

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF MOSHI
AT MOSHI**

MISCELLANEOUS CIVIL APPLICATION NO.29/2023

FATUMA MOHAMED KASSEMBOAPPLICANT

VERSUS

**WALII MOHAMED (As administrator of
the estate of Mohamed Kiuree Ngindo).....RESPONDENT**

RULING

3rd & 26th June, 2024.

A.P. KILIMI, J.:

There is neither endless administration nor Life administrator of probate in this land. What happened in this matter depicts that, the applicant's father named as Mohamed Kiuree Ngindo died intestate in 1996, later in 2001 the respondent one Walii Mohamed who is the deceased brother was appointed as an administrator by this court in Probate Administration Cause No. 5 of 2001. After his appointment he did not perform his entrusted duty by the law for almost 22 years. Undeterred by respondent conduct, the applicant mentioned above who is a daughter of deceased, has moved this court to revoke the Letter of respondent's appointment.

To move this court the applicant by way of chamber summons has brought this application under section 49 (1) (a),(d) and (e) and (2) of the Probate and Administration of Estate Act, Cap 352 of the laws ' **PAEA** ' read together with Rule 29 of the Probate Rules, GN No. 10 of 1963 supported by her affidavit.

During the hearing, both applicant and respondent were unrepresented. Arguing in support of her application, the applicant submitted that after the demise of their father, they proposed the respondent to administer the estate of their late father and eventually the respondent was appointed by this Court. The applicant further submitted that the respondent even after won the land case wherein he sued some of the relatives who invaded the deceased land after that cases he did nothing entrusted by the law.

In respect to the use of the land left by deceased, the applicant said as children of the deceased they decided that one piece of land to build the family house and the other piece of land be used for farming, but other children have denied one Asiana Msofe one of the daughters of the deceased from cultivating the said land.

The applicant stated further that, they asked the administrator who is the respondent herein to interfere by attending the relative meetings so as to settle the matter but the respondent did not attend all scheduled

meetings. Then relatives in the meeting advised the applicant herein to revoke the respondent as they did not see why he was refusing his duty to interfere when his blood sister was rejected and alienated to own land.

In reply, the respondent denied the allegation of failing to administer the deceased estate. He stated that what the applicant stated was not true because the information that Asiana wanted to cultivate deceased land, he got from his relatives where he stated that upon getting such information he told them that Asiana was allowed to cultivate as she was also the deceased child. The respondent further stated that he told her young relatives one Ashirafi Mohamed and Zahirina Mohamed to show Asiana the area where she can cultivate where unfortunately they refused to show her and said the said farm was too small.

The respondent further stated that he told heirs to fund him money for a bus fare from Kawayai Hai to Lembeli to attend the meeting but they refused. The respondent also contended that, after he won civil case appeal No 5 of 2003 which he sued as administrator, he wanted to recover the expenses used to prosecute such case by selling a part of disputed land but the relatives denied him, thus he was never compensated for expenses incurred.

Having considered the above rival arguments, the issue for determination is whether the applicant has adduced enough reasons to grant revocation order against the respondent.

To answer this issue, I find apposite to look on laws which govern the administration of estate and its consequences when there is default on its compliance. Section 107(1) of PAEA provides for an obligation to an administrator from the date of his appointment to file inventory and accounts of the deceased estate within six months. It states that;

*"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 added]

(See also **Godbless Mathew Naibala vs. Annet John M.N. Lukumay**, Civil Application No. 119 & 142, CA (unreported).

Moreover, the matters to be considered by the Court in revoking the appointment of the administrator are provided for under Section 49 (1) of PAEA. Which provides that;

"The grant of probate and letters of administration may be revoked or annulled for any of the following reasons;

(a) N/A

(b) N/A

(c) N/A,

*(d) **That the grant has become useless and inoperative;***

*(e) That the person to whom the grant was made **has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI** or has exhibited under that Part an inventory or account which is untrue in a material respect."*

[Emphasis added].

According to the affidavit of the applicant and oral reply by the respondent, it is undisputed facts that the respondent herein was appointed by this Court as an administrator of the deceased estate in

Administration Cause No. 5 of 2001 in the year 2001, and he never filed any inventory or accounts of the deceased estate since his appointment whereas one of the heirs is claiming of her portion in that estate, but also, the respondent has failed to attend the relatives meetings to settle matters as administrator in certain issues including the land which was in dispute.

In view of above facts, since the respondent had never filed inventory and accounts of the deceased estate since his appointment, in my considered view I see his appointment has becomes inoperative. His defence that his relatives failed to provide him with bus fare which led him to miss out the relative meetings in my opinion does not amount to sufficient cause for not revoking his appointment, since the respondent has not accounted why he did not file inventory and account reports within six months from the date of his appointment as now is almost over 22 years have passed without him adhering to his duties as an administrator.

For the foregoing reasons, this application is meritorious. I therefore, hereby revoke the appointment of Walii Mohamed as administrator of the estate of Mohamed Kiuree Ngindo forthwith.

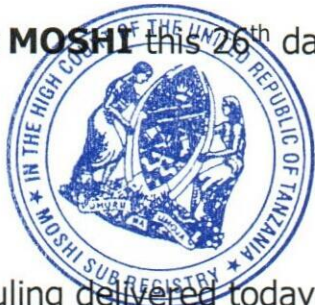
The next point is who will step into his shoes. The applicant together with this application prays to this court to be appointed as administrator

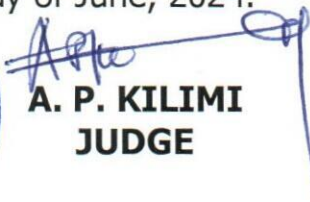
of the deceased estate. In her affidavit at paragraph 12 she averred that on the 15th August, 2023 she was proposed to make this application so as to move this Court to revoke the Respondent herein and to appoint her as the new Administrator, the respondent in his submission did not object these relatives' wishes.

In the upshot thereof, I find merit in this uncontested application for her appointment. Consequently, the applicant **Fatuma Mohamed Kassembo** is hereby appointed to be an administratrix of the deceased estate of **Mohamed Kiure Ngindo**, subsequently I order her within six months to file an account and inventory of the deceased estates.

It is so ordered.

DATED at **MOSHI** this 26th day of June, 2024.




A. P. KILIMI
JUDGE

Court: Ruling delivered today on 26th day of June, 2024 in the presence applicant and respondent in person.

Sgd: A. P. KILIMI
JUDGE
26/06/2024

Court: Right of Appeal explained.

Sgd: A. P. KILIMI
JUDGE
26/06/2024