

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CONSOLIDATED MISC. APPLICATION NO 614 OF 2018

AND 644 OF 2018

(Originating from Probate and Administration Cause No. 65 of 2016)

**IN THE MATTER OF THE ESTATE OF THE LATE MARK NYAMOYO
WAMBURA**

AND

**IN THE MATTER OF APPLICATION FOR REVOCATION OF LETTER
OF ADMINISTRATION BY KEBISI CHACHA NYAMOYO**

(the administrator)**APPLICANT**

VERSUS

DELVINA BALTAZAR SWAI.....RESPONDENT

AND

**IN THE MATTER OF APPLICATION FOR REVOCATION OF LETTER
OF ADMINISTRATION BY DELVINA BALTAZAR SWAI**

(the administrator)**APPLICANT**

VERSUS

KEBISI CHACHA NYAMOYO.....RESPONDENT

RULING

Date of last Order: 06/12/2019

Date of Ruling: 27/12/2019

MLYAMBINA, J.

In Misc. Application No. 614 of 2018, the applicant Kebisi Chacha Nyamoyo has moved this court to revoke the letters of administration of the estate of the late Mark Nyamoyo Wambura issued to the respondent one Delvina Baltazar Swai by this court on 04th October 2017. At the same time, in Misc. Application No.

644 of 2018, the applicant Delvina Baltazar Swai has moved this court to revoke the respondent's Kebisi Chacha Nyamoyo, granted letter of administration, dated 20th January 2017 issued by this court in respect of the same estate.

From the afore state of facts, it is no doubt that Kebisi Chacha Nyamoyo was granted the letters of administration of the estate of the late Mark Nyamoyo Wambura prior the grant of the letters of the same estate to Delvina Baltazar Swai.

The reasons for revoking the letters granted to Delvina Baltazar Swai, as can be gathered from the supporting affidavit of the applicant and amplified in the submissions of counsel Ezekiel J. Mayunga, are that Delvina Baltazar Swai illegally petitioned for letters of administration by concealing and thus misleading this court that no any other proceedings for grant of probate or letters of administration has ever been commenced before any court.

On the other hand, the reasons for revoking the letters of probate administration granted to Kebisi Chacha Nyamoyo, as can be found in the supporting affidavit of Delvina Baltazar Swai and submissions by counsel Edwin Msingwa is that Kebisi Chacha Nyamoyo fraudulently petitioned for grant of letters of administration.

From the records, it is clear that Probate Cause no 65 of 2016 that resulted into the grant of letters of administration to Kebisi Chacha Nyamoyo was filed on 20th January 2017. It is also clear that Probate Cause No. 63 of 2016 that resulted into the grant of letters of administration to Delvina Baltazar Swai was filed on 23rd September, 2016.

In the view of the foregoing, it follows correct that Probate Cause No. 65 of 2017 was *res subjudice* with Probate Cause No 63 of 2016. Further, from the records and submissions, the following facts are not disputed at equal footing:

One, initially, there was Probate Cause No 7 of 2014 before the Ilala District Court of which Kebisi Chacha applied for letters of administration against the estate of the late Chacha Nyamoyo Wambura. Delvina Baltazar Swai filed a caveat. At the end, the letters were granted to Kebisi Chacha, Furaha Chacha and Kirigiti Chacha.

Two, Delvina Baltazar Swai appealed to this Court through Civil Appeal No. 102 of 2014. This Court nullified the proceedings and the matter had to start afresh.

Three, there is no dispute from Kebisi Chacha that Delvina Baltazar Swai is the legal wife married to the deceased with a certificate showing that the marriage is monogamous.

Four, the said Kebisi Chacha Wambura has not controverted the allegation that the annexed document in support of his petition, in particular the typed version of the minutes is fraudulent. Such minutes do not indicate the person who convened the meeting to propose Kebisi Chacha to be the Probate Administrator. As correctly submitted by counsel Edwin Msigwa, the said document was signed by Dr. R.M Tumbo as the Chairman on 18/2/2014. In the same document F. Nyigana signed as a Secretary on 17/2/2014.

Five, there is no dispute that the typed version of the minutes seems to be taken from different meeting but binded together as one. Even the font of the first page (size of letters) is too different to the second paper. Page 1 bears big font size while the second page bears small font size.

Six, the typed minutes and the untyped minutes do not relate at all. In the untyped version, the Chairman of that meeting was Kebisi Chacha Wambura Nyamoyo. The assistant was Edward Nyaboni Masame. But in the typed version the Chairman is Dr. R.N Tumbo and the secretary is F. Nyigana Secretary. It follows true

that there are two documents to the purported meeting to appoint Kebisi Chacha.

Seven, as alluded earlier, Delvina Baltazar Swai petitioned on 23/9/2016 through Misc. Cause No. 63/2016 while Kebisi Chacha petitioned on 20/1/2017 through Misc. Application No. 65/2017. For that reason, Delvina Baltazar Swai was the first one to petition for a grant of letters of administration followed by Kebisi Chacha. In that regard, the petition by Kebisi Chacha was illegal.

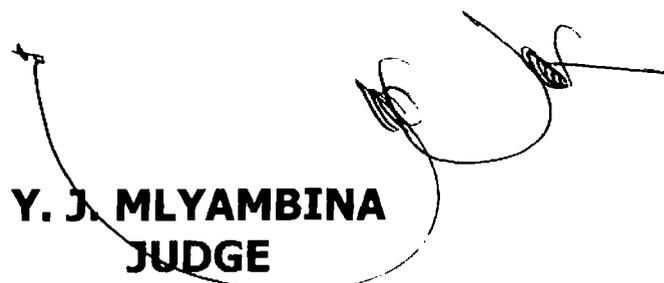
Eight, it is astonishing to note that Kebisi Chacha petitioned on 20/1/2017 and obtained the letters of administration on the same date.

In the final result, I find correct that Misc. Application No. 65 of 2017 was *res subjudice* with Misc. Application No. 63 of 2016. Therefore, the letters of Probate Administration of the estate of the late Mark Nyamoyo Wambura granted to Kebisi Chacha is hereby revoked as prayed in Misc. Application No. 644 of 2018. Misc. Application No. 614 of 2018 is hereby dismissed for lack of merits. Costs be shared.



Y. J. MLYAMBINA
JUDGE
27/12/2019

Ruling delivered and dated 27th December, 2019 in the presence of Eva Rudi the Aunt (Mama Mdogo) of Kebisi Chacha (Applicant) and in the absence of the Respondent.



Y. J. MLYAMBINA
JUDGE
27/12/2019