

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA SUB - REGISTRY

AT SONGEA

MISC. APPLICATION NO. 19 OF 2023

(Originating from the Probate and Administration Cause No. 01 of 2017, High Court of Tanzania at Songea)

IN THE MATTER OF THE ESTATE OF THE LATE SEIFU MTEKATEKA TAWETA

AND

**IN THE MATTER OF APPLICATION FOR REVOCATION OF LETTERS OF
ADMINISTRATION BY ZENA DHARAFI WAZIRI NORA KIRENJE**

BETWEEN

ZENA DHARAFI WAZIRI NORA KIRENJE APPLICANT

AND

AMINA S. MTEKATEKA RESPONDENT

RULING

Date of last Order: 16/02/2024

Date of Ruling: 26/03/2024

U. E. Madeha, J.

To begin with, the applicant herein above named, filed an application before this Court by way of chamber summon made under section 49 (1) (a), (b) and (c), section 82 of the *Probate and*

Administration of Estates Act (Cap. 252, R. E. 2002) and Rule 14 (1) of the *Probate Rules* (GN. No. 369 of 1963), praying for the following orders:

- a) "That, this Court be pleased to declare that letters of administration in Probate and Administration Cause No. 01 of 2017 of the High Court of Tanzania at Songea was obtained fraudulently.*
- b) That, this Court be pleased to revoke letters of administration in Probate and Administration Cause No. 07 of 2017 of the High Court of Tanzania at Songea.*
- c) That, this Court be pleased to declare any actions done by the administratrix in respect to Probate and Administration Cause No. 01 of 2017 to be null and void.*
- d) Costs of the application; and*
- e) Any other relief(s) this Court may deem fit to grant".*

As a matter of fact, the application was encountered with the preliminary objection raised by the Respondent's learned advocate on the grounds that: **One**, the Applicant has no *locus standi*; and **two**, the application is bad in law for being omnibus in nature which cannot be

granted by the Court. At the same time, this ruling is in respect to the foresaid preliminary objections.

Basically, in this application the applicant was represented by none other than; Mr. Hilary Ndumbaro whereas, the Respondent was represented by none other than; Mr. Eliseus Ndunguru. The disposal of the preliminary objection was done through written submissions whereby the learned advocates filed their submissions pursuant to a schedule drawn by the Court and acceded to by both parties.

Submitting on the first limb of Preliminary Objection, Mr. Ndunguru contended that, the Applicant has no *locus standi* to prosecute this application since he is not among the heirs of the estate of the late Seifu Mtekateka Tawete. In that regard, he named the lawful heir to be Amina S. Mtekateka, Mayufe. S. Mtekateka, Omari. S. Mtekateka, Fatuma S. Mtekateka, Yasin S. Mtekateka, Zaituni S. Mtekateka, Asumini S. Mtekateka, Seifu S. Mtekateka, Maimuna S. Mtekateka, Tabu S. Mtekateka and Rashid S. Mtekateka. He argued that; only the listed people are entitled to apply for revocation of the letters of administration in Probate and Administration Cause No. 01 of 2017 which granted letters of administration to the Respondent. To cement on it, he made reference to

the decision made in the case of **Dirshard Othaman Hassan & Others vs. Kariakoo Auction Mart Co. Limited**, Misc. Civil Cause No. 546 of 2021, in fact, he argued that the application filed by the applicant is incompetent. Thus, he prayed for this honorable Court to strike it out for want of *locus standi*.

As far as the second limb of preliminary objection is concerned, Mr. Ndunguru submitted that; the application is bad in law for being omnibus in the logic that, it contains several distinct prayers that cannot be granted by the Court at the same time. On the same note, he argued that the prayers for nullification of letters of administration, revocation of the letters of administration and declaration that the actions done by the respondent as the administratrix of the estates of the late Seifu Mtekateka Tawete are null and void. That is to simply say, cannot be made and granted in the same application. To buttress his contention, he referred this Court to the decisions made by this Court in the case of **Rutunda Masole vs. Makufuli Motors Limited**, Misc. Labour Application No. 79 of 2019 (unreported) and **Semere Tewelde vs. Republic**, Misc. Criminal Application No. 227 of 2022 (unreported), he prayed for this application to be strike out respectively. The main reason being that the

prayers sought in the chamber summons are diametrically opposed to each other.

In reply to what has been submitted by the Respondent's learned advocate in respect to the first ground of the Preliminary Objection, Mr. Ndumbaro argued that, the Applicant was the legal wife of the late Seifu Mtekateka Tawete and by virtue of that she has right to be among the heirs of the estates of the deceased and she has *locus standi* to file this application. In addition, he further submitted that; from the facts sworn in the affidavit filed in support of the application, which was not counted by the Respondent in her counter affidavit, it is crystal clear that she has interests in the estate of the late Seifu Mtekateka Tawete, hence she has *locus standi* to file this application. In line to that, Mr. Ndumbaro went on by submitting that, the case of **Dirshard Othaman Hassan & Others vs. Kariakoo Auction Mart Co. Limited** (supra) requires that a person bringing a matter to the Court must show that he/she has the right or interest on the subject matter and in this application the Applicant as the wife of the late Seifu Mtekateka Tawete has *locus standi* to file this application. Still arguing on the first ground of the preliminary objection, Mr. Ndumbaro further added that; in the application at hand, the

objection that the Applicant has no *locus standi* does not qualify to be a point of law since it needs evidence to prove that the applicant has no rights on the subject matter. Hence, she has no *locus standi* to file this application.

He prayed this Court to be guided by the decisions made in the case of **Mukisa Biscuit Manufacturing Co. Ltd vs. West Ends Distributors Ltd** (1969)1 E.A. 696, **The Soitambu Village Council vs. Tanzania Breweries Limited & Another**, Civil Appeal No. 105 of 2011 (unreported) and **Ibrahim Abdallah (the administrator of the estate of the late Hamisi Mwalimu) vs. Seleman Hamisi (the administrator of the estate of the late Hamisi Abdallah)**, Civil Appeal No. 314 of 2020 (2022) TZCA 43 (21 February, 2022) TanzLII) and he prayed for the first ground of the preliminary objection to be dismissed.

Then, submitting on the second point of the preliminary objection, Mr. Ndumbaro contended that, the prayers sought by the Applicant in the chamber summons cannot be said to have made an omnibus application. Since they relate to each other and they are made under the same provision of the law. To add to it, he submitted that, Courts are

encouraged to entertain omnibus applications which contains prayers that do not oppose each other and they are made from the same law. He expounded his stance by requesting this Court to be guided by the decision of the Court of Appeal, the Apex Court in our land in the case of **Mic Tanzania Limited vs. Minister for Labour and Youth Development & Another**, Civil Appeal No. 103 of 2004 (unreported). He went on contending that the case of **Rutunda Masole vs. Makufuli Motors Limited** (supra) and **Semere Tewelde vs. The Republic** (supra) which were referred by the Respondent's learned advocate are distinguishable to the circumstance of this application. Finally, he prayed for the preliminary objections raised by the Respondent's learned advocate to be dismissed with costs since they are baseless.

As much as I am concerned and from the submissions made by the learned Counsel from both parties, I will now proceed to determine on merit or otherwise of the preliminary objections raised by the Respondent in this application.

To start with the first point of preliminary objection, the issue is whether the Applicant has locus stand to file this application. Going through the affidavit sworn by the Applicant in support of the application,

it is crystal clear that; the Applicant has deponed that she was a legal wife of the late Seifu Mtekateka Tawete, the fact which was not controverted by the Respondent in her counter affidavit.

Principally, it is a well settled law in our country that, widows are entitled with the right to inherit from the estates of their late husbands. Refer to the decision of this Court in **Elizabeth Stephen & Another vs. Attorney General**, Misc. Civil Cause No. 82 of 2005. Also, in **Shaban Mussa Mhando vs. Ester Msafiri Mhando**, Probate and Administration Case No. 75 of 2020 (unreported), this Court sitting at Dar Es Salaam (Mlacha J. as he then was) stated clearly that; widows have their shares in the estates of their late husbands. Eventually, I concur with the Applicant's learned advocate that the Applicant has a legal stand to file this application and the first point of the preliminary objection is dismissed.

As long as the second point of the preliminary objection is concerned, an application is said to be omnibus if it contains several distinct prayers in the same chamber summons and not all omnibus applications are bad in law. This stance was stated in the case of **Mic Tanzania Limited vs. Minister for Labour and Youth Development**

& Another (supra) the Court of Appeal of Tanzania had this to state on omnibus application: -

"Therefore, unless there is a specific law barring the combination of more than one prayer in one chamber summons, the court should encourage this procedure rather than thwart it for fanciful reasons. We wish to emphasize, all that each case must be decided on the bases of its own peculiar facts".

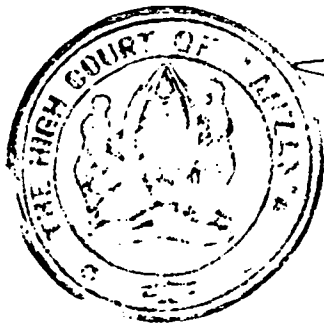
Notably, in the instant application; the Applicant has moved this Court for an order of nullification of letters of administration, revocation of the letters of administration and declaration that the actions done by the Respondent as the administratrix of the estates of the late Seifu Mtekateka Tawete are null and void.

It is important to note the fact that, all prayers are made under the provision of section 49 (1) (a), (b) and (c), section 82 of the *Probate and Administration of Estates Act* (Cap. 252, R. E. 2002) and Rule 14 (1) of the *Probate Rules* (GN. No. 369 of 1963). But I am of the opinion and view that the second preliminary objection that the application is omnibus was prematurely filed. To know whether this application is omnibus it is after hearing of the application. Thus, I order for the hearing of the main

application and at the end, this Court will be in a good position to determine whether the application is omnibus or not.

In the final event; the preliminary objections raised by the Respondent in this application are devoid of merit and due to the nature of this application, each party must bear its own costs. It is so ordered.

DATE and DELIVERED at SONGEA this 26th day of March, 2024.



A handwritten signature in black ink, appearing to read "U. E. Madeha", is written over the seal.

**U. E. MADEHA
JUDGE**

26/03/2024

COURT: Ruling is delivered in the presence of Mr. Optatus Japhet, the learned advocate for the Applicant and the Respondent. Right of appeal is explained.



A handwritten signature in black ink, appearing to read "U. E. Madeha", is written over the seal.

**U. E. MADEHA
JUDGE**

26/03/2024