

TANZANIA / JUDGMENT

in the matter of the estate of the late devota nambi kijogoo and in the matter of the application for the a grant of probate by florah adam kijogoo 2024 tzhc 340 21 fe

COURT
TZHCDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE SUB-REGISTRY (ONE-STOP JUDICIAL CENTRE) AT TEMEKE PROBATE AND ADMINISTRATION CAUSE NO. 92 OF 2023
IN THE MATTER OF THE ESTATE OF THE LATE DEVOTA NAMBI KIJOGOO AND IN THE
MATTER OF THE APPLICATION FOR A GRANT OF PROBATE BY FLORAH ADAM KIJOGOO

RULING

22nd January & 21st February, 2024 BARTHY, J. Before this court, Florah Adam Kijogoo has filed a petition for a grant of probate with a will annexed to administer the estate of her late sister, Devota Nambi Kijogoo, who passed away in India on the 16th of November 2022. Upon issuance and proper publication of the general citation, this court discovered that the petitioner did not possess the original death certificate i of the deceased. Consequently, the court issued an order requiring the presentation of the original death certificate before this court. On the 22nd of January 2024, Ms. Jesse Mnguto, counsel for the petitioner, appeared and addressed the court regarding the missing original death certificate. Ms. Mnguto argued that the original death certificate of the deceased could not be located. Therefore, the petitioner lodged an affidavit pursuant to section 56(1) and 70(a) of the PAEA and rules 32 and 39 of the Probate Rules, attaching all necessary documents. Ms. Mnguto further explained that the death certificate was transported along with the deceased's body from India, where she was receiving treatment before her passing. However, the original death certificate could not be found thereafter. Consequently, the petitioner decided to lodge this petition using a photocopy and filed the affidavit to substantiate the deceased's passing. This court, having heard Ms. Mnguto's argument, is tasked with determining the propriety of this petition before the court without the original death certificate of the deceased. The petition for probate is governed by section 55(1) of the Probate and Administration of Estates Act, Cap 352, R.E 2019 (PAEA), and rule 33(1)(a) to (d) of the Probate Rules, 1963. According to rule 33(1) (b), the 2 death certificate is required to be among the attachments, subject to rule 63 of the Rules. As rule 63(2) of Probate Rules provides; "Where, for any reason beyond die control of die peddoner, a death certificate is not available, the petitioner

shall file in lieu thereof an affidavit from a person who saw the remains of the deceased being interred or cremated or an affidavit from a medical practitioner, duly registered as such in the country where the deceased died, who pronounced the death of the deceased". The above section addresses the situation in which the original death certificate is lost or unavailable, as in this case. It is evident that rule 63(3) of the Probate Rules is a mandatory provision, as it employs the term "shall" and mandates the petitioner to file an affidavit from a person who witnessed the interment or cremation of the deceased, or an affidavit from a duly registered medical practitioner in the country where the deceased passed away. In the present case, the petitioner submitted her affidavit, supported by a copy of the death certificate, stating in paragraph 3 that the certificate was prepared by hospital authorities in Bangalore and issued in November 2022, but went missing after the arrival of the body. The provision of Rule 63(3) of the Probate Rules explicitly requires an affidavit from a person who witnessed the interment or cremation of the deceased, or an affidavit from a duly registered medical practitioner in the country. It is evident that the petition for the grant of probate letters is not properly before this court, as the affidavit provided to prove the death of the deceased does not meet the legal requirement. Therefore, the appropriate remedy is to strike out the petition for being incompetent. It is so ordered. Dated at Dar es Salaam this 21st of February, 2024. Delivered in the presence of the petitioner in person and Ms. Mnguto the counsel for the petitioner. 4

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