

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

APPLICATION FOR REVIEW NO. 11 OF 2023

(C/f Probate Cause Number 27 of 2020 , in the High Court of Tanzania, Dar es Salaam sub-registry)

IN THE MATTER OF THE ESTATE OF THE LATE LEMITO MASEKE MSAFIRI

AND

IN THE MATTER OF GRANTED LETTERS OF ADMINISTRATION TO

JACQUELINE DAVID NYAULINGO.....APPLICANT

RULING

Date of Last Order: 26-2-2024

Date of Judgment: 15-4-2024

B.K.PHILLIP, J

This application is made under sections 78(1), 95, Order XLII Rule 1 (1)(a) of the Civil Procedure Code and Rules 107 (1) (2), 108 (1), and 134 (1) (2) of the Probate Rules. The applicant's prayers are reproduced verbatim hereunder;

- i) That, this Court may be pleased to set aside the court's orders dated 29th May 2023 (Order issued by Hon, Kisanya, J.) to close (*sic*) the administration of the estates.
- ii) That, may the Honorable Court be pleased to order restoration of the Probate (*sic*) and allow the review of the orders to enable the administrator to resolve the pending issues on the estate and

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

MISC CIVIL APPLICATION NO.392 OF 2023

(Arising from Probate and Administration Cause No.64 of 2016, in the High Court of Tanzania, Dar Es Salaam Sub-registry)

**IN THE MATTER OF AN APPLICATION FOR SUCCESSOR ADMINISTRATOR OF
THE ESTATE OF THE LATE EDWIN SEMZABA.**

MAGRETH MDAKI SEMZABA.....APPLICANT

RULING

Date of last order:5-2-2024

Date of ruling:11-3-2024

B.K.PHILLIP, J

This application is made under sections 33 (3),48, and 49 (3) of the Probate and Administration of Estates, Act Cap 352. The applicant prays for the following orders;

- i) This Honourable court upon the revocation of the letters of administration of the estate in issue and the provision for the succession of the former administrator by another family member of the deceased and to-date the family had shown no interests, let therefore the applicant be appointed the successor administrator for the collection of her credit being 50% of the total estate of the deceased to be collected and decreed.

administration of the estates that are pending in Probate Cause No. 27 of 2020.

iii) Any Order which the Honorable Court shall deem fit to grant.

The application is supported by an affidavit sworn by Mr. Themistocles Laurian, learned Advocate representing the applicant in this application. I ordered the application to be disposed of by way of written submission.

Briefly, the background to this application is as follows; The deceased in this matter is Lemito Maseke Msafiri (P9048). He died on 17th January 2020 in Dar es Salaam, interstate. He was survived by his wife, (the applicant herein) and four children. At the clan meeting, the applicant was proposed to be the administratrix of the deceased estate. Upon filing the appropriate application in court, she was appointed as the administratrix of the deceased estate. Thereafter, she embarked on discharging her duties.

She managed to identify the deceased's properties to wit; One house in Tanga and another one in Dar es Salaam, a Plot in Tanga, two cars, funds from NMB and CRDB Bank, and uncollected Pension Funds (from the deceased employer, JWTZ). On 19th January 2023, the applicant filed in court an inventory of the deceased's estate and final accounts after being granted leave by this court to file the same out of time. Thereafter the heirs namely, Jacqueline David Nyaulingo, (wife) Esther Maseke Msafiri (child), Maxwell Maseke Msafiri (child), Josephine Maseke Msafiri (child), and Veronica Webiro (mother) were summoned to appear in court to confirm the distribution of the deceased estate. The heirs raised some complaints regarding the distribution of the deceased estate which were dealt with and

determined by this court (Hon,Kisanya,J) accordingly. Since those complaints are not relevant in this application I will not narrate them in this ruling. However, suffice it to say that this court overruled all the complaints raised by the heirs and since the inventory and final accounts were already filed in court by the administratrix of the deceased estate (the applicant herein), this court admitted the same, closed the administration of the deceased estate and discharged the administratrix of the deceased estate. That marked the end of Probate Cause No. 27 of 2020.

Back to this application, in his submission Mr. Laurian adopted the contents of the affidavit in support of the application. He contended that on the 29th day of May 2023 this court closed the Probate Cause 27 of 2020 the subject of this Ruling mistakenly since the actual estates are still held in the Judiciary Account and other benefits from the deceased's employer (JWTZ) are still held by the Government Treasurer except for other assets such as cars, farm, and houses which have been given to the beneficiaries. He went on to submit that both the court and himself as he appeared for the applicant during the closure of Probate Cause No.27 of 2020 did not realize that the payments of funds allocated to the beneficiaries from the Judiciary Account and the Government Treasurer were not yet effected.

Moreover, Mr. Laurian submitted that each time the administratrix made a follow-up of the funds from the deceased's employer for distribution to the heirs she was told that the funds would be transferred direct to the beneficiaries after the court order for the final determination of Probate Cause No.27 of 2020 is issued. He contended that somehow the

communication from the Ministry of Defence where the deceased was working in her lifetime and the Government treasurer, contributed to the misunderstanding on her part regarding what should have come first between the closure of the Probate Cause No. 27 of 2020 and the collection of the funds from the deceased's employer.

Furthermore, Mr. Laurian was of the view that in general, probate orders can be reviewed by the court under certain circumstances. If there is evidence that an order was made erroneously or that there are undistributed assets, beneficiaries or interested parties may seek a review of the order. The court has the authority to revisit its previous orders to ensure that justice is done and that the estate is properly administered. Since there is no way a person who is discharged by the court can be allowed to continue acting as Administratrix of the deceased estate unless the court order that released him or her has been reviewed, that why the applicant lodged the application in hand, contended Mr. Laurian.

He maintained that under the circumstances of this case, it is obvious that the legal duty by the administratrix was not legally terminated as there are estates undistributed something that this court ought to have confirmed before discharging the Administratrix of the deceased estate. The court ought to have called every beneficiary to confirm the receipt of the funds allocated to him/her. Mr. Laurian contented that it is a requirement of the law that once the administrator files the inventory, the court must conduct verification before the closure of the matter and discharging the administrator of the deceased estate.

He was emphatic that this court has the power to re-appoint the administratrix of the deceased estate to complete the administration of the deceased estate. By setting aside its order dated 29th day of May 2023 this court will automatically re-open Probate Cause No.27 of 2020 and the administratrix of the deceased estate will be automatically re-instated. He beseeched this court to grant this application to enable the applicant herein to rectify any deficiencies in the administration of the deceased's estate. Alternatively, Mr.Laurian submitted that this court may invoke Rule 39 of the Probate Rules to appoint any person for collection and preservation of the deceased estates from being alienated or wasted. He pointed out that from the court's records, it is clear that there has never been any reported fraud or any allegation of ill intention from any party in this case. The applicant has been obedient to the court in executing the orders. She has demonstrated a high degree of trust among the beneficiaries as well as the court, thus re-appointing her would bring no harm but a solution to the issue in hand.

In addition to the above, Mr. Laurian prayed that this court be pleased to expunge from the court's records the inventory and statement of account filed in court by the administratrix of the deceased estate and order newly/ potentially appointed Administratrix to file a new inventory and Final accounts upon satisfaction by this court that all estates that have come into hands of the Administratrix including funds held in the Judiciary Account and the Government Treasurer are available to the Administratrix for distribution to the beneficiaries.

Having keenly analyzed the submission made by Mr. Laurian in support of this application as well as the affidavit in support of this application and the court's records, I think a good starting point in the determination of this application is the provision of the law on the powers of this court to review its orders/ruling. The provision of Order XLII Rule 1 read together with section 78 both of the Civil Procedure Code ("CPC") provides that this court has the power to review its orders/ruling upon being moved by a party to the case on the discovery of new information which was not available at the time the impugned decision/order was made or when there is an error on the face of the record. In the affidavit in support of this application, Mr. Laurian deponed that the funds allocated to the beneficiaries have not yet been transferred to the beneficiaries as they are still held in the Judiciary Accounts and the Government Treasurer. Since Probate Cause No.27 of 2020 has been closed and the applicant discharged from her duty as administratrix of the deceased estate then, there is no one to complete the process to enable the beneficiaries to obtain their shares from the deceased estate. At this juncture, I wish to make it clear that the court's records reveal that this court summoned all the beneficiaries of the deceased estate to appear in court and allowed them to be heard and raise their concerns on the inventory and final accounts filed in court by the applicant. With due respect to Mr. Laurian, it is not true that this court closed Probate Cause No.27 of 2020 without giving the beneficiaries the opportunity to be heard. It is worth noting that in matters of this nature, the court normally relies on the information filed in court by the administrator of the deceased estate and the confirmation by the beneficiaries upon being summoned to appear

in court before discharging the administrator of the deceased estate as it was done in this case. Mr. Laurian stated in his submission that there was a time when the applicant was not sure which one should start between the filling of inventory and final accounts in court, and the actual distribution of the deceased estate and receipt of shares allocated to each beneficiary. This indicates that the administratrix of the deceased estate moved this court to close Probate Cause No.27 of 2020 and discharge her from her duties due to ignorance of the correct procedure of the administration of the deceased estate. All in all, there is no dispute that the beneficiaries of the deceased estate have not been given their shares of the funds from the deceased estate. For the avoidance of doubts, let me make it clear that before the hearing of this application, I summoned the beneficiaries of the deceased's estate to appear in court. They confirmed what is deponed in the affidavit in support of this application. So, it is true that there is an error on the face of the record in respect of the order of this court dated 29th May 2023 since it shows that distribution of the deceased estate was completed and discharged the administratrix of the deceased estate whereas the truth is that the beneficiaries have not obtained the shares allocated unto them by the administratrix of the deceased estate. For the interests of justice, under the provisions of Order XLII Rule 1 and sections 3A and 3B (1) all of the CPC, I hereby grant this application to the extent that the orders of this court dated 29th May 2023 for closure of Probate Cause No.27 of 2020 and discharging the Administratrix of the deceased estate are set aside. Other orders made by this court in respect of the complaints raised by the beneficiaries and admission of the inventory, and final accounts remain

intact. Since Probate Cause No.27 of 2020 is re-opened, the administratrix of the deceased estate is at liberty to make any necessary prayers before this court for the proper completion of the administration of the deceased estate.

Dated this 15th day of April 2024




B.K.PHILLIP

JUDGE.