

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 346 OF 2023

(Arising from Probate and Administration Cause no. 11 of 2004)

**IN THE MATTER OF THE ESTATE OF THE LATE SEBASTIAN RUGAIMUKAMU
KAKOTI TIGWERA**

AND

**IN THE MATTER OF APPLICATION FOR REVOCATION OF JOSEPH SHUMBUSHO
AS AN ADMINISTRATOR OF THE ESTATE**

BETWEEN

GEORGE RUGAIMUKAMU KAKOTI _____ APPLICANT

VERSUS

**JOSEPH SHUMBUSHO (As administrator of the estate of the late Sebastian
Rugaimukamu Kakoti Tigwera) _____ RESPONDENT**

RULING:

28th Nov & 13th Dec 2023

KIREKIANO, J.

It is now 21 years since the late Sebastian Rugaimukamu Kakoti Tigwera (the deceased) died intestate on the 8th day of December 2002. The deceased was laid to rest in peace leaving behind in pieces several properties of his estate. Eventually, the respondent herein, on 29th April 2008 was appointed to the office of the administrator of the estate.

Administration of the deceased estate has been more protracted in this registry than it was expected. A brief background will tell the tale.

On 29th April 2008, the respondent herein was appointed to the office of administrator of the estate of his late father. Before he could accomplish the administration, in the year 2012 some of the heirs; Mary Grace Tigwera, James Rugaimukamu, and David Rugaimukamu, successfully applied for the revocation of the respondent's appointment to the office of the administrator. The respondent appointment was revoked on 03rd February 2012 and the said Mary Grace Tigwera, James Rugaimukamu, and David Rugaimukamu were appointed as administrators.

It is noted here that these administrators did their part before the respondent was reinstated to the office by the court of appeal on 6th October 2020.

This time another heir the applicant herein is dissatisfied with the manner the respondent discharged his duties as administrator of the estate. He thus wishes to be appointed to the office, he has thus filed this application under section 49 (1) (e) and (2) 107 (5) of the Probate and Administration of Estate Act Cap 352 [RE 2019] to be referred to as PAEA and section 95 Civil Procedure Code Cap 33 [RE2019] seeking this court to

order removal or revocation of the letters of administration granted to the respondent issued on 29th April 2008 and reinstated on 29th October 2020.

According to the applicant's affidavit, the main complaint is on the manner the respondent/administrator dealt with the distribution of the estate particularly a commercial property at Plot no. 1048 Msasani Peninsula. According to him, the property commands extensive rental revenue over and above its resale cost, thus distribution was disproportional and heavily favoured the respondent who apportioned it to himself without conducting a professional evaluation. In this state of facts, the applicant complains that the administrator has not discharged his duties according to his oath.

The respondent in his counter affidavit admitted the chronological event of his appointment revocation and reinstatement. According to him, he performed his duties properly and then filed the final accounts to court and exhibited the same to court on 30.11.2022 and served the applicant on 2.06.2023. He disputed doing any wrong stating that he had involved the heirs in the process but despite summoning the applicant and other heirs to attend a meeting they have not been acting accordingly.

The application was heard by way of written submissions, the applicant was represented by Mr Jonathan Mbuga learned advocate while the respondent had the service of Mr. Ambrose Mkwera learned advocate.

In his submission, Mr Mbuga submitted that following the order by the court of appeal restoring the respondent to office, he remained mum without informing the heirs including the applicant. When he made this application, he learned about the existing inventory and final accounts.

It was Mr Mbuga's submission that this court under section 49 (1) PAEA is vested with powers to examine the said inventory and accounts and ascertain whether the administrator has discharged his duties properly including the right to distribute the same to the rightful beneficiaries as required by the law. In support of this contention, he cited the court of appeal decision ***in Joseph Shumbusho v Mary Grace Tigerwa and 2 Others, CoA Civil Appeal No. 183 of 2016***

"In the performance of his duty as a legal representative, the law requires him to act per his oath. That is the administrator will faithfully administer the deceased's estates by first paying the just debts of the deceased, distributing the residue according to the law, making and exhibiting a full and true inventory of the deceased's properties and credits, and rendering a true account of the administration.

Mr. Mbuga thus submitted that the respondent ought to have distributed the estate equally to the surviving heirs in view of section 30 of the Indian Succession Act 1865, he submitted that according to the accounts submitted by the respondent, there were 25 properties worth Tshs 4,134, 210,000.00 and five beneficiaries however the respondent allocated to himself properties worth about 50.55% including a potential property situated at Plot no 1048 Msasani Dar es Salaam and no justification was made why the other child David was allocated only one property.

On the second ground, Mr Mbuga submitted that the beneficiaries are entitled to question the legality of the distribution however the respondent did submit the account in secrecy and without notifying the beneficiaries personally as required by rule 13 of the Probate Rules. He submitted that the respondent having filed the inventory ought to have caused this court to issue summons so that the beneficiaries could be summoned in court thus the whole process of distribution was not done transparently.

Given the above, the applicant's counsel thus argued this court to revoke the appointment of the respondent and instead appoint the applicant who is qualified to the office of the administrator to finalize the administration of the estate.

The respondent through Mr Mkwera adopted the contents of the affidavit and responded that there was an initiative by the respondent by emails to involve the heirs including the applicant in a meeting involving the administration of the estate, but the heirs did not confirm attendance of the meeting nor attended the same.

On complaint of share of the estate the respondent submitted that the same is misconceived as it does not warrant revocation, he said the applicant cannot complain on behalf of other heirs. If the said heir David mentioned by the applicant was dissatisfied with the share, he should have contested the distribution. He argued that the applicant cannot speak for the other beneficiaries who have agreed with the distribution of the estate.

According to Mr Mkwera, the respondent became functus official after he had filed the accounts of the estate. He cited the decision in **Ahmed Mohamed Al Lamaar Vs Fatuma Bakari and another civil appeal non 71 of 2012 CAT at Tanga** emphasizing that since the respondent had already exhibited the inventory and accounts, he was already functus officio. Mr, Mkwera was thus of the view that in the state of affairs as narrated above the proper remedy was not to apply for the revocation.

In his rejoinder, Mr Mbuga argued that there was no proof that the beneficiaries were informed of the existence of the inventory and accounts

he argued this was contrary to rule 13 of the probate rules which requires personal service. On the propriety of this application, Mr. Mbuga submitted that the application is proper and Mr. Mkwera should not be allowed to bring a late objection without even suggesting the proper application to be made.

Mr Mbuga was of the view that in the absence of an order closing the proceeding, it can not be said that the probate was closed. He cited the decision in **Andrew G Mfuko Vs George C Mfuko Civil Appeal no 320 of 2021** to support his position.

On my part, having examined the parties' affidavits and reflected on the rival submissions, I wish to start by appreciating the provision of section 49 (1) (e) of the Probate and Administration Act Cap 352 as relied on by the applicant. The same provides for ground in which the administrator may be removed. That is to say, **one** the administrator has wilfully and without reasonable cause omitted to exhibit an inventory and accounts, or **two**, the administrator has exhibited inventory or account that is untrue in a material respect.

On the first aspect, that is whether the respondent filed accounts of the estate, when addressing the point of objection earlier raised, it appeared on face of the record in probate cause no 11 of 2004 was silent if

the respondent had filed accounts of the estate and if the same was closed. Considering the parties affidavits and submission, it is clear that both the applicant and respondent are aware of existing accounts of the estate filed by the respondent which is the centre parties' arguments.

This prompted more inquiry in the registry which revealed that, on 30/11/2022 the respondent submitted to this registry an account of the estate and was issued with exchequer Receipt no **25011080**. The same was thus found, and it is the same accounts which both parties addressed in their opposing arguments. From this state of facts, it is clear and I thus make finding that the respondent filed accounts of the estate on 30/11/2022.

While I have in mind the decision in **Mohamed Lamar** that once a probate has been closed there cannot be an application to remove the administrator. I am more concerned with the manner of handling the "accounts" filed in the registry on 30/11/2022. That is, in absence of a court order, can it be said that the respondent had exhibited into court the accounts of the estate as required under section 107 of the Probate and Administration Act Cap 352. I say so because the record in probate cause no 11 of 2004 is silent on this. Despite being issued with receipt the accounts filed were not brought to the attention of the court.

It was expected that when the said accounts were filed, the same would have been brought to the attention of the presiding Judge or Deputy Registrar who would make an entry in the record that is, probate cause no 11 of 2004. It cannot be over emphasized that, an account of the estate is an important record verifying the significant process in the administration of probate or execution of wills. It is evidence of the work done by the administrator or executor of the will after being appointed to the office.

Presenting an account should as a matter of prudence be followed by the court acknowledging the same, followed by direction or order of the court ending the proceedings or otherwise.

In the case of **Miriam John Mallya & 3 others Vs. Marian John Mallya (executrix of the estate of the late John Kacheli Malya, Misc. Civil Appl. No. 07 of 2021 at Pg. 10** the Court held that,

*"For the Probate matter to be closed first, the inventory and final statements of accounts have to be filled to the court as per section 107 (1) of the Probate and Administration of Estate Act (Supra), also **the court shall order for beneficiaries to inspect and confirm on the inventory and final statement of the statement of accounts as per Section 107 (4) of the Probate and Administration of Estate Act.***

In view of the above, the word **"exhibit into court"** appearing under section 107 of the probate act should therefore be construed to mean presenting the accounts openly to invite notice or attention, objection, or court direction. My view is also fortified by decision by this Court Mlacha J in **Beatrice Brighton Kamanga and Amanda Brighton Kamanga Vs Ziada William Kamanga**, Civil Revision N o. 133 of 2020, High Court of Tanzania at DSM,

*Heirs, creditors, and debtors may seek to peruse the statements of accounts and inventories. If they do so the court must allow them. In practice, in a good system of administration of justice, once they are filled, **the court must cause the same to be known to heirs, debtors, and creditors and ask them to file objections against them, if they so wish.***

The considering all the above were missing I do not subscribe the respondent proposition that the respondent was, after submitting the accounts, functus official. He would have been so if there was an order to that effect. Deciding otherwise as Mr Mkwera was attempting to persuade me would risk courts control of administrators or executors, especially the unfaithful ones for it is known that where there is wildebeest there are also few zebras.

The last aspect is on the manner the estate was distributed. Mr Mbunda in his submission persuaded this court to examine the truthfulness of the inventory and account filed and find that the administrator did not do his job properly in distribution of the assets.

I have demonstrated the procedure after the administrator has filed accounts of the estate and taken note that there is no proof that the heirs appearing in the accounts are aware of the same due to the circumstances of filing the accounts. It is loud and clear that it is the administrator who is mandated to administer or deal with the estate on behalf of the deceased. I find that the prayer by Mr Mbunda will mean an elusive and inappropriate attempt to interfere with the work of the administrator. Conversely on part of the heirs this court cannot step into their shoes in the first place to examine accounts which have not been brought to their attention.

In final analysis, on basis of the reason above, I find that the applicant has not demonstrated sufficient reasons to warrant revocation of the administrator. This application thus fails in want of merit. Before winding up, the deputy registrar is directed to cause the accounts to be known by all heirs involved before proceedings are formally closed. Considering this is a probate matter I shall make no order as to costs



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A. J. KIREKIANO

JUDGE

13/12/2023

Court

Ruling delivered in presence of the Mr Alfred Rweyemamu for the applicant and in presence of Mr Malekela holding brief of Mr Ambroce Mkwera for the respondent.

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A. J. KIREKIANO

JUDGE

13/12/2023