

TANZANIA / JUDGMENT

grant of letters of administration by neema hassan mgwale and in the matter of the estate of the late hassan salum mgwale deceased and in the matter of an application

COURT
TZHCDECIDED
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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA (MOROGORO DISTRICT REGISTRY) AT MOROGORO PROBATE AND ADMINISTRATION CAUSE NO.01 OF 2021 IN THE MATTER OF AN APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION BY NEEMA HASSAN MGWALE AND IN THE MATTER OF THE ESTATE OF THE LATE HASSAN SALUM MGWALE DECEASED AND IN THE MATTER OF AN APPLICATION BY AMINA MOHAMED MGOYI AND RASHID SALUM MGWALE CAVEATORS

RULING

Final written submission: 05/10/2022. Ruling date on: 24/10/2022. NGWEMBE, J The petitioner herein Neema Hassan Mgwale petitioned for a grant of letters of administration of the estate of her late father Hassan Salum Mgwale, who died on July, 2017, while residing at Ruaha Village in Kilosa District within Morogoro Region. Upon filing this petition and upon publication of general citation in Mwananchi Newspapers of 28th March, 2022, Amina Mohamed Mgoyi and Rashid Salum Mgwale on 12th August, 2022 in response to the Page 1 of 12 citation they entered caveat objecting the petition. Fortunately, the objectors are true grandmother (Mother of the deceased Hassan Salum Mgwale,) and true uncle (Brother of the deceased Hassan Salum Mgwale). The petitioner is a true granddaughter of Amina Mohamed Mgoyi the first objector of the petition. I have insisted on the relationship of the petitioner and objectors with a view to print a clear picture on the nature of this petition as well as the objection. The objectors advanced two grounds for objection; first, the petitioner has listed some properties not lawfully belonging to the deceased; and second, no valid family meeting appointed the petitioner to petition for administration of the estate of the deceased. Since the petition is encumbered with caveat, this matter turned into contentious, hence invoked section 52 (b) of The Probate and Administration Act Cap 352, RE 2002, (referred to as Act), which demands the matter to take the form of a civil suit, whereas the petitioner shall be treated as the plaintiff and the caveators shall be treated as the defendants. This position was clearly observed by the Court of Appeal in the case of Monica Nyamakere Jigamba Vs. Mugeta Bwire Bhakome & Another, Civil Application No. 199/1 of 2019

(CAT - Dar es Salaam)[2020] TZCA 1820 (16 October 2020)(Tanzlii), where it was held: - "Where a Caveator appears and opposes the petition for probate or letters of administration, then sub - section 3 of section 59 of the Probate and Administration requires the Court to proceed with the petition in accordance with paragraph (b) of section 52 of the Probate and Administration which Page 2 of 12 provides:- in any case, in which there is contention, the proceedings shaii take, as nearly as may be the form of a suit in which the Petitioner for the grant shaii be a plaintiff and any person who appears to oppose the proceedings shaii be the defendant' Both parties In this petition, procured legal assistance from learned counsels. While the petitioner was represented by Mr. Nehemia Nkoko, learned advocate, Mr.. Saul Sikalumba learned counsel represented the Caveators. As such, the petitioner lined up two witnesses, while the caveators had four witnesses. Accordingly, the petitioner Neema Hassan Mgwale, (PW1) commenced her testimonies that, she Is the first of two daughters of the deceased Hassan Salum Mgwale. Her young sister Is Lulu Hassan Mgwale and that the deceased died on July 2017 while domiciled in Ruaha village at Kilosa District within Morogoro region. Testified that, her petition Is accompanied with clan meeting minutes, which unanimously listed properties of the deceased and that meeting proposed her to be the administrator of the deceased estate. Proceeded to testify that among the caveators attended that clan meeting. The first caveator, who also Is her grandmother is living with her husband called Mayasa to date. The second caveator/defendant was the one who mentioned the properties of the deceased (His young brother) and his daughter was the secretary of that clan meeting. Proceeded to tender the death certificate and clan meeting minutes which both were admitted as exhibits P1 and P2 respectively. She further elucidated that after the clan meeting, the second Page 3 of 12 caveator/defendant and other relatives accompanied her to Ruaha K II Primary Court, where she instituted a probate case and was successful. At the end, the court appointed her together with the second caveator/defendant as administratrix and administrator of the estate of late Hassan Salum Mgwale. Such appointment of the second defendant as administrator was revoked due to his misappropriation of the deceased's properties. The removal of the second caveator/defendant aggrieved him hence, appealed to the District Court of Kilosa. Consequently, the District Court nullified the whole proceedings of the Primary Court of Ruaha K II. To justify her testimonies, PW1 tendered the letter of appointment which was admitted as exhibit P3. Rested by a prayer that this court may be pleased to appoint her as administratrix of her father's estate. The second and last witness for the plaintiff was Lulu Hassan Mgwale (PW2) who testified that, she is one of the deceased's two daughters and that she lived with her father until his demise at Ruaha Kilosa. That she left her father's house because her uncle (Second caveator - Baba Mkubwa) was abusing her and that her father informed her prior to his death, that the house and other listed properties in exhibit P2 belonged to him. She prayed this court to appoint PW1 to be the administratrix. After the testimonies of PW2, Mr. Nehemia prayed to close the plaintiff's case and defence case was opened. The grandmother of the petitioner and first caveator was the first defence witness appeared as DW1 (Amina Mohamed Mgoyi). Stood firm and testified quite eloquently that, the late Salum Akilindogo Mgwale Page 4 of 12 was her husband and that, they had two issues that is, Rashid Salum Mgwale and Hassan Salum Mgwale. After the demise of her husband no one was appointed as an administrator. All properties of her late husband were never distributed to whoever, all of them are in her custody.

She further testified that, Hassani Salum Mgwale had only one house and the house in which Hassani Salum Mgwale was residing at the time of his death is hers. Concerning the alleged clan meeting minutes, DW1 testified that she had no idea of what happened. She does not remember, she is illiterate, but her name and signature in the minutes must be forged. She denied to have knowledge of Mayasa and termed him as a stranger. In respect to this petition, she testified that, she is not objecting the appointment of the petitioner. DW2 Salehe Mgwale after affirmation, he testified that, he knows Hassan Salum Mgwale as a son of his Brother Salum Akilindogo Mgwale who died on 22nd February, 2009. Upon his death, he left two wives and two Children, that is, Rashid Salum Mgwale and Hassan Salum Mgwale. In regard to the properties left by Salum Akilindogo Mgwale, DW2 mentioned to include six (6) milling machines, plot of land, two houses including the one built on plot No. 3, two (2) tractors, four (4) trailers, one vehicle Toyota Hilux, 20 acres of land at Nyange, 20 acres at Lyahila and 8 acres at Mzombe. DW2 proceeded to testify that he has all the documents to support his testimony and prayed to tender them as exhibits. The court admitted ten (10) documents and marked them collectively as exhibits D1. Further testified that he does not have documents for Toyota Hilux Page 5 of 12 and prayed to tender registration card for one tractor No. T 518 AWU which was admitted as D2. In respect to plot No. 3, he prayed to tender a letter of offer of right of occupancy, which was admitted as exhibit D3. Proceed that, after the death of Hassan Salum Mgwale there was no clan meeting to list his properties. He declined to acknowledge exhibit P2. That he did not attend such clan meeting and never signed the minutes. Further, testified strongly that, after death of Salum Akilindogo Mgwale, there was no administrator of his properties. Added that Hassan Salum Mgwale left only one house. He maintained not to recognise the appointment of Hassan Salum Mgwale as administrator of the estate of Salum Akilindogo Mgwale and the division of properties thereof. In this petition, the applicant has included properties of Salum Akilindogo Mgwale, which to him is not correct. However, same as DW1, he did not object the appointment of the petitioner as administratrix of the deceased estate. DW3 Pascal Abdallah Maketa after affirmation he testified that, he started living at Kilombero K II in year 1976, where he was a ten-cell leader for eighteen (18) years. He admitted to know Salum Akilindogo Mgwale who had two children and that, the said Salum owned six (6) milling machines, two (2) tractors, four (4) trailers, two houses; one was for business and he was living in another. He further told the court that after death of Salum Akilindogo Mgwale, he never knew if the administrator was appointed. Hassan Salum Mgwale neither had job nor properties, which were known to him. To his best knowledge he was managing the properties of his father (Salum Akilindogo Mgwale). That Page 6 of 12 all properties of Salum Akilindogo Mgwale are now managed by Amina Mohamed Mgoyi who was the only wife of the deceased. The fourth and last witness for defence was Rashid Salum Mgwale (DW4) who testified that, Hassan Salum Mgwale is his young brother and that he was never appointed as an administrator of the estate of their father Salum Akilindogo Mgwale. Went further to testify that, his young brother had only one house and all the properties mentioned in exhibit P2 are not his. DW4 contended that, there were no division of the estate of their father, but he admitted that the second wife of his father was given her share of the estate (Kithumni) before K II Primary Court. Prayed that the report which was signed by him before K II primary court be part of his evidence. Under section 154 and 164 (c) of the Evidence Act [Cap. 6 R,E 2022] such document dated

23/02/2010 was admitted and marked exhibit D4. Admitted that in Probate Case No. 9 of 2020, before Masanze Primary Court there was division of all properties of Salum Akilindogo Mgwale. Lastly, he stated that he is objecting the appointment of Neema Hassan Mgwale because the properties listed therein did not belong to the deceased. Mr. Sikalumba prayed to close the defence case. Critical review of the testimonies of caveators/defendants and the documents admitted therein, obvious the main contentious issue revolves around the properties of the deceased Hassan Salum Mgwale, which are listed in exhibit P2. It seems the objectors/Caveators/defendants are less concerns with appointment of the applicant, rather are concerns of properties listed therein. Page 7 of 12 In essence, the petition of Neema Hassan Mgwale is seeking for letters of administration of the estate of her deceased father. The petition was attaching with minutes of clan meeting, which minutes listed all properties she believes belonged to her late father, her sister PW2 also testified same that, her father prior to his death informed her that the house and other listed properties in exhibit P2 belonged to him. In turn the caveators in totality, are not disputing her appointment as administratrix, rather are contesting on the properties. They admitted on the fact that the deceased had only one house, the rest of other listed properties belonged to the estate of Salum Akilindogo Mgwale. To that effect DW2 even adduced documentary evidences to support their claim. DW1 testified that after the death of her husband Salum Akilindogo Mgwale, she had no idea of what happened, she does not remember if there was clan meeting regarding the estate of Hassan Salum Mgwale. She denied that her name and signature on clan meeting minutes must be forged. DW4 a brother to Hassan Salum Mgwale contended on the documented list of assets brought by the applicant/plaintiff and added that, the deceased was not appointed as the administrator of the estate of their father and that the estate is yet to be divided. DW3 testified to know the assets of Salum Akilindogo Mgwale and that of Hassan Salum Mgwale was only managing assets of the former. Under section 56 (1) (d) of the Act, it is clear a petitioner must provide an indication of the amount and nature of assets which are likely to come to the petitioner's hand. That means the petitioner should provide an indicative property to be administered. Likewise, section 58 of the Act, caveat may be issued against the appointment of the Page 8 of 12 petitioner, not otherwise. The purpose of section 58 of the Act is to object the appointment of an administrator over the estate of the deceased. Considering more inquisitively, the petitioner under section 99 of the Act once appointed acquires equal rights and empower him/her over the properties of the deceased as if the deceased has arisen from grave. The administrator becomes the legal representative for all purposes and all properties of the deceased. Lastly, section 108 of the Act confers general duties of the administrator to collect all properties of the deceased, debts and other costs. Also is responsible to settle debts as they are found and verified. Finally, the administrator has statutory duty under section 107 of the Act to file an inventory and accounts containing a full and true estimate of all the properties in possession, and ail the credits, debts owing by any person to which the administrator is entitled. The question is what do these sections mean in respect to this petition? I am settled in my mind, at the stage of petition for letters of administration, the expected caveat must be related to appointment as opposed to assets and properties of the deceased. The second objection is expected to arise at the stage of inventory where caveator may object inclusion of certain properties listed in the inventory. In respect to this petition, the

caveators without doubt together with their witnesses are challenging the list of properties brought with the petition of Neema Hassan Mgwale. They are not opposing the appointment of Neema Hassan Mgwale as administratrix of her father's estate. As such and for the reasons alluded above, it is certain the Page 9 of 12 caveat is premature because this court is not called upon to determine on the ownership of properties rather is invited to either grant or refuse to grant letters of administration of the estate of Hassan Salum Mgwale. It is worth noting that, issues of properties constituting the estate is determined after filing inventory under section 107 (1) of the Act. Nevertheless, administration of the estate in regard to the estate of Hassan Salum Mgwale is yet to be granted, until now the estate is yet to have an administrator answerable to the estate, court and heirs. The administrator will have the duty to discharge his/her obligations among many, to file an inventory capable of being inspected and challenged as to its correctness and full account of the assets constituting the deceased estate. The caveators cannot be allowed to prosecute the petitioner for the mere list she supplied with in the petition as the list, most of the time does not reflect the reality of what exactly entails the deceased estate. Usually the list is mere indicative not conclusive. The justification behind the above observation is apparent under section 71 of the Act. One may not be able to provide a comprehensive and detailed list of the deceased estate without being an administratrix. It is only after being appointed an administratrix, thus can identify and make discoveries of all relevant facts on the deceased properties and then file inventories on those properties. It is after the above is done, when any interested person dissatisfied with those properties may raise concerns over those properties. Considering critically, both caveators and their respective witnesses, substantively, are not objecting the applicant's eligibility to appointment as administratrix of the estate of her deceased father. The Page 10 of 12 only dispute which holds the disputants in loggerheads is on ownership of some properties listed therein. It follows therefore that; the caveat is brought in this court prematurely. Taking into consideration that both parties in this case had privilege of enjoying the services of learned advocates, I find it irresistible to remind the duties of advocates as officers of the Court. If both parties or specifically caveators would have appeared in person I would give it a consideration bearing in mind they are lay persons. I did not expect an officer of the court purposely misleading his clients and wasting precious time of this court by pre-maturely registering a caveat whose ground constituted matters unfit to be dealt with. Having found that the objection by the caveators is premature, this court as well refrains from determining the question of properties constituting the estate of the deceased. For the reasons so stated the caveat is premature same is dismissed. Consequently, I proceed to grant the letters of administration of the deceased estate of Hassan Salum Mgwale to her daughter Neema Hassan Mgwale who has demonstrated serious interest on the estate of her father. Since this is a probate matter, each party should bear his/her own costs. Order Accordingly. orogoro in chamber this 24th day of October, 2022, O T' ■z. /I P. J. NGWEMBE JUDGE 24/10/2022 Page 11 of 12 Court: Ruling delivered at Morogoro in Chambers on this 24th day of October, 2022, Before Hon. 3.B. Manyama, AG/DR in the presence of Mr. Nehema Nkonko, Advocate for the Plaintiff and in the presence of Mr. Magonza Charles, Advocate for the Defendant. Right to appeal to the Court of Appeal explained. SGD. HON. J.B. MANYAMA I Certify that this is a true and correct copy of the official AG/DEPUTY REGISTRAR eputy ■Heytsfw 24/10/2022 DalP 3.tf(143a^Moroonrn Page 12 of 12

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