IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA SUB-REGISTRY)

AT ARUSHA

PROBATE AND ADMINISTRATION CAUSE NO. 15 OF 2023

IN THE MATTER OF THE ESTATE OF THE LATE NYANDE MISSANA MKHOI WHOSE PLACE OF DOMICILE WAS AT LONGIDO IN ARUSHA TANZANIA

AND

IN THE MATTER OF PETITION FOR LETTERS OF ADMINISTRATION BY MWATIMA MISSANA MKHOI OF P. O. BOX 53 LONGIDO ARUSHA, TANZANIA

JUDGMENT

25th January & 06th March 2024

MWASEBA, J.

On 17th July, 2023, Mwatima Missana Mkhoi, filed A petition for letters of administration of the Estate of the late Nyande Missana Mkhoi, his father, who died intestate on 14th October 2022 at Longido Arusha, Tanzania. According to the petitioner, the deceased was survived by one wife, Cesilia Mkhoi Kilawa and several children. In the family meeting that was convened on 20th October 2022, he was appointed by the family members to petition for and administer the deceased's estate. He further alluded that the deceased professed Christianity during his lifetime. After issuance of a citation, the probate was published in the

official Government gazette No. 4617, dated 18th August 2023 and was advertised in Mwananchi newspaper issue No. 0856-7573 No. 8413 dated 26th August 2023.

On 22nd September, 2023, a formal caveat was entered by Yasinta John Kimario. According to the caveat, the caveator claimed to be the second wife to the deceased, married under customary rites. The caveator recounted that before her husband's death, they were blessed with one issue, Chausiku Nyande Mkhoi. The caveat was also supported by the Last Will purported to have been bequeathed by the deceased on 3rd May 2016, before his death. The caveat was also featured with a preliminary objection regarding the jurisdiction of this court to entertain the matter. In the course of hearing the evidence, it is reflected that the objection was abandoned as it shall be apparent during the determination of the issues.

After the caveat was entered and having called the caveator to enter appearance in terms of **Section 59 of the Probate and Administration of Estates Act,** Cap. 352 [R.E 2002] (hereinafter "PAEA") and **Rule 82 of the Probate Rules**, the matter turned out to be contentious. The proceedings took the form of a normal civil suit in

terms of **Section 52(b) of the PAEA**, where the petitioner became the plaintiff while the caveator became the defendant.

Both the plaintiff and the defendant appeared in court in person unrepresented, although their documents were drawn by the learned counsels. Before the hearing commenced, the following issues for determination were framed by consensus.

a) *Whether the court is vested with jurisdiction to determine the matter;*

b) *Whether the caveator was the legal wife of the deceased;*

c) *Whether the will purported to be left by the deceased is valid;*

d) *Whether the family meeting minutes were lawfully procured;*

e) *Whether the deceased and the caveator jointly acquired any property;*

f) *Whether the petitioner/plaintiff deserves to be granted letters of administration; and*

g) *To what reliefs are the parties entitled?*

The parties were then called on to present their respective evidence to support their case. The evidence went as follows:

Mwatima Missana Mkhoi (PW1) informed the court that he is the biological son of the deceased. He tendered his birth certificate, which

was admitted as exhibit P1. He accounted that the family meeting that was convened on 20th October 2023 was attended by 11 members who unanimously appointed him to administer the deceased's estate. According to PW1, the deceased was a Christian, a Seventh Adventist devotee. He contracted Christian marriage with Cesilia Kalawa on 15th March 1980 at Chang'ombe Adventist Church in Dar es Salaam, which subsisted to his death. The marriage certificate was admitted as exhibit P2. At the family meeting, which the defendant also attended, they agreed that the deceased died intestate without leaving any Will. PW1, therefore, challenged the will sought to be relied on by the defendant, stating that it was invalid for being one-sided and without being witnessed by any witnesses or lawyer. He urged the court to disregard such A Will. PW1 tendered the family meeting minutes which were admitted as exhibit P3. The deceased's death certificate was admitted as exhibit P4. According to PW1, the deceased had a concubinage relationship with the defendant, which gave birth to one child, Chausiku, who was also listed among the deceased's children and heir. Based on whether there were properties jointly acquired by the defendant and the deceased, PW1 left the burden upon the defendant to prove.

When cross-examined by the defendant, PW1 stated that the defendant was once the deceased's tenant before they engaged in the love affairs. Regarding the houses, the plaintiff testified that they were all built on the plots owned by the deceased. He further stated that the defendant participated in the family meeting and she signed in exhibit P3.

Nyakwesi Missana Mkhoi (PW2) gave evidence similar to that of PW1. She added that she was appointed in the family meeting to administer the deceased's estate along PW1. However, on 20th September 2023, she wrote a letter to the court recusing herself from the administration exercise as she resides outside Arusha, letting PW1 as sole petitioner. She supported that PW1 be appointed as the administrator of the deceased's estate. PW2 added that when the tenant's house was constructed by her father in 2006, she participated in carrying bricks. Their mother, Cesilia, was once in a marital dispute with the deceased, she left for Iringa, but later the dispute was resolved, and she returned back when the defendant had already given birth to Chausiku.

As to why the defendant was called to the family meeting, PW2 stated that it was simply because she had a child with their late father. It

was further PW2's testimony that the deceased had Christian marriage which does not allow polygamy. She further stated that she takes care of Chausiku as her younger sister. That evidence was corroborated by Musiba Missana Mkhoi (PW3), who supported the plaintiff's appointment as administrator. PW3 added that the defendant was not there when the deceased bought the plot in 2005.

Faruku Alfan Kalawa (PW4) and Shida Kalawa (PW5) told similar stories supporting the plaintiff's appointment as the administrator of the deceased's estate. According to PW5, the Will purportedly left by the deceased was read by the village and church leaders before the burial ceremony, and it was rejected outright for being forged. That marked the closure of the plaintiff's case.

Yasinta John Kimario (DW1) informed the court that she started living with the deceased in 2004 in a rented house at Mianzini area. After one month, they went to Longido and bought a plot there. The sale agreement in respect of that plot was admitted as exhibit D1. They continued to live as husband and wife. Later, the deceased and his two brothers, Mwijarubi Missana Mkhoi and Mruli Missana Mkhoi, went to pay dowry at Kilimanjaro. While at Moshi, the deceased informed the defendant's parents that he was marrying her as a second wife because

he married his first wife under their customary rites. After paying the agreed dowry, the deceased took DW1 to Musoma at his house. DW1 was introduced to the deceased's relatives and siblings. She was even taken to Ukerewe, where other relatives of the deceased lived, for introduction. She was taken back to Musoma where she was left for six months to learn the customs of the Jita tribe, where the deceased belonged. Thereafter, they returned to Mianzini area in Arusha and lived as husband and wife.

She testified that the deceased's children also used to visit her house. In 2010, the deceased started constructing a house for her. The profile map of the said house was admitted as exhibit D2. After roofing the house, they shifted to it, although it was unfinished. By the time they shifted to the new house, the defendant had had a four-month-old baby, Chausiku.

Regarding the jurisdiction issue she had contested in her pleadings, DW1 readily conceded that the court is vested with jurisdiction to entertain the matter. Regarding the status of her marriage, she accounted that she was the legal wife as they contracted customary marriage. Regarding the Will, she accounted that it was written by the deceased, who signed it, but it was not attested by a

lawyer. The copy of the said will was admitted as exhibit D3. DW1 challenged the family minutes, stating that they were attended by relatives of the deceased's first wife and her children, while her relatives and children were not called to participate. She further challenged it because the meeting took only half an hour. According to DW1, when she attended the meeting with her sister, they found the minutes already written; they were only required to sign the attendance register.

Concerning the issue of joint acquisition of properties, DW1 informed the court that they jointly acquired a house that she currently lives in. There is also a rented house with 12 rooms at Plot No. 1 and a vehicle, make Corona with registration No. T 529 AAM. She accounted for another vehicle and the house at Musoma, which the deceased acquired before marrying her. DW1 objects to the plaintiff's appointment as the administrator of the deceased's estate simply because he clandestinely instituted the probate case without notifying her. He has also started occupying the deceased's properties, including the vehicle she acquired jointly with the deceased. He has also started painting the house while the case is pending in court.

When cross-examined, DW1 stated that her name is Yasinta Kimario, while the names in exhibit D3 are Yasinta Nyande, but she

pointed out that both convey her names. The name Hyasinta John Kimario appears in the Will, she termed it as a typing error. DW1 also denied objecting that the court lacks jurisdiction in her pleadings, stating that they are in English. According to DW1, she disputed the minutes after the plaintiff started occupying the properties. She was of the view that having a child with the deceased is conclusive proof of the existence of marriage. When further cross-examined, she admitted that she was a Christian, but she did not know the status of a Christian marriage. DW1 also stated that she has two other children not belonging to the deceased. Regarding her contribution towards the acquisition of the house, she stated that she was cooking for the masons. DW1 also testified that the Will was given to the deceased's brother.

Mwijarubi Missana Mkhoi (DW2) testified that the defendant is the legal wife of the deceased, as the deceased had two wives, namely Cesilia and the defendant. The deceased had a customary marriage, with the defendant insisting that neither of the wives contracted Christian marriage. According to DW3, when he fell sick, the deceased was taken care of by his junior wife, the defendant herein. After his death, the plaintiff told them that the deceased had said that in case he died, he should be taken to his elder wife. So, after he died, the body

was taken to the elder wife. In the meeting convened to arrange the burial of the deceased, the elder wife and the deceased's children did not recognize DW2; hence, he left without attending his young brother's burial. DW2 referred to an incident when the plaintiff's brother died in 2022, and they disturbed the defendant to the extent of pouring down the food. By then, their father was alive, and he reported them to the police.

On the validity of the Will, DW2 stated that it is valid because it was printed by the deceased, who distributed it to his family and clan at large. According to DW2, the defendant was married in 2004. Thereafter, in 2005 they bought a plot at Longido and built a house where they lived. After completing the house, they constructed another house for renting. He insisted that at longido, there are three houses, one for the elder wife, the second for the junior wife and the last one for tenants. He objected to the appointment of the plaintiff as the administrator of the deceased's estate because the family meeting was attended by Cesilia's relatives, excluding the relatives of the deceased. He also asserted that in his Will, the deceased chose that the estate should be administered by a clan member.

When cross-examined, DW2 stated that the deceased had no religion. He accounted that the defendant and the deceased started acquiring properties in 2004. He also stated that the marriage between Cesilia and Nyande is void because his brother never contracted a Christian marriage.

Omary Ramadhan Salum (DW3) and Steven Lesinga (DW4), the village chairman and ten-cell leader, respectively, testified that they knew the defendant as one of the wives of the deceased. She was identified to them by the deceased as one of his wives because he had two wives. DW4 stated that DW1 was registered as one of the permanent members in the cell he led. The duo also admitted to having participated in the burial ceremony when the deceased's history was read to identify the defendant as one of the deceased's wives. DW3 added that the purported Will was read in a meeting before burial, and in his capacity as the village chairman, he considers it a valid Will. He accounted that the burial was led by a pastor from the Seventh Adventist church.

Esther John Kimario (DW5), a sister to DW1, gave evidence similar to that of DW1. She added that before they acquired any property, the deceased was her tenant at Mianzini for six years. After he bought a plot

and built a house, they shifted to their house. When she was taken there, DW5 saw two houses which were constructed by the deceased. She objected to the appointment of the plaintiff to administer the deceased's estate, stating that he abuses the defendant by beating her, breaking utensils and pouring down food. DW5 participated in the family meeting, but they were just given attendance papers to write their names without knowing what transpired because the meeting was a two-minute meeting. Basically, they did not participate in the discussion. She added that the plaintiff once stabbed the defendant and absconded, hence disqualifying himself from administering the deceased's estate.

Having summarised the evidence of both sides and scrutinized the exhibits tendered, I now proceed to determine the issues raised one after another. The first issue is whether this court has jurisdiction to determine the matter.

As pointed out earlier in this judgment, the caveator raised a preliminary objection challenging the jurisdiction of this court to determine the matter. Seemingly, in paragraph 3 of the affidavit in support of the caveat, the defendant faulted the plaintiff for referring this matter in this court without noting that the deceased lived a Sukuma customary life as he married two wives; hence, this court lacked

jurisdiction to entertain the matter. However, in the course of hearing the evidence, DW1 was strong enough to concede that the court is vested with jurisdiction to entertain the matter. She candidly testified that this court has jurisdiction to determine this matter. Even when cross-examined by PW1, she denied having pleaded that the court lacked jurisdiction. She, however, faulted that the pleadings were in English, which she was ignorant of. Similarly, at the beginning of his evidence, DW2 stated that this court has jurisdiction to determine the matter. It is noted that at first, the defendant challenged the jurisdiction of this court to determine the matter, having perceived that the deceased lived a customary life. Hence, the estate must be administered customarily.

It is noteworthy that the jurisdiction of the courts is a creature of statute. In Probate and Administration of estates, where the law applicable is either Islamic or customary law (mode of life of the deceased), jurisdiction to such cases is vested in Primary Courts. According to the **Magistrates Court Act**, Cap. 11 [R.E 2019], which is the law applicable in primary courts, the Fifth Schedule of the Act is crystal clear. Paragraph 1(1) of the Fifth Schedule reads thus:

"1. (I) The jurisdiction of a primary court in the administration of deceased's estates, where the law

applicable to the administration or distribution or the succession to, the estate ***is customary law or Islamic law****, may be exercised in cases where the deceased at the time of his death, had a fixed place of abode within the local limits of the court's jurisdiction."* (Emphasis added)

At this juncture, I wish also to state at the outset that the High Court has unlimited jurisdiction in determining probate matters. That is irrespective of the law applicable, the estate's value, the place of abode or any other relevant factor. This has been the court's position in numerous decisions, including this court's decision in **Beatrice Brighton Kamanga and Another v. Ziada William Kamanga,** Civil Revision No. 13 of 2020 H.C DSM reported TANZLII. This court underscored:

"The High Court like the primary court can hear any probate or administration matter regardless of the amount of the assets involved. It can also apply any probate and administration law applicable in this country."

Regardless of the deceased's mode of life, this court is vested with jurisdiction to determine the matter. I, therefore, agree with the plaintiff and his witnesses, as readily conceded by the defendant, that this court is vested with jurisdiction to determine this matter. The first issue is resolved in the affirmative.

Regarding the second issue, I am called upon to determine whether the caveator was the legal wife of the deceased. In the defence evidence, DW1 and her witnesses testified that she had married the deceased in 2004 when they started cohabiting. According to defence witnesses, the defendant and the deceased contracted customary marriage because the deceased and his two brothers went to the defendant's parents, intimated that he intended to marry the defendant as the second wife, and subsequently paid the dowry. He further took the defendant to Musoma and introduced her to his relatives at Musoma and Ukerewe. The two were also blessed with one issue of marriage, namely, Chausiku Nyande Missana Mkhoi.

On their part, the plaintiff and his witnesses insisted that the deceased lived a Christian life as he contracted a Christian marriage with Cesilia Kalawa. They manifested that, since the marriage was a Christian one, it was intended to last for their joint lives. A certificate of marriage dated 7th August 1980, which shows that the marriage was contracted at the Seventh Day Adventist Church Temeke Chang'ombe-Dar es Salaam, was admitted in evidence.

All four witnesses for the plaintiff testified that the deceased contracted Christian marriage with his wife, Cesilia Kalawa. According to

the Law of Marriage Act. Cap. 29 [R.E 2019], (hereinafter "the LMA"), Christian marriages are intended to be monogamous in terms of **Section 9(2) of the LMA**. The law restricts marriages contracted in Christian form from being converted to polygamous or potentially polygamous. **Section 11(5) of the LMA** provides:

> *"No marriage between two Christians which was celebrated in a church in Christian form may, for so long as both the parties continue to profess the Christian faith, be converted from monogamous to polygamous and the provisions of this section shall not apply to any such marriage notwithstanding that the marriage was preceded or succeeded by a ceremony of marriage between the same parties in civil form or any other form."*

Further, **Section 15(1) of the LMA** prohibits a person who is in a monogamous marriage from contracting another marriage while the former marriage still subsists. The provision provides:

> *"-(1) No man, while married by a monogamous marriage, shall contract another marriage."*

Several judicial pronouncements are to that effect. For example, in **Francis Leo v. Paschal Simon Maganga** [1978] LRT 22, this court had the following to say:

> *"A Christian who has neither renounced his faith nor divorced his wife has no capacity to marry another woman and*

therefore cannot invoke the presumption under section 160 in his favour."

Applying the above provisions of the law and precedents in the case at hand, there is no doubt that the deceased professed Christianity, the Seventh-day Adventist denomination. When testifying, DW3 stated that the burial ceremony was led by a pastor from a Seventh-Day Adventist church, which implies that it is the religion the deceased professed. Further, there is no doubt that the deceased contracted Christian marriage with Cesilia Kalawa on 7th August, 1980, as per exhibit P2. The defendant did not manage to water down the validity of exhibit P2, which is conclusive proof of the existence of marriage. Undoubtedly, exhibit P2 suggests that the marriage contracted is none other than a Christian marriage.

From the evidence on record and the tendered exhibits, nothing suggests that the marriage contracted between the deceased and Cesilia Kalawa was annulled either by decree of divorce or any decree of the court declaring the marriage irreparably broken down. Marriage can be ended by decree of divorce, annulment, death or extra-judicial divorce outside Tanzania, the grounds enlisted under **Section 12 of the LMA**. None of those conditions existed in the marriage between the deceased and Cesilia. That presupposes that the marriage was subsisting at the

time the defendant claimed to have contracted customary marriage with the deceased. Any marriage contracted during the subsistence of a valid monogamous marriage is declared invalid.

According to DW1, the fact that she had a child with the deceased acted as conclusive proof of the existence of customary marriage. In my considered view, having a child in itself cannot be inferred as proof of the existence of a couple's marriage. Marriages can be proved in accordance with the LMA.

It suffices to conclude that at the time the defendant claimed to have contracted customary marriage with the deceased, there was still subsisting Christian marriage between the deceased and Cesilia Kalawa, which could not have been impeached by any subsequent marriage. That said, the marriage purported to be contracted between the deceased and the defendant, if any, has no legal force. That said, the second issue is resolved in the negative in the sense that the caveator was not the legal wife of the deceased.

The third issue pertains to the Will purported to have been written by the deceased prior to his death. The said Will was admitted as exhibit D3 although it was strongly disputed by the plaintiff. In determining this issue, I wish to make clear that the term "Will" is defined under **Section**

2 (1) of the Probate and Administration of Estate Act, Cap. 352 [R.E 2002] to mean:

> *"The legal declaration of the intentions of a testator with respect to his property, which he desires to be carried into effect after his death."*

This being a legal declaration the court must be assured of its validity for it to be considered as a Will. In determining the validity of the Will, the Court of Appeal sets out tests that the court has to consider before the grant of probate. In the case of **Mark Alexander Gaetje and Two Others v. Brigitte Gaetje Defloor**, Civil Revision No. 3 of 2011, the Court of Appeal sitting at Dar es Salaam had this to say:

> *"In a petition for probate, the court is concerned with the validity of the will as annexed to the petition. The questions which will come up are* ***whether or not the will has been properly executed; whether or not the testator had the capacity to make the will; in the case where the testator has disabilities like blindness, deafness or illiteracy, whether or not the contents of the will were made knowledgeable to him by reading over, etc and he had granted his approval; whether there was undue influence or not; whether there was forgery and fraud or not; and whether the will has been revoked or not****. If the will passes all the tests enumerated above, it is taken to be*

proved, and the court grants the executor the power to administer the will. These requirements of the law are reflected in Sections 24 to 28 of the Probate and Administration of Estates Act, chapter 352 R.E. 2002 of the Laws." (Emphasis added)

Being guided by the above-stated principle, in determining the matter at hand, I will consider the first tests as to whether or not the will has been properly executed. **Section 50 of the Law of Indian Succession Act 1865** stipulates that:

*"**The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will** or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary." (Emphasis added)*

The above provision is couched in a mandatory form that the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark at the Will.

Applying the law governing the Will in the document under deliberation, it is apparent that exhibit D3 did not meet the conditions stipulated by the law. The Will was not witnessed by any witness; it was only signed by the deceased. There is no indication whether there was any witness at the time he signed.

Notwithstanding the above legal shortfalls, there was no evidence as to where the said Will was stored. In her evidence, DW1 testified that the Will was stored by the deceased's brother without mentioning his name or calling him to testify. On the other hand, DW2 stated that the Will is valid because it was printed by the deceased who distributed it to his family and his clan members at large. However, there is no evidence supporting such line of argument, because the will reached the other relatives through DW1.

From the foregoing, it is instructive to note that the purported Will is not a Will at law as it did not meet the conditions precedent for making of a valid Will. The Court of Appeal, while faced with an akin scenario in the case of **Jackson Reuben Maro v. Hubert Sebastian**, Civil Appeal No. 84 of 2004 (unreported), had the following to say:

> *"The document - Exhibit – 'B' is clear that Eliaichi w/o Sauli was not present when Sauli was making the purported will. It is apparent, therefore, that since the conditions (as cited) for*

making a valid will were not complied with, no valid will was made by Sauli and his purported will was of no legal effect. The High Court, therefore, erred in considering it to be valid."

The circumstances of the case at hand echo the above decision. Since the purported Will did not meet the conditions precedent for making Will, it is no will in law and it has no legal effect. Thus, the third issue is resolved in the negative.

I now revert to determining the 4th issue, whether the family minutes were lawfully procured. This issue will not detain me. According to the evidence on record, the plaintiff and his witnesses testified that the clan meeting was convened on 20th October 2022. The minutes were recorded and admitted as exhibit P3. DW1 admitted that she was informed of the meeting, and she attended. Her complaint is that she did not know what was discussed in the meeting because she was only given a paper to sign. DW5 also gave a similar account.

According to exhibit P3, DW1 and DW5 signed the attendance paper as numbers 9 and 10, respectively. At this juncture they cannot deny knowing what transpired in the meeting while they signed the attendance. They are not bound by the long term embraced principle *'non est factum.'* By signing, they signified that they participated in the meeting. After all, their account was quite divergent. While DW1

testified that it was a 30-minute meeting, DW5 referred to it as a five-minute meeting.

Further, it is on record that under paragraph 6 of the affidavit in support of the caveat, the defendant denied having been involved in the meeting, but in the evidence, she admitted to having participated. That clearly indicates that the defendant's evidence contradicted her statement in the pleadings. It is a trite law that parties are not allowed to depart from their pleadings. That suffice to disregard the defendant's evidence in respect of the family meeting minutes. Considering that the evidence and pleadings are not at one, since the minutes showed that the defendant and her sister participated, I entertain no doubt that the minutes were lawfully procured. The 4th issue is resolved in the affirmative.

Next for consideration is the 5th issue, whether the deceased and the caveator jointly acquired any property. According to DW1 and her witnesses, in their joint lives with the deceased, they acquired two houses and two cars. However, there was no evidence adduced showing the defendant's contribution towards the acquisition of the said properties. As resolved in the second issue that there was no valid marriage between the deceased and the defendant, there was also no

tangible evidence whether the deceased and the defendant acquired any property. Acquisition of any property cannot be proved by mere words in the absence of concrete evidence.

The defendant tendered the sale agreement, exhibit D1 showing that they bought the plot jointly. Exhibit D1 does not show whether the defendant participated in purchasing the plot, as there is neither her name nor signature in the sale agreement. I took note that DW3 and DW4, the leaders where the deceased lived, recognised the defendant as the deceased's second wife. Even assuming that she was actually the deceased's wife, I still hold and find that there is no material evidence showing that they acquired any property. That evidence (documentary) was crucial since the deceased had another wife and family.

PW1 and his witnesses insisted that the defendant was a mere tenant who later turned out to be in a concubinage relationship with the deceased. Without assuming facts, that is indicative that they lived in the deceased's house during their concubinage relationship. That in itself cannot act as proof of acquisition of properties. DW1, on her part, insisted that she participated in the construction of the houses as she used to cook for the masons. In the first place, there was no other witness to support her version. Second, cooking for the masons in

another person's family (a man who lives with his wife and children) cannot be equated to a contribution towards acquiring properties. In the absence of tangible proof, I am inclined to hold and find that there were no properties jointly acquired by the deceased and the caveator. The 5th issue is resolved in the negative.

The 6th issue, whether the plaintiff deserves to be appointed as administrator of the deceased's estate, the evidence adduced and the exhibits tendered reveal that he deserves. First, he is the son of the deceased, which implies that he has sufficient interest in the deceased's estate. Second, he was appointed by family members as per the family minutes (exhibit P3), which the defendant also attended and signed. By signing exhibit P3, the defendant subscribed to the resolution made in that meeting, which shows that the attendees of that meeting appointed the plaintiff to petition for letters of administration.

DW1 purports to object to the appointment of the plaintiff, stating that he has owned the deceased's properties without stating clearly the property he owned. DW2, on the other hand, objected to the appointment of the plaintiff on the account that the deceased, in his Will, wanted the estate to be administered by a clan member, not a party to his family. However, having discounted the said will, this

argument succumbs to death. DW5, on the other hand, objected to the appointment of the plaintiff, stating that he abuses the defendant by beating her and pouring down food. This argument is misplaced as it was not supported by any witness, including the defendant herself.

At the outset, the parameters set forth in appointing a person to administer the deceased's estate are basically that such a person must show sufficient interest in the deceased's estate. This position has been underscored in numerous decisions of the Court of Appeal, including the decision in **Naftary Petro v. Mary Protas**, Civil Appeal No. 103 of 2018 (reported at TANZLII), where the Court held:

> *"... The primary consideration, therefore, is holding of an interest in the estate of the deceased. The term interest in a deceased's estate has not been given any statutory definition. But we think it should be looked at as "beneficial interest" which is defined in Black's Law Dictionary, Eighth Edition, at page 828, to mean "a right or expectancy in something (such as a trust or an estate) as opposed to legal title to that thing." Thus, any person, who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased person, is entitled to a share of the deceased person's estate qualifies as an interested person. Invariably, this will include any heir, a spouse, a devisee or even a creditor of the deceased - see, for instance,* ***Seif***

Marare v. Mwadawa Salum *[1985] TLR 253; and* ***Sekunda Bwambo v. Rose Ramadhani*** *[2004] TLR 439."*

From the foregoing, it is apparent that the plaintiff, the deceased's son, poses sufficient interest in the deceased's estate. First, he is one of the beneficiaries, and second, he was appointed by the family members, indicating that he is conversant with the properties left out by the deceased. That clearly qualifies the petitioner/plaintiff to be appointed as the administrator of the deceased's estate. Perpetrated by the above narration, the 6th issue is resolved in favour of the plaintiff.

Now, the last issue is what are the reliefs the parties are entitled to. This issue summarises what has been deliberated in the first six issues. Having resolved that there was no valid marriage between the deceased and the defendant, further since there were no properties jointly acquired by the deceased and the defendant, the caveat filed by the defendant lacks legs to stand on. The caveat filed by Yasinta John Kimario against the petition stands dismissed in its entirety.

Having dismissed the caveat filed by the defendant, I now revert to the petitioner's petition. While resolving the sixth ground, I explained in detail that the petitioner deserves to be appointed the administrator of the deceased's estate for the pointed-out reasons. I have no reason to reiterate the reasons.

Guided by the above determination, I hereby appoint **MWATIMA MISSANA MKHOI** to be the administrator of the estate of the late **NYANDE MISSANA MKHOI**. The administrator shall have powers to collect the deceased's estate, pay debts, and distribute the residue to the lawful hairs in a fair manner without discrimination. The administrator shall file an inventory and statement of true accounts within six months from today. This being a probate matter and taking into account the family ties between the parties herein, I make no order as to costs.

Order accordingly,

DATED at **ARUSHA** this 5th day of March 2024

N. R. MWASEBA

JUDGE