

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

**PROBATE AND ADMINISTRATION CAUSE NO. 59 OF 2020**

**IN THE MATTER OF THE ESTATE OF THE LATE LIONEL JOSEPH MAWALLA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR REVOCATION OF THE LETTERS  
OF ADMINISTRATION OF THE ESTATE OF THE LATE LIONEL JOSEPH  
MAWALLA GRANTED TO STEVE LIONEL MAWALLA**

**BETWEEN**

**NOREEN LIONEL MAWALLA.....APPLICANT**

**AND**

**STEVE LIONEL MAWALLA.....RESPONDENT**

**RULING**

29<sup>th</sup> January & 14<sup>th</sup> March 2024

**BARTHY, J.**

The deceased Lionel Joseph Mawalla died on 5<sup>th</sup> October 2018, intestate; prompting his sons, Sepi and Steve Lionel Mawalla, to petition this court for the letters of administration concerning their late father's estate. However, their half-sister, Noreen Lionel Mawalla (the applicant), vigorously opposed this action and filed a caveat to contest the petition.

Following thorough deliberations among the involved parties, this court granted the letters of administration to Steve Lionel Mawalla (the respondent herein), appointing him as the administrator of the deceased estate. Additionally, he was ordered to present an accurate inventory of the deceased estate and submit the final accounts within the given time.

At various junctures, the respondent has submitted the inventory and accounts of the estate, a matter fiercely contested by the applicant, who is also a beneficiary. Consequently, the applicant has opted to lodge this application for the revocation of the respondent's letters of administration via chamber summons, substantiated by the accompanying affidavit. The applicant fervently prays for the following orders:

- 1. That, this honourable court be pleased to revoke and annul the letter of administration granted to the respondent in respect of the Probate and Administration Cause No. 59 of 2020.*
- 2. That, this honourable court be pleased to appoint an Administrator General or an officer of the High Court or an impartial person able and willing to administer the estate of the late Lionel Joseph Mawalla.*

*3. Any other order this honourable court may deem just to grant*

*4. And cost of this application*

The application was made under section 49(1)(e) of the Probate and Administration of Estate Act, Cap 352, R.E 2019, and Rule 29(1) of the Probate Rules. The hearing of this matter was conducted via written submissions. Submitting in favour of the grounds of the application, Mr. Hardson Mchau, learned advocate for the applicant, prayed to adopt the contents of the chamber summons, affidavit, and reply to the counter affidavit to form part of the pleadings.

He further submitted that the conduct of the respondent in the administration and distribution of the estate of the deceased properties has prejudiced the applicant's interests, as the heirs have equal rights to inherit unless there was a will. To bolster his argument, he cited the case of **Mwanaheri Mrisho v. Faud Alli**, Civil Application No. 576/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam.

It was also stated that there is no dispute that the applicant is one of the heirs and is therefore entitled to an equal share of his father's estate. Yet, in the accounts of the estate filed on 11<sup>th</sup> July and 19<sup>th</sup> August 2023, the respondent maliciously discriminated against the

applicant by not bequeathing the house located at Plot No. 519, Masaki, to her. Instead, it was bequeathed to Sepi Lionel Mawalla (50%) and the respondent (50%), who are the deceased sons, which was deemed discriminatory. Citing Article 12(1) and 13(1) and (2) of the Constitution of the United Republic of Tanzania, 1977, as amended which specifically address the issue against discrimination.

As the records indicate, the applicant has persistently objected for not receiving a share of the said house, yet her efforts have been futile. This is despite the court's order dated 11<sup>th</sup> August 2023, mandating the equal division of the Masaki property among all beneficiaries.

Mr. Mchau went on to submit that, the respondents have filed untrue inventory and accounts by listing properties that did not belong to the deceased, namely, the farms located at Rawiya and Makuyuni-Moshi, which are the properties of their late grandfather entrusted to the deceased to take care of them on behalf of other siblings, as deposed in paragraphs 5, 6, 7, 12, 13, and 14.

Additionally, he stated there was an untrue estimate of assets, contrary to section 107(1) of PAEA, where the house at Masaki was estimated to be worth between 1 billion and 3 billion without any justification. Also, the farm at Riwaya, the initial inventory stated it was

16.6 acres with an estimated value of Tsh. 60,000,000, and when it was reduced to 9 acres, it was estimated to be worth 50,000,000.

He therefore argued that the distribution of the estate was unfair, as the respondent and his brother favoured themselves by bequeathing properties worth Tsh. 1,609,617,117.5 While the applicant was given properties worth 87,616,417.5.

Lastly, Mr. Mchau addressed the issue of misunderstanding among the heirs regarding the house located at plot 519, Masaki area, and prayed to this court to use its discretionary power under section 49(2) of the PAEA to revoke the respondent from administration of the estate and appoint the Administrator General to take over administration of the estate of Late Lionel Joseph Mawalla in terms of section 5(1) of the Administrator – General (Powers and Functions) Act, Cap 27. He also cited the case of **Judith Patrick Kayamba v. Tunsume Mwimbe and others**, Probate and Administration Cause No. 50 of 2016, High Court at Dar es Salaam, at page 18. In conclusion, he prayed for the application to be granted.

Opposing the application, Mr. Clemence Velen, advocate for the respondent, expressed the view that the application should be dismissed, as it was motivated by greed. He provided the history of the house at Plot No. 519 located in Masaki, where the deceased lived with

his wife Anna Tarimo (Anna Lionel Mawalla), whom he married on 15<sup>th</sup> December 1979, and had three children together: Sonia, Sepi, and Steve Lionel Mawalla.

The deceased also had one child out of wedlock named Noreen Lionel Mawalla, bringing the total to four children. The Masaki house had been the family home for more than 40 years, and the applicant wants it to be sold, despite having been given her own plots.

Ms. Veleno further argued that the final accounts filed on 9th August 2023, show that the properties were distributed equally in accordance with the law, with each heir receiving their share of monies in the banks and company shares. The house in Masaki was given to Sepi and Steve, while Sonia Lionel Mawala was given land in Himo (4 acres) and Rawiya (2 acres), and the applicant was given land in Makuyuni (9 acres) and a plot in Himo town. All heirs were satisfied with the division except the applicant, who is seeking to sell the Masaki house.

Regarding the cited case of **Mwanaheri Mrisho (supra)**, Ms. Veleno argued that it should be distinguished, as the applicant in this case has not been discriminated against as stated in that case. The allegation that the administrator gave himself properties worth 1,609,617,117.5 was deemed unreliable, as the value is derived from

the suggested value of the Masaki house at Tsh. 3,000,000,000 proposed by the applicant.

Furthermore, Ms. Velená contended that the house in Masaki was already divided in the estate of the late Anna Mawalla in Probate and Administration Cause No. 25 of 2021, and attached annexure SLM-1.

Ms. Velená interpreted section 49(1) of the PAEA on revoking the administrator, stating that it can only be invoked when inventories and accounts are not filed. In this matter, the respondent filed inventories and accounts every time he was ordered to do so, as required by section 107(1) of the PAEA, and was ordered to amend inventories, which does not render them untrue. The law requires the administrator to show the estimated value of the properties, not the exact value.

He further submitted that after the respondent refused buyers and lessees sent for the Masaki house by the applicant, she began objecting to everything. She lowered the value of assets to be distributed to her and increased the value of assets of other heirs.

Ms. Velená argued that the changes to the inventory and accounts of the estate were made to meet the demands of the applicant so that they could resolve the matter amicably. Despite the fact that the law does not require the administrator to consult the heir in distribution, as

decided in the case of **Joseph Shumbusho v. Mary Grace Tigerwa**, Civil Appeal No.183 of 2016 at page 25.

He asserted that the last inventory and account of the estate filed met all the requirements emphasized in the case of **Joseph Shumbusho (supra)**. Furthermore, he stated that the respondent discharged his fiduciary duties by identifying, collecting, and identifying debts, then filing inventories and accounts, and amending them.

Ms. Veleno firmly stated that dissatisfaction with the distribution by an heir is not a legal ground for revocation. Additionally, he pointed out that while there are two female heirs, it is only the applicant who is complaining of discrimination. In conclusion, he argued that the applicant's motives were to frustrate the administration process, as her application was superficial, and the court ought to dismiss it.

Rejoining the submission, Mr. Mchau prayed for the respondent's submission to be expunged from the record, as it was filed on 20th February 2024, beyond the prescribed time, which constitutes failure to prosecute the case.

He recounted the claim that the applicant is born out of wedlock; therefore, she is not entitled to a share of the Masaki house as it is considered matrimonial property. He referenced the case of **Judith Patrick Kyamba v. Tunsume Mwimbe & others (supra)**, as it



discourages discrimination against women and children born out of wedlock in inheriting their parents' properties. Additionally, he firmly argued that the principles of marriage cease to apply when it comes to succession.

He also rejoined in regard to Probate and Administration Cause No. 25 of 2021 at the Kinondoni District Court, stating that the house at Masaki is the sole property of Lionel Joseph Mawalla and therefore cannot be administered or divided.

He again referred to section 49(1)(e) of the PAEA, which provides grounds for revocations, maintaining his argument that the inventories and accounts were underestimated and that the respondent had refused to comply with the order of Hon. Rwizile issued on 11th August 2023, directing the respondent to include the applicant's share of the house at Masaki.

He therefore prayed to the court to use its discretionary power under section 49(1) and (2) of the PAEA to revoke the administrator and appoint the Administrator General to take over the administration of the estate of the late Lionel Joseph Mawalla in terms of section (1) of the Administration General (Powers and Function) Act Cap. 27.

Before I embark on deliberation of the application, it is prudent to address the prayer raised by the applicant in her rejoinder to strike out

the respondent's submission on the claim that it was filed out of time.

On 29th January 2024, this court provided a scheduling order, indicating that the applicant was supposed to file her submission on 5th February 2024, the reply submission on 20th February 2024, and the rejoinder submission, if any, on 26th February 2024.

Therefore, Mr. Mchau's claim that the submission was filed on 20<sup>th</sup> February 2024 and out of time is baseless and unfounded, as the respondent's submission bears the court stamp showing it was timely filed.

Having that being said and done, the application before this court the court is by applicant as the beneficiary seeking to revoke letters of administration issued by this court to the respondent on 16<sup>th</sup> December 2022 in respect of Probate and Administration Cause No. 59 of 2020 and appoint Administrator General to administer the estate of the late Lionel Joseph Mawalla.

From the parties' deliberations, it was observed that the main issue for determination is whether the applicant has presented sufficient grounds for this court to revoke the respondent's granted letters of administration of the deceased.

The applicant based her arguments on the fact that the respondent had failed to allocate the applicant her rightful share in the

house located at Plot 519 in Masaki. Consequently, the applicant felt discriminated against for not being given her share of the said property. Additionally, she asserted that the inventory and account of the estate filed on 11th July 2023 by the respondent were inaccurate, and the property was undervalued without any basis.

These claims were contested by the respondent, who argued that there were no disputes regarding other properties except the Masaki house, of which the deceased only owned 50%, as it was considered matrimonial property. Furthermore, the respondent argued that it was best for the house, where the three siblings had grown up, to remain with them instead of being sold. The respondent claimed that the applicant's request for a share of that house was driven by greed, as she had already received an equal distribution of other assets.

Having in mind that the application is made pursuant to section 49(1) (e) of PAEA and Rule 29(1) of the Probate Rules, GN. No 10. For easy reference section 49(1)(e) of the PAEA reads;

*(1) 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) N/A

(e) *that the person to whom the grant was made has wilfully 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.*

From the submissions of both parties and the records of this case, it is evident that the respondent, subsequent to their appointment as the administrator of the deceased on 16th December 2022 by this court, was directed to file the inventory and account of the estate by 3rd February 2023, a directive which was duly adhered to. However, on 7th May 2023, the applicant's counsel raised objections to certain properties listed in the inventory.

Consequently, the court ordered an amendment to the inventory, which was submitted on 11th July 2023. Nevertheless, this amendment was contested by the applicant's counsel, leading to a court order stating that the house in Masaki should be equally divided among the beneficiaries.

Subsequently, the respondent filed another inventory and account of the estate, culminating in the current application for the revocation of the granted letters of estate.

In essence, the respondent complied with the stipulated time frame for filing the inventory and account of the estate, as required by Section 107(1) of the PAEA, which mandates such filings to be completed within six months from the grant of letters of administration.

The argument put forth by Mr. Mchau regarding alleged discrimination against the applicant for not receiving an equal share, particularly concerning the house in Masaki, lacks merit. The respondent allocated other properties of equivalent value to other beneficiaries, demonstrating fairness in distribution. Reviewing the estate account reveals that the applicant was not discriminated against, as asserted by their advocate. She received assets and funds comparable to other beneficiaries, with the exception of the Masaki house, which the applicant sought to claim a share of alongside only two out of four beneficiaries. Given the court's directive to distribute the Masaki house among all four beneficiaries, the subsequent estate account filed by the respondent suggested an equal 50% share for each beneficiary.

Hence, the claim that the 50% share was solely held by their deceased mother lacks substantiation. Therefore, the respondent was

obligated to provide the applicant with her share of the Masaki house, as previously ordered by this court. Following the evaluation of the property, the applicant can receive her share in the form of funds, since there are other heirs who wish to retain ownership of the house.

Another ground for seeking the respondent's revocation was the inclusion of assets not belonging to the deceased, or the alleged overpricing or undervaluing of certain assets without justification. However, the respondent maintains that amendments to the inventory and account of the estate were made in accordance with the applicant's demands, and the asset values were estimates rather than actual values.

Examining Section 107(1) of the PAEA, it's evident that administrators of estates are expected to present a true estimate of the properties for disposal. The law doesn't mandate the attachment of an evaluation report with Form No. 81, despite administrator being entrusted with fiduciary duties by diligently exercising under Section 66 of the PAEA, obligating them to act faithfully in accordance with their oath. The case of **Joseph Shumbusho v. Mary Grace Tigerwa & Others** (Civil Appeal 183 of 2016) [2020] TZCA 1803 underscores the administrator's duty to act in good faith by providing information to beneficiaries and heirs.

Beneficiaries or heirs have the right to information to verify the estate account in accordance to section 107(5) of PAEA. However, in this case, establishing overpricing or undervaluing of assets requires evidence, which the applicant failed to provide to substantiate claims of inaccuracies in the estate inventory and account or inclusion of assets that did not belong to the deceased. As it was stated in the case of **Fadhili Adam Selemani v. Said Adam Selemani and another**, Misc. Civil Application No. 11 of 2021, High Court at Moshi emphasized on the need of giving evidence in a claim of dishonest.

In light of these circumstances, the court finds insufficient evidence to revoke the respondent's appointment. The respondent has been filing the inventory and accounts timely, with no tangible evidence presented to suggest dishonesty. Additionally, only two properties are in dispute, primarily concerning distribution, which can be accommodated through confirmation hearing rather than as grounds for revocation.

Consequently, the respondent is instructed to submit an amended inventory and account of the estate, adhering to previous orders of this court, accompanied with the evaluation report of the assets by the government valuer so that it resolves all disputes. In the upshot, the application is dismissed for lack of merit, and considering the nature of this case, no order is made regarding costs.

It is so ordered.

**Dated at Dar es Salaam** this 14<sup>th</sup> of March, 2024.



  
**G. N. BARTHY**  
**JUDGE**

Delivered in the presence of both parties in person, Mr. Hudson Mchau learned advocate for the applicant and Ms. Velenia Clemence the learned advocate for the respondent.