

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**TEMEKE SUB-REGISTRY**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**PROBATE AND ADMINISTRATION CAUSE NO. 19 OF 2023**

IN THE MATTER OF THE ESTATE OF THE LATE

**NSA KAISI..... DECEASED**

**AND**

IN THE MATTER FOR LETTERS OF ADMINISTRATION BY

**KAISI EMANI KALAMBO..... PETITIONER**

**AND**

IN THE MATTER OF CAVEAT BY

**NTULI KAISI KABENGA.....CAVEATOR**

**JUDGEMENT**

19<sup>th</sup> March & 5<sup>th</sup> April, 2024

**BARTHY, J.:**

In this matter, the petitioner filed a petition for the grant of letters of administration of the estate of the late Nsa Kaisi, who died intestate on 13<sup>th</sup> of February, 2020. Upon the issuance of the general citation, Ntuli Kaisi Kabenga filed a caveat opposing the grant of letters of administration to the petitioner. A citation was issued to the caveator, who then filed an affidavit in support of the caveat. The matter evolved

into a typical legal suit, with issues being framed and parties having the opportunity to present their evidence.

At the hearing of this matter, the petitioner, now the plaintiff, was represented by Mr. Ngasa Gaya, Ms. Rose Mwambusi, and Ms. Jesca Lewis, while the Defendant appeared in person. On the plaintiff's side, a total of ten witnesses testified, whereas only one witness testified for the defendant.

On the plaintiff's side, Kaisi Kabenga Kalambo, identified as PW1, testified that the deceased was his uncle. The deceased, was the retired officer, never married nor lived with a woman throughout his life. Despite this, he never disclosed information about his children to PW1.

Additionally, PW1 described the deceased as a close relative whom he would visit at his house in Sinza. During these visits, PW1 encountered the caveator, now the defendant, who was introduced as a relative. Through his aunt, Tulimbumi Nsunga Kaisi @ Tuli Nsunga Kaisi, PW1 learned about the existence of other children of the deceased.

Initially, PW1 was informed about two children of the deceased, Nuru Baruti@ Nuruti Clerk and Ntuli Kaisi Kabenga, who later adopted the name Kaisi. However, PW1 expressed confusion as to why the other children did not bear the deceased's surname. He explained that the

deceased preferred a private life without social interaction, making it difficult for PW1 to inquire about his personal affairs.

Subsequently, PW1 learned about additional children of the deceased, namely Mlapama Mamboleo Rashid, Arafat Rashid, Mohamed Ismail Lichika, Nasra Ismail Lichika, Kidola Nsa Kaisi, and Michael Wilson Mwasongwe. PW1 noted that despite holding various posts in his career, the deceased primarily lived with house servants and close relatives such as the plaintiff, Prof. Lenard Yesaya Mwaikambo, and Mwamala. PW1 claimed to be the deceased's right-hand man, responsible for running his errands.

Following the death of the deceased, a clan meeting was convened, during which PW1 was nominated by the family to petition for letters of administration. The minutes of the clan meeting were tendered and admitted as Exh. P2. PW1 emphasized that he was nominated because of his familiarity with the deceased's assets and his ongoing responsibility for managing them, including maintenance, bill payments, salaries of servants, and even the needs of the defendant.

PW1 also highlighted the costs associated with administering the deceased's estate, given that his assets are scattered in various regions

like Mtwara and Mbeya. He asserted his financial ability to manage these assets, unlike the defendant.

During cross-examination, PW1 attributed the delay in filing the petition to the defendant's caveat and clarified that he was not involved in disposing of the deceased's assets, refuting such allegations

Another witness, Edward Evarist Mwaka (PW2), testified that he had worked as a watchman, farmhand, and cook for the deceased since 1999 until his passing. In his capacity as a servant, he was never introduced to anyone as a child or spouse of the deceased. He emphasized that the deceased was very private and disliked nosy individuals. It was only after the deceased's death that PW2 became aware of his children, friends, and relatives.

PW2 also mentioned that the deceased financially supported certain children by paying for their school fees. He identified these children as Ntuli of Arusha, Mohamed, Nasra, and Arafat, to whom the deceased entrusted stipend money when traveling.

Moreover, PW2 identified Mr. Mwamwala of Ubungo, Prof. Mwaikambo, and Mr. Kaisi Kalambo (PW1) as close associates of the deceased who frequently visited him. He specifically noted PW1's role in caring for the deceased during his illness and after his passing. PW1

continued to provide financial support by paying PW2's salary and all bills after the deceased's demise.

Following the deceased's death, PW2 learned that the deceased had left behind eight children.

Professor Leonard Yesaya Mwaikambo (PW3) testified that the deceased was his uncle. He outlined the various positions the deceased held during his lifetime and emphasized that the deceased never married or cohabited with any woman. PW3 first became aware of the defendant, Ntuli, in 2015. It wasn't until the funeral that he was introduced as the deceased's son, and later he learned of another child in Mtwara and one living in the United Kingdom.

Moreover, PW3 described his involvement in listing the deceased's assets after the burial services, which were then handed over to the deceased's sister. During this process, they discovered that the deceased had eight children, including the defendant, whom he had lived with for five years while studying at the University of Dar es Salaam under the deceased's guardianship. PW3 noted that PW1 continued to cover all bills and salaries of the deceased's estate, amounting to Tsh. 500,000. He further asserted that the defendant was unfit to administer the deceased's estate.

PW4, Joseph Issa Mwamwala, testified that the deceased served as their mentor and maternal grandfather. During PW4's employment at the electricity company, the deceased involved him in various projects for consultation and the acquisition of landed properties.

However, PW4 noted that the deceased kept his personal life private. The children found in his house, PW4 claimed, were orphans he was assisting. He specifically mentioned Arafat, whom he assisted in finding a job after completing university. PW4 became aware of the deceased's eight children during his funeral, where they traveled together with Arafat. PW4 appealed to the court to grant letters of administration to the plaintiff.

In contrast, Michael Wilson Mwasongwe, as PW5, informed the court that he was raised by his mother and didn't live with his father. He only came to know the deceased as his father when he was working in Mara. His father briefly took him to Morogoro before returning to Mbeya to conduct business. PW5 described the deceased as a very secretive person, acknowledging that he knew little about him.

Despite of knowing that the deceased was unmarried, PW5 was unaware of any other children until his formal introduction to the family in November 2020, where he learned of the deceased's eight children.

PW5 believed he was the deceased's only child until discovering his siblings. After learning about his other siblings, PW5 chose not to file a caveat, believing they were raised similarly. PW5 supported PW1's appointment as administrator of the deceased's estate due to his closeness to the deceased and his support for the family.

Additionally, Mwanahamisi Abdul Mussa, a close friend of the deceased since 2000, testified as PW6. She described the deceased as a hardworking, secretive, unmarried man with eight children. She claimed that the deceased entrusted her with raising four of his children: Mohamed, Nasra, Lukama, and Arafat. Despite maintaining his children, the deceased never disclosed the identity of their mother.

The deceased introduced Mussa to his sister living in Mbeya during the funeral, where she also met PW1. Then later, Mussa became acquainted with all eight children of the deceased. She insisted that PW1 was the appropriate person to administer the estate considering the different backgrounds of the children.

PW7, Kidola Nsa Kaisi, testified that the deceased was his father, who never married but had eight children from different mothers. He learned about his siblings from his mother at different times. PW7 was informed about the deceased's illness through the Kabenga family. He

emphasized that the deceased never lived with a wife or child and maintained a private lifestyle, meeting people only by appointment. PW7 stated that PW1 was nominated to petition and continued to look after the deceased's house. PW7 advocated for PW1 to be appointed as the administrator of the deceased's estate, citing his elder status, good reputation, and neutrality to serve all beneficiaries.

Another witness, PW8 Ndimbumi Kaisi, testified virtually from Kyela District Court in Mbeya Region, stating that the deceased was her younger brother who died unmarried but left behind eight children. She mentioned the names of the children and their mothers. PW1, she noted, was nominated as the administrator of the deceased's estate.

She also mentioned her status as a beneficiary, as the deceased had taken care of her since her husband's death in 1996. PW8 provided a detailed account of the deceased's humble and loving nature towards his family and close friends. She also mentioned a long-serving servant named Mwaka.

Mohamed Lichika, PW9, introduced himself as the son of the deceased. He initially thought there were only four siblings, but later learned there were eight. He attended the burial where he encountered PW1, who continued to take care of the deceased's house in Dar es



Salaam. He supported the petition, citing PW1's suitability as an upright, older individual capable of managing the estate, especially considering the diverse backgrounds of the beneficiaries.

The final witness, Arafat Rashid Mlukama (PW10), identified himself as the son of the deceased. He initially thought there were only two children, but later learned of the other siblings. He testified that the deceased provided for them through an aunt and used to visit their house. PW10 supported PW1's appointment as the administrator due to his close relationship with the deceased and his neutral stance, considering the different mothers of the deceased's children.

On the defence side, Ntuli Kaisi Kabenga, as DW1 and sole defence witness, stated that the plaintiff had compiled the list of beneficiaries without informing the heir Nuru Baruti or her representative. He cited the plaintiff's health condition as the reason for postponing the petition until 2023, claiming the plaintiff was unfit. DW1 admitted to living in Arusha, selected by the deceased's family, and acknowledged Nuru Baruti as the deceased's child despite not using his name.

DW1 insisted he is fit person to be appointed as the administrator of the estate, pledging to ensure justice for all heirs upon proof of

paternity. DW1 acknowledged PW1's financial support for the deceased's household expenses and the occasional involvement in repair works. This marked the conclusion of the defence testimony.

After hearing the evidence presented by both parties and considering their final submissions, which are not reproduced here but will be taken into account during the determination of the issues, the following matters have been framed for consideration:

- i. Who should be granted letters of administration between the petitioner and the defendant.
- ii. Who are lawful heirs of the deceased estate
- iii. What relief are the parties entitled to.

To address the first issue, in determining who should be granted letters of administration, it is important to note that the plaintiff initiated the petition for letters of administration concerning the estate of the late Nsa Kaisi. This action followed his nomination by the family during a meeting held on 21/2/2020. According to documented records, eight beneficiaries were identified, and the plaintiff secured the consent of seven of them, with the exception of the defendant (caveator).

In the affidavit submitted in support of the notice of appearance by the defendant, several reasons were cited to justify the caveat. These

reasons included allegations of the plaintiff's failure to disclose all properties owned by the deceased. The defendant also asserted that the clan meeting convened to nominate the plaintiff was invalid. Furthermore, the defendant raised concerns regarding the legitimacy of the other purported beneficiaries introduced by the plaintiff, questioning the validity of their birth certificates.

Additionally, the defendant claimed to be the eldest son of the deceased, asserting his capability to administer his father's estate. In contrast, he characterized the plaintiff as merely the deceased's nephew, lacking sufficient knowledge of the deceased's estates.

The defendant alleged that the plaintiff's motives were driven by personal gain from the deceased's assets. Consequently, the defendant refused to provide the certificate of death to the plaintiff, impeding the administration process.

Overall, the first issue revolves around determining the rightful person to be granted of letters of administration: whether it should be the plaintiff, nominated by the family meeting, or the defendant, who claims to be the eldest son and challenges the legitimacy of the plaintiff's nomination and motives.

It is a clear fact that the deceased died intestate, meaning he left no will which could have specified an executor and the heirs of his estate. In such cases, letters of administration can be granted to a person who is entitled to the estate of the deceased or to any other person in accordance with the circumstances provided by law.

In the present matter, there was undisputable evidence that deceased died unmarried, but there are persons claiming to be children of the deceased from different mothers and thus asserting themselves as beneficiaries of his estate.

The evidence presented by witnesses from the plaintiff's side indicates that among the eight children, none had lived with the deceased, as they resided apart. Most of the children came to know each other only during the funeral and were introduced to the family during a clan meeting. Even the defendant admitted to never having lived with the deceased during his lifetime.

All documents related to the deceased's assets were kept by his sister, who was also listed as a beneficiary of the deceased. The only person said to have been close to the deceased was the plaintiff, hence possessing sufficient knowledge of the deceased's estate.

The defendant has challenged the clan meeting which nominated the plaintiff to petition for letters of administration. Also, employing his inability to take the task due to sickness, using the deceased assets for his gain and not knowing all assets of the deceased. However, all witnesses who appeared before the court testified that the family had appointed him and had faith in him for the duties of that office.

In light of these circumstances, the administrator of the estate should be the person who has demonstrated diligence and ability to collect and distribute the deceased's estate to the beneficiaries according to the law. This aligns with the decision of this court in the case of **Limi Mussa Mbogo and two Others v. Christina Alexander Ntonge**, Misc. Civil Application No. 211 of 2020, where the court held that

*"The exercise of administrator's duties in the office as collector of estate and discharger of all debts of the deceased before distribution of the estate, partly depends on the cooperation and trust he/she is accorded with the beneficiaries to the estate. His appointment therefore invites a need to have a person who is trustworthy and willing to exercise diligence when occupying the office so*

*as to make sure that the estate is distributed to all entitled beneficiaries”.*

In the case cited above, the court also referred the case of **Sekunda Bwambo v. Rose Ramadhani** [2004] TLR 439, where the Court observed that:

*“The object of appointing an administrator of the estate is the need to have faithful person who will, with reasonable diligence, collect all the properties of the deceased. He will do so with the sole aim of distributing the same to all those who were dependants of the deceased during his life-time.”*

In regard to the first issue, the defendant has failed to substantiate the claim that the plaintiff, acting with malice, included individuals who were not children of the deceased. Moreover, the assertion concerning the properties of the deceased allegedly not listed by the plaintiff was prematurely raised. This is because the plaintiff has not yet been granted letters of administration, which would empower him to gather all the deceased's assets and furnish an accurate inventory.

Nevertheless, all ten witnesses for the plaintiff's side testified in favor of the plaintiff being the appropriate person to oversee the deceased estate. They underscored his close relationship with the deceased, indicating his thorough understanding of the estate. Furthermore, given his current responsibility for managing the estate and his appointment by the clan meeting as a neutral party, coupled with his financial capability to gather scattered assets, he is deemed suitable to equitably distribute the assets to beneficiaries and heirs.

When considering a suitable individual to administer the estate of the deceased, the court emphasized certain factors to be taken into account, as outlined in the case of **Sekunda Mbwanbo v. Rose Ramadhani** (supra) it was held that;

*"Furthermore, it must by now be very obvious to all, that such **an administrator must be a person who is very close to the deceased** and can therefore easily identify the properties of the deceased. He must also have the confidence of all the beneficiaries or dependants of the deceased. **Such a person may be the widow or the widows, the parent or child of the deceased or any***

***other close relatives of the deceased...***" [emphasis is supplied].

Therefore, I have reached the conclusion that the plaintiff/petitioner is the suitable individual to be appointed as the administrator of the deceased estate. He possesses ample knowledge of the estate and has demonstrated both the ability and impartiality required for distributing the estate to the legal heirs.

Turning to the second issue, which pertains to determining the lawful heirs of the deceased, the plaintiff's side has asserted that the deceased never married or cohabited with any woman. He maintained his private relationships discreetly, away from public scrutiny.

Consequently, every child who testified in court was under the impression that they were the sole offspring of the deceased until later when they were introduced to other siblings. Even the defendant himself could not provide an explanation as to how he became acquainted with Nuru Clerk as his own sister.

Despite the contentious nature of this matter, I find that it has been raised prematurely. Determining the lawful heirs of the deceased estate should occur subsequent to the administrator of the deceased estate lodging a true account of the inventory, revealing the collected



assets of the deceased and who stands to benefit from the estate. It is at this juncture that objections regarding the determination of lawful heirs can be raised for the court's consideration.

At this preliminary stage, where the administrator of the estate has yet to assume office, it cannot be definitively determined who the lawful heirs of the deceased estate are. Therefore, this issue lacks basis for being raised prematurely.

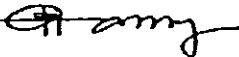
With that being said, I conclude that the entered caveat holds no merit and is therefore dismissed. Ultimately, I find that the plaintiff/petitioner, Kaisi Kabenga Kalambo, is indeed the suitable individual and is hereby granted letters of administration for the estate of the late Nsa Kaisi.

The administrator is instructed to furnish an accurate inventory of the deceased's estate and submit an account of the estate within a span of two months from the present date. This obligation must be fulfilled in accordance with the pertinent laws governing estate administration in Tanzania.

It is so ordered.

**Dated at Dar es Salaam this 5<sup>th</sup> day of April, 2024.**



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

Delivered in the presence of Ms. Rose Mwambusi Learned Advocate for  
the Petitioner and Caveator in person.