

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

PROBATE AND ADMINISTRATION CAUSE NO. 57 OF 2022

In the matter of the estate of late

CHRISTOPHER EDWARD KAVALAMBI.....DECEASED

BETWEEN

In the matter of Letters of Administration granted to

ELIZABETH JOSEPH SAKALANI.....ADMINISTRATRIX

AND

In the matter of an objection to the account of estate by

HILDA CHRISTOPHER KAVALAMBI.....1st OBJECTOR

LUCY CHRISTOPHER KAVALAMBI.....2nd OBJECTOR

EDWARD CHRISTOPHER KAVALAMBI.....3rd OBJECTOR

WILLIAM EDWARD KAVALAMBI.....4th OBJECTOR

RULING

Last Order date: 21.03.2024

Ruling Date: 07. 05.2024

M. MNYUKWA, J

This ruling is a result of an objection against the distribution of the deceased's estate exhibited in Form No.81, which was filed in this court by the administratrix.

Record shows that, on 21/3/2024 when the matter was called for the confirmation of the final account which was filed on 21/2/2024, the same was objected by Ms Mariam Shelimo, the learned advocate for the



beneficiaries. Her objection was based on the distribution of immovable properties as transpired on Form No. 81.

At the hearing parties appeared in person, and were represented. For the administratrix was Mr. Alex Kaaya and Olaf Kaboboye learned counsels, while, objectors enjoyed the legal services of Ms Mariam Shelimo learned counsel. The objection was argued orally.

Supporting her objection learned counsel argued that, the administratrix in this matter did not comply with the rules of distribution as provided for under the Indian Succession Act No. 10 of 1865 (the Act). Her contention based on what she argued that, the distribution on immovable properties exceeded what she is required to get as a widow, which is $\frac{1}{3}$ of the value of the estate.

Learned advocate submitted further that, principles of distribution which are stated by the law under section 26 – 30 of the Act require a ration of $\frac{1}{3}$ to $\frac{2}{3}$ to the widow and other beneficiaries (children) respectively. Consequently, she asserted that, according to the value of each property as transpired in the inventory (form No. 80) makes a total value of the deceased estate to be Tsh.785,000,000, of which considering the distribution of immovable properties given to the administratrix



(widow), it is the learned advocate's argument that the same exceeded her share of 1/3.

Ms. Shelimo contended further that, since the widow's share exceed what she ought to be given, it makes a deficit of Tsh. 102,000,000 of what was supposed to be the shares of other beneficiaries who are the deceased's children. According to her, this distribution was unfair in the eyes of the law as she argued further that, administratrix ought to remove a landed property at Kijichi and add up any property with a value of Tsh. 21,000,000 to 25,000,000 so that she gets her share of 1/3 which is Tsh. 262,000,000. She then prayed for the account of estate to be not confirmed.

Contesting the objection, Mr Kaaya learned advocate was in agreement with the rules of distribution whereby, the widow is entitled to 1/3 of deceased's estate, while the children get 2/3. However, he disputed the value relied upon by the learned advocate for the objectors, which he said, the same was just estimation and not the true value.

It was his argument further that since the value was estimated, it goes for the distribution too. He therefore argued that, it was not proper for the learned counsel to rely on the estimated value to object on the



final account since the value can decrease or increase on either of the parties.

Further, learned counsel argued that, the distribution was fair since, according to him, administratrix was supposed to get 4 houses but she distributed to herself 2 houses. He then prayed for the account to be confirmed and since there was no valuation report, for the administratrix to get 1/3 of the properties.

Having heard the submissions of the parties and examined the records, the only issue for consideration and determination is whether the objection has merit.

To start with, it is settled that after the administrator/administratrix or executor is appointed, he/she is duty bound to exhibit in court the true inventory and final account of the deceased estate in accordance with the time assigned to it by the law or the court. And, the exhibition of the same is done by filing in court Form No.80 and 81 of Probate Forms as prescribed under the schedule to the Probate Rules, GN No. 369 of 1963.

My scrutiny to the records of this case, led my eyes to land on the two documents which are, Inventory of the deceased's estate in form No. 80 which was filed on 7/12/2023 and the Accounts of estate in Form No. 81 filed on 21/2/2024. And, as far as this objection is concerned, the point



of dispute arises from the manner in which the landed properties were distributed.

Before going further to the centre of the dispute, I must say, it is not in dispute that deceased professed Christian religion during his lifetime. Reference is made to paragraph 9 of the petition. It follows therefore that, the law which regulate the manner of distribution of the deceased's estate will be the Indian Succession Act No.10 of 1865. Also, I am alive to the provision of section 27 of the Act which provides for entitlements of the widow and lineal descendants of the deceased in the ration of 1/3 and 2/3 respectively. For ease of reference the said provision is herein reproduced:

"Where the intestate has left a widow, if he has also left any lineal descendants, one – third of his property shall belong to his widow, and the remaining two – thirds shall go to his lineal descendants, according to the rules herein contained..."

Considering the foregoing provision, it is apparent that the parties in this case have no dispute in the manner of distribution as stated thereto. However, their dispute based on the properties distributed to the widow (administratrix) of which, according to Ms. Shelimo learned advocate, their value exceeded 1/3 of which the widow ought to be given.



She premised her objection depending on the value of each property as transpired in the Inventory. Her argument was, the value of the landed properties which are given to the widow exceed the 1/3 which has to be calculated from the total value of the whole estate.

Bearing in mind the point of contention in this matter, it has to be noted that, calculating one – third and two – third of the estate depends on the total value of the whole estate. The question to be asked is, where should the value of the estate be stated. The answer to this question is provided under section 107(1) of the Probate and Administration of Estate Act, Cap 352 R.E 2002 where, the law is expressive that inventory exhibited in court should contain the true estimation of all properties. The said provision reads;

*"(1) 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."

It follows therefore that, for the parties to follow the manner of distribution provided for by the Act, there must be a true estimation or in other words, a true valuation of all properties as stated in the provision hereinabove. Since, administrators or executors cannot just look at the properties and estimate their value rather they ought to have done a true valuation of the same. Similarly in this matter, as was argued by the learned advocate for the administratrix who confirmed that, the value of properties stated in the Inventory was not true estimation, I therefore see a point in this objection.

That being said, I hold that this objection is sustained, administratrix is ordered to file another inventory of estate with the true estimation of all properties thereto and amend the account of estate accordingly. Account of estate filed on 21/2/2024 is hereby not confirmed. Although, with respect, I see a need to remind the administratrix that 1/3 or 2/3 entitlement to the estate is calculated from the total value of the whole estate not to some selected properties.



Last but not least, administratrix should also file a proof of valuation report from a certified body or person.

It is so ordered.



A handwritten signature in blue ink, appearing to be "M. Mnyukwa".

M.MNYUKWA

JUDGE

07/05/2024.

Court: Ruling delivered in the presence of parties' counsel.

A handwritten signature in blue ink, appearing to be "M. Mnyukwa".

M.MNYUKWA

JUDGE

07/05/2024.