

TANZANIA / JUDGMENT

Raymond Patrick Msigwa vs Linda Cassian Chatila Another

COURT
TANZLIIDECIDED
28 August 2021

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA
IRINGASUB-REGISTRY AT IRINGA PROBATE AND ADMINISTRATION CAUSE NO. 04 OF 2023 IN
THE MATTER OF THE ESTATE OF THE LATE PATRICK EDMUND MSIGWA AND IN THE MATTER
OF APPLICATION OF LETTERS OF ADMINISTRATION BY RAYMOND PATRICK MSIGWA
PETITIONER VERSUS

1. LINDA CASSIAN CHATILA
2. FRIDOLINE PATRICK MSIGWAJ.... CAVEATORS

JUDGMENT

Date of last order: 30.12.2024 Date of Ruling: 10.01.2025 S.M. KALUNDE, J.: The late Patrick Edmund Msigwa passed away on the 28th day of August 2021 at Mbeya Zonal Referral Hospital. In accordance with the records, he was survived by his wife and five children. Upon his demise, his son, RAYMOND PATRICK MSIGWA, filed the present petition seeking for letters of administration of his estate. Subsequent to the filing of the petition for letters of administration and citation, on the 22nd day of November 2023, LINDA CASSIAN CHATILA and FRIDOLINE PATRICK MSIGWA, the caveators herein, filed caveats in terms of section 58 of the Probate and Administration of Estates Act [Cap. 352 R.E. 2002] ("the PAEA") and rule 82 of the Probate Rules, G.N. No. 369 of 1963. Thereafter, based on the petition and the caveat filed and upon appearance by the caveators, it became apparent that the matter was contentious. Thus, the court brought into play the provisions of section 52(b) of PAEA by converting the petition into a suit whereby the Petitioner was converted into a Plaintiff and the caveators turned into Defendants. However, before commencement of hearing of the petition, on the 19th day of September 2024, the learned counsel for the petitioner, Mr. Essau Sengo, informed the court that parties have reached an out of court settlement. In accordance with Mr. Sengo, the settlement proposed to amend the petition in the following terms; first, to remove one of the beneficiaries of the estate, at paragraph 2(vii) of the petition; second, to amend paragraph 4 of the petition to provide for the estimated value of the deceased estate. Third, to amend the supporting Forms by removing Form Nd, 56, which was signed by a beneficiary who is proposed to be removed by the amendments in the first item. These prayers were made under Order XI Rule 17 of the Civil

Procedure Code [Cap. 33 R.E. 2019]. Mr. Sengo added that, upon lodging the application which incorporates the proposed amendments, he shall request the court to proceed with appointment of the administrator without requiring consent of beneficiaries since there is an agreement between the 2 parties. Thereafter, Mr. Sengo prayed for [leave of the court to amend the petition to effect the agreement of the parties. The proposed amendments were seconded by Mr. Marco Kisakaii, learned Advocate for the caveators. The counsel notified the court that parties had reached an agreement that would see the withdrawal of the caveat. Having been supported by both parties, the prayer was granted, and a date was issued for filing of the amended petition. On the 12th day of December 2024 an amended petition reflecting the agreement of the parties was lodged to this court. Hearing of the application was slated for the 30th day of December 2024. At the hearing of the application, Mr. Marco Kisakaii, learned Advocate for the caveators entered appearance. The learned counsel informed the court that he was also holding brief for Mr. Essau Sengo, learned advocate representing the petitioner. Upon taking the floor, Mr. Kisakaii informed the court that he was in contact with the learned counsel for the petitioner and that he was duly served with the amended petition. The learned counsel prayed to adopt the contents of the amended petition as part of his submissions. He also prayed that the annexes to the petition be admitted as exhibits in their respective order. Thereafter, Mr. Kisakaii informed the court that his clients were not contesting the application as it had complied with the provisions of section 56 of the PAEA. He thus prayed for the appointment of RAYMOND PATRICK MSIGWA as the administrator of the estate of the [ate PATRICK EDMUND MSIGWA. Considering the above background, the question for my determination is whether letters of administration should be granted to the petitioner herein. It is common knowledge that, in terms of section 33(1) of the PAEA, for a person to be entitled for letters of administration of a deceased estate who died Intestate it must be shown that they are entitled to the whole or part of the estate. The section states: "(1) Where the deceased has died intestate, letters of administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate," In the present case, the petitioner alleges that the deceased died intestate at Mbeya Zonal Referral Hospital, within Mbeya Region on the 28th day of August 2021. To support this, a copy of the death certificate was annexed. The petitioner contended further that he was a son of the late Patrick Edmund Msigwa and therefore eligible to be appointed as an administrator. He appended a copy of a birth certificate to support this stance. The death certificate and birth certificate were admitted as Exhibit P1 and P2, respectively. 4 To further justify his petition, the applicant alleges that a clan meeting of the family of the late Patrick Edmund Msigwa convened on the 09th day of October 2021, unanimously appointed the caveators, LINDA CASSIAN CHATILA and FRIDOLINE PATRICK MSIGWA to administer the estate of the late Patrick Edmund Msigwa. He implored that, by accepting his application and withdrawing their caveat, the caveators were supporting his appointment. The minute of the said family meeting were also attached and admitted as Exhibit P3. In his submissions^ Mr. Kisakali opined that upon lodgement of an amended petition which reflected the consensus of the parties, the caveators were not contesting the application. He advised the court to proceed to grant the application as the same was in accord with section 56 of the PAEA. In light of these revelations,

the caveat filed by the petitioners is marked withdrawn. The withdrawal of the caveat entails that the present petition is unopposed and thus not contentious. Having considered the contents of the petition, submissions by the parties as well as supporting exhibits, and considering that the application stands unopposed, I see no reason why letters of administration should not be granted to RAYMOND PATRICK MSIGWA, the petitioner, and I hereby do. In respect thereof, the following orders are issued:

- (i) The petition is hereby granted; s (ii) RAYMOND PATRICK MSIGWA is hereby appointed as the Administrator of the estate of the late PATRICK EDMUND MSJGWA who died intestate at Mbeya Zonal Referral Hospital, within Mbeya Region on the 28th day of August 2021; (iii) Thus, letters of administration shall be granted to the Administrator; fiv) The Administrator shall endeavour to gather and bring to book all properties of the deceased and file an inventory of the estate of the late PATRICK EDMUND MSIGWA before this court within six months of this order, but in case not later than 10th day of July 2025;
- (v) The Administrator shall file a final account of the estate within twelve months of this order, that is, on or before 10th day of January 2026; (vi) The Administrator shall administer the estate faithfully and ensure: that the lawful heirs and beneficiaries of the late PATRICK EDMUND MSIGWA are all catered for in the deceased estate; and 6 (vii) Costs of the administration be borne within the estate of the deceased. Considering the relationship of the parties in the present matter I make no order for costs. It is ordered accordingly. 7

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