaint is unfounded.

Another ground for revocation was a complaint that respondent made a false suggestion in the inventory by including a house at Plot No. 59 Block 32 G Kinondoni as the deceased's property while it is not. According to the applicants the same belonged to their late father one Simon Mahindi Matogoro. With respect, I disagree with the applicants on the same though I am aware of the records, specifically annexure TA- 2 which shows that deceased in this matter was appointed administrator of the estate of the late Simon Mahindi.

But the said annexures did not establish that the house in dispute was owned by the late Simon Mahindi. Unlike, annexure MH3 which is a report from Ministry of Lands, Housing and Human Settlement Development which shows that a property on Plot No. 59 Block 32G Kinondoni is registered in the name of Christina Nyaikobe Nyesu. Hence, it goes without saying that the said house belonged to the late Christina



Nyaikobe Nyesu, who is the deceased in this case at hand. (See the case of **Amina Maulidi Ambali & Two Others vs Ramadhani Juma**, Civil Appeal No. 35/2019 CAT at Mwanza). Further, it is in record that the first applicant told this court that the said house belonged to the deceased, Christina Nyaikobe Nyesu. Records of 28th of April, 2023 he said, I quote;

I will not repeat to destruct court documents at all once fixed on the house that belong to my late mother and that Josephat Simon Mahindi is the administrator of the estate.

By the way, putting the records straight, it has to be noted that, the house referred in the above quotation is the house at Plot No.59 Block 32G, Kinondoni. It follows therefore that, considering the above quotation, it appears that a complaint by the applicant on the said house as far as this application is concerned, is vexatious and abuse of court process. The same is dismissed.

The third ground for revocation is based on the allegation that respondent is a stranger to the deceased estate. Applicants alleged that respondent is not the deceased's son. With respect, I think this ground is baseless due to the reason that, the law under section 33 (4) of the Act, allows the court to appoint any other person, even a stranger (as it is



referred by the applicants), to administer the estate of the deceased. The said sub section reads that;

Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator; and in every such case letters of administration may be limited or not as the court thinks fit.

Guided by the foregoing provision, it is where, we can draw our understanding that, even a stranger can be appointed by the court and granted letters of administration when there is no objection against the same. Since, granting letters of administration is upon discretion of the court when considering among other things, safety of the estate.

On the other hand, I am of the view that as a matter of law this complaint was supposed to be administered through caveat before respondent was appointed, as per section 58(1) of the Act. At this point, it seems that applicants are overtaken by event. That being said, this complaint lacks merit, it is hereby dismissed.



Lastly, applicants complained that, a person who signed an administration bond during petition by the respondent, one Valentina Range was in secondary school during that time hence she did not have any means to sign a bond of the stated amount. According to the learned counsel, respondent's grant was obtained by false suggestion and concealing from the court something material.

After my perusal on the record, I agree with the learned advocate for the applicants that, administration bond attached to the petition which was filed in this court by the respondent was signed by Valentina Range, who was among the sureties who signed to the bond of Tsh. 900,000,000/=. However, considering Annexure JC – 3 and TA- 8 attached to the applicant's affidavit show that, the said surety despite being of majority age, she probably cannot secure the said amount stated in the bond. This, however, despite being improper, I humbly think the same is not fatal since the law under section 67 allows for one or more sureties to sign a bond. That being the case, it will not be prejudicial if the said surety is struck out from the court record or for the respondent to be ordered by the court to file a new administration bond and its certificate thereof. This ground also lacks merit.



Considering what I have stated above, I hold that this application lacks merit it is hereby dismissed. Since the parties are siblings, I make no orders as to costs.

It is so ordered.

Right of appeal explained to parties.




M.MNYUKWA
JUDGE
07/06/2024.

Court: Ruling delivered in the presence of respondent's counsel and in the absence of the applicants.


M.MNYUKWA
JUDGE
07/06/2024