

TANZANIA / JUDGMENT

Probate No 19 of 2019

Mutaboyerwa bjection to Inv Acnts

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM REGISTRY AT TEMEKE (ONE STOP JUDICIAL CENTRE) PROBATE AND ADMINISTRATION CAUSE NO. 19 OF 2019 In the Matter of the Estate of the Late ANICETIUS JOSEPH JOHN MUTABOYERWA and In the Matter of the Application for a Grant of Letters of Administration By EMMANUEL JOHN MUTABOYERWA..... ADMINISTRATOR and In the Matter of Objection of the Inventory and Accounts of Estate by AUGASTINE JOHN MUTABOYERWA..... 1stOBJECTOR DEVOTA JOHN MUTABOYERWA..... 2ndOBJECTOR ACQUILINA JOHN MUTABOYERWA..... 3rdOBJECTOR STELLA JOHN MUTABOYERWA..... 4thOBJECTOR AMIDE JOHN MUTABOYERWA..... 5thOBJECTOR ALLAN JOHN MUTABOYERWA..... 6thOBJECTOR ELIZA KAUNGAMNO..... 7thOBJECTOR IRENE KAUNGAMNO..... 8thOBJECTOR Page 1 of 14

RULING

25th June & 23rd August, 2024 BARTHY, J.: This ruling stems from a significant objection raised by Devota John Mutaboyerwa, Acquilina John Mutaboyerwa, Stella John Mutaboyerwa, Amide John Mutaboyerwa, Allan John Mutaboyerwa, Eliza Kaungamo, and Irene Kaungamo, collectively referred to as "the objectors." They have contested the inventory or and final accounts submitted by the administrator of the estate in this matter, marking a critical juncture in the administration of the estate. To fully appreciate the gravity of this case, it's important to understand the underlying circumstances. The late Anicetius Joseph John Mutaboyerwa passed away intestate on 27th of October, 2018. He was survived by his wife, Emily Joseph Mutaboyerwa, and their two daughters, Daniella Allegra Kokuturage Joseph Mutaboyerwa, and Damita Vania Joseph Mutaboyerwa. Following Anicetius's death, his wife Emily petitioned for letters of administration to this court, sitting in Dar es Salaam. The court then granted the letters of administration on 29th of July 2019, and she became the administratrix of the deceased estate. J Page 2 of 14 Tragically, before she could complete the administration, Emily and her two daughters passed away in an untimely incident on 9th June, 2021 wiping out the entire family and potential

beneficiaries of the deceased estate. This unfortunate turn of events left the estate of the deceased largely unadministered. Consequently, Emmanuel John Mutaboyerwa petitioned the court for letters of administration to manage the remaining unadministered properties of the deceased, in accordance with Section 46 of the Probate and Administration of Estates Act, Cap 352 R.E. 2019 (referred to as PAEA) and Rule 46 of the Probate Rules, G.N. 369 of 1969 (referred to as the Rules). The court granted the letters of administration for the unadministered assets. As part of his duties, the new administrator was ordered to file an inventory and accounts of the deceased's estate. The objectors, as interested parties, exercised their right to inspect these filings under Section 107(5) of the PAEA. They subsequently raised objections, prompting the court to invite all parties to present their arguments regarding the inventory and accounts. “ /7 Page 3 of 14 At the hearing, the administrator was represented by Mr. Thomas Rwebangira, a learned advocate. Representing the 1st through 6th objectors was Mr. Dennis Mwesiga, the learned advocate, while Ms. Nakazael Lukio Tenga, assisted by Ms. Edeline Komugisha, both learned advocates, appeared for the 7th and 8th objectors. The court now faces the task of determining the validity of the objections raised and the appropriate course of action in the ongoing administration of the estate. In this matter, Mr. Rwebangura moved the court to amend the accounts of the estate to include Augustine John Mutaboyerwa as an heir, attributing his initial omission to an oversight. He proposed that Augustine should share in the distribution of Plot No. 497 on Kalenga Road, alongside two other heirs listed in Item A(b) of paragraph 3 in the filed accounts. Mr. Mwesiga, representing Objectors 1 to 6, proposed an alternative distribution plan for the estate. He suggested that the property at Oysterbay should be allocated to Emmanuel Ephraim, the Africana property to Amide and Brian, the Kalenga Road property to Augustine, Devota, Acquilina, and Stella, and the Chato Street property to Thomas and Alphonse. This proposal was aimed at modifying the distribution initially made by the administrator in the filed accounts. 1 <7 Page 4 of 14 Ms. Tenga, representing the 7th and 8th objectors, argued that the current administrator's role was limited to describing and valuing the unadministered estate, as the former administratrix had already collected the deceased's assets and filed both an inventory on 29th of January 2020, and the final accounts on 13th of June, 2020. She contended that these filings were uncontested, and the present administrator should have moved the court to close the matter rather than restarting the process with a new inventory and accounts. According to her, this was unnecessary repetition would only create further confusion. In response, Mr. Rwebangira countered Ms. Tenga's arguments by highlighting that the issues she raised had already been resolved in a previous caveat entered by the 8th objector and Andrew Tesha. He noted that in the former administratrix's filings, only one asset, Title No. 25469 for Plot No. 266 and 268 of Block B in Mikocheni, had been bequeathed to the deceased's wife, while the remaining assets—including communication towers and bank accounts—remained unadministered under the name of the deceased, Anicetius Joseph Mutaboyerwa. Thus, the petition under Section 46 of PAEA and Rule 46 of the Probate Rules was necessary to distribute these remaining assets after settling all debts. Page 5 of 14 Mr. Rwebangira further argued that since those originally expected to inherit the estate had passed away, the estate should now be distributed to the surviving heirs, as previously decided by a predecessor judge—a decision that remains unchallenged. He supported his argument by citing the case of Naftari Petro v. Mary

Protas, Civil Appeal No. 103 of 2018, where the Court of Appeal at Tabora underscored the powers of an administrator, and the case of Noshad Hemed Siwji v. Akbar Ahmed Siwji, Misc. Civil Application No. 178 of 2022, High Court at Dar es Salaam, which reinforced this principle. He also emphasized that under Rule 46 of the Probate Rules, the administrator's duty extends beyond merely stating the value of the assets to actually distributing the estate to the rightful heirs. He therefore sought the court's permission to amend the accounts in the interest of justice. In counter-arguments, Mr. Mwesiga contended that while the administrator holds significant duties, these duties are subject to the court's supervision. He acknowledged that the administrator was open to considering the opinions of other interested parties but maintained that the court's authority to monitor the administration was paramount. Page 6 of 14 Finally, Ms. Tenga, granted permission to rejoin on the new issues raised by Mr. Rwebangira, argued that the claim that the estate could not be distributed to deceased individuals was misguided, as the heirs have their personal representatives. She also pointed out that the newly filed accounts introduced a list of heirs that had not been previously included, deviating from the guidance provided by Hon. Judge Rwezile. She therefore prayed for the inventory and accounts of the estate to be struck out, arguing that the new filings led the administration process down an inappropriate path. In summary, the crux of the case revolves around the proper distribution of the estate and the procedural correctness of the inventory and accounts filings, with both sides presenting competing interpretations of the administrator's duties under the relevant legal provisions and case law. Having gone through the submissions of both sides, the issues for determinations are;

1. Whether the objectors' proposed alternative distribution plan is legally justified under the relevant laws. Page 7 of 14
2. Whether the current administrator is obligated to file a new inventory and accounts to replace those filed by the former administratrix.
3. Whether the unadministered assets fall under the responsibility of the current administrator and necessitate a new account of the estate.
4. Whether the administrator is justified to have distributed the estate to new heirs. I will begin with the second issue, which concerns whether the current administrator is obligated to file a new inventory and account to replace those filed by the former administratrix. Regarding this matter, it is undisputed that the current administrator petitioned for letters of administration for the unadministered estate of the deceased. As Ms. Tenga submitted, the former administratrix had already filed an inventory and accounts of the estate with the court, arguing that there was no need for the current administrator to file another inventory and account. However, upon viewing the records from the trial court, it was discovered that the inventory filed by the former administratrix was neither properly registered nor were the required fees paid to validate it. This Page 8 of 14 procedural irregularity renders the previously filed inventory legally ineffective. It was also noted that the accounts of the estate were not filed or were not in the court's records, despite the claim that they had been filed. Furthermore, Mr. Rwebangira pointed out that, within the entire estate, only one house was transferred to the deceased's wife, leaving the remainder of the estate unadministered. This

implies that the majority of the estate has yet to be appropriately distributed or accounted for. Under Section 46 of the PAEA, the current administrator has a statutory obligation to ensure the complete and proper administration of the deceased's estate. This includes the duty to file a new and accurate inventory and account of the estate that reflects the current status of the administration, particularly given the deficiencies in the filings by the former administratrix. The provision of section 46 of PAEA is quoted below for easy reference; On the death of a sole or sole surviving executor who has proved the will or of a sole or sole surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting such letters of Page 9 of 14 administration the court shall apply the same provisions as apply to original grants: [Emphasis is supplied]. In this matter, the letters of administration were granted for an unadministered estate. As the administrator, the individual holds the same rights and responsibilities as in an original grant. As the personal representative of the deceased, the administrator is tasked with the duty to collect all assets of the deceased, settle any debts, and distribute the remaining assets to the heirs of the estate. In fulfilling these duties, the law requires the administrator to declare all assets that have come into their possession and specify how they will be disposed of by filing an inventory. This inventory must include a full and accurate estimate of all the property in possession, all credits, and any debts owed to the estate, along with accounts of the estate. This requirement was emphasized in the case of Joseph Shumbusho vs. Mary Grace Tigerwa & Others (Civil Appeal No. 183 of 2016), Court of Appeal at Dar es Salaam

[2020] TZCA 1803 (6 October 2020), where the court held that; "...an administrator is required to file inventory containing full and true estimates of all the properties which came into his possession as a legal representative." Page 10 of 14 Given that the administrator is required to report on the assets collected as part of the deceased's estate and outline their proposed distribution according to Section 107 of the PAEA, the claim that an inventory and account of the estate were previously filed by the former administratrix lacks merit. This is because the documents in question do not bear the court's seal or a receipt of payment, indicating that they were not properly filed. Moreover, heirs and other interested parties, such as creditors, were not notified to appear in court to approve the inventory before the court could order the distribution of the estate in accordance with the accounts. Thus, it can be concluded that the former administratrix did not properly file an inventory of the deceased's estate with this court. Even if she had done so, the current administrator is still legally required to account for the assets that have come into his possession for distribution. Therefore, the first issue is resolved in the affirmative: the current administrator was correct in filing the inventory and accounts of the estate concerning the deceased's estate. Addressing this issue also resolves the Page 11 of 14 third issue, as the unadministered assets fall under the responsibility of the current administrator, necessitating a new account of the estate. I will now address the first and fourth issues together, which can be consolidated into the question of whether the administrator's distribution of the estate, including the proposed alternative distribution plan by the

objectors, is legally justified under the relevant laws. The administrator, after filing the current inventory and accounts of the estate, proposed that the estate be distributed to 11 individuals, primarily the brothers, sisters, and mother-in-law of the deceased's wife. However, Ms. Tenga argued that the estate had already been distributed to the deceased's surviving wife and two children, and therefore, the administrator had no authority to redistribute it to other parties. Mr. Mwesiga emphasized that while the administrator holds significant responsibilities, these duties are subject to the court's supervision. He also acknowledged that the administrator had been open to considering the opinions of other interested parties. On the other hand, Mr. Rwebangira argued that the estate could not be distributed to individuals who have since passed away; instead, it must Page 12 of 14 be distributed to the surviving heirs. He reiterated the legal principle that inheritance rights do not extinguish upon the death of an heir but rather pass on to the heirs of the deceased heirs, in accordance with the laws of consanguinity. Given the arguments from both sides, it is undisputed that the deceased was initially survived by three heirs: his wife and two children. According to Section 27 of the Indian Succession Act, 1865 (the Indian Succession Act), the wife was entitled to one-third of the deceased's estate, with the remaining two-thirds divided between the two children. In cases where a beneficiary survives the deceased but subsequently dies before receiving their inheritance, their share of the deceased's estate passes to their own estate. This means that the legacy they were due to receive will then be distributed according to the rules of intestacy. Therefore, the respective shares of the deceased's estate should be distributed to the heirs of the wife and children, based on the degree of consanguinity outlined in Section 24 of the Indian Succession Act. The administrator of the deceased's estate was obligated to file accounts showing the distribution of assets to the wife and children of the Page 13 of 14 deceased. Since probate matters have been instituted concerning their estates, the distribution of their shares should be handled within those probate proceedings. Any further distribution beyond this, particularly to individuals who were not direct heirs of the deceased, must be excluded from the current accounts of the estate. Consequently, this court hereby orders the administrators to submit amended accounts of the estate within 45 days from the date of this ruling. These accounts must be accompanied by a comprehensive evaluation report of the estate. It is essential that the distribution of the estate be conducted only after a thorough valuation of the properties in question has been completed by the Government Valuer. This step is crucial to ensure that the distribution reflects an accurate and fair estimation of the estate's value, thereby safeguarding the interests of all beneficiaries. It is so ordered. Dated at Temeke this 23rd day of August, 2024. Page 14 of 14

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