

TANZANIA / JUDGMENT

Judgment BEATA NGANDAKU

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF MOSHI AT MOSHI PROBATE AND ADMINISTRATION CAUSE NO. 12 OF 2023 IN THE MATTER OF THE ESTATE OF THE LATE EMIL PETER SABAS AND IN THE MATTER FOR APPLICATION FOR LETTERS OF ADMINISTRATION BY BEATA NGANDAKU EMILIUS.....1ST PETITIONER PAUL SABAS SHAYO.....2ND PETITIONER AND IN THE MATTER OF CAVEAT FILED BY TECLA GEMMA REMMY.....CAVEATOR

JUDGMENT

22nd March & 25th April, 2024. A.P. KILIMI, J.: In this Court via Probate and Administration cause number 2 of 2023, the petitioners herein Beata Ngandaku Emilius who is the wife of the deceased and Paul Sabas Shayo, the brother of the deceased applied for letters of administration of estate of the late Emil Peter Sabas who died on 14th day of September, 2022 at Kibosho hospital. Before their official appointment by this court, on 20th March 2023 Tecla Gemma Remmy filed a caveat objecting the grant of letters of administration to the petitioners and in her affidavit in support of the 1 caveat, she averred that, she lived with the deceased as husband and wife for more than seven years and that the petitioners included the assets which she acquired with the deceased such as One farm estate with developments of rooms house, Godown/office, five commercial rooms now turned a dispensary, One printing office which are at Tabata Segerea. She further avows that, she was the one who was taking care of the premises including renting the premises and she and deceased were living together. Also in her caveat, the caveator further revealed that the petitioners were denying the caveator interest by not involving her in a clan meeting and that the petitioners trespassed on the deceased properties by demanding rent. In their joint counter affidavit in reply to the caveat, the petitioners strongly disputed the caveator averment and stated that the deceased never married the caveator rather married to the first petitioner for 30 years from 1992 up to his death in 2022. The petitioners further stated that the mentioned farm estates were acquired on 15/10/1995 by the deceased and developed by the deceased and the first petitioner during subsistence of their marriage. They further replied that the mentioned printing machinery belonged to one James Sabas Kuleiye while the 2 dispensary which did not take off was a proposed business venture between the deceased and one professor Innocent Semali Shayo. The petitioners averred further that the caveator was a mere tenant in the deceased property, that she was also entrusted by the deceased to collect rent to other tenants when the

deceased was in a medical treatment at Moshi. They further avow that the deceased opted not to attend the clan meeting at her own choice as the clan meeting was convened and attended by both relatives and the public by 52 members. The petitioners then averred that the caveator aim was to frustrate the process of administrators as she had no any right to the deceased properties and was trying to swindle the deceased properties. When this contentious matter came before me for hearing, both parties enjoyed the service of learned advocates whereas the petitioners were represented by Mr. Philip Njau and the caveator was represented by Mr. Baraka Massawe learned advocate. Both after consensus agreed issues for determination were as follows;

1. Whether the Petitioners are competent to be appointed as administrators of Emil P. Sabas,
2. Whether the Caveator has advanced sufficient grounds to support the objection. 3
3. To what relief one parties entitled. To prove their case, the Petitioners lined up total of four witnesses as follows Beata Ngandaku (PW1), Paul Sabas Shayo (PW2), Joachim Antony Semali Shayo (PW3), Salto Sabas Shayo (PW4) whereas the caveator testified herself with no other witness. Led by her advocate, Beata Ngandaku (PW1) the petitioner stated that she petitioned for letters of administration of estate of her late husband Emil Peter Sabas who died on 14/09/2022 at Kibosho hospital. She presented a death certificate which was admitted as exhibit 'P1'. PW1 stated further that she and the late Emil Peter Sabas contracted a Christian marriage on 09/05/1992 and presented a marriage certificate which was admitted as exhibit 'PE2'. PW1 also testified that the clan meeting sat and proposed her and the second petitioner (PW2) to be administrators of the deceased estate, PW1 tendered a clan meeting minutes which was admitted as exhibit 'PE3'. PW1 Proceeded to mention and list the deceased properties located at Segerea Dar es salaam and stated that those properties were jointly acquired during a substance of their marriage and 4 that the caveator was not married to the deceased as she did not contribute to the acquiring of the said estates.. Paul Sabas Shayo (PW2) stated that he was the brother to the deceased and that he knew PW1 to be the wife of the deceased. He further testified that at a clan meeting they recommended him and PW1 to be the administrators of the deceased estate. PW2 testified further that the deceased before his death never informed or introduced them to the caveator or that he had another wife beside of PW1, he stated that at the hospital when his brother (the deceased) was ill, he was attended by him and his wife (PW1) and that he never saw the caveator attending the deceased. Joachim Antony Semali Shayo (PW3) testified that the deceased was his cousin and that he attended a clan meeting as a chairman where PW1 and PW2 were proposed to be the administrators of the deceased estate. His evidence was aligned with Saito Sabas Shayo (PW4) the brother of the deceased who testified that before his brother's death, he called him and told him to write his will that all of his properties were to be inherited by his children and that nowhere in a will which was written in a CRDB notebook the deceased mentioned the caveator to be one of the 5 beneficiaries. PW4 further testified that he did not know the caveator, he only knew her during this caveat in court. In caveator case, Tecla Gema Remy (DW1) in her evidence being led by her advocate stated that she objects the petitioners to be granted letters of administration of the deceased estates and

prayed her to be appointed as administrator of estate because the petitioners listed some of her properties which she obtained with the deceased while living together. She further testified that before deceased demised, they lived together as a husband and wife for six years and she was the one who took care of him when he was sick. She testified further that she started living with him when he told her that he was married to Beata Ngadangu (PW1) but was living alone. She decided to move in that matrimonial home after she was welcomed by his wife (PW1) who was living in one area with her but separated by a wall. She testified to have contributed to the acquisition of the properties such as printing office, the house with three frames. She presented the building material receipts which was admitted as exhibits 'D1' collectively, and a notice issued by the government which was admitted as exhibit 'D2' which she stated that such receipts proved her contribution. 6 DW1 further stated, after the deceased was buried, his relatives one Paul Shayo Sabas (PW2) started to threaten her, the matter was reported to police station where they called them and advised to open a probate case. She testified further that upon a follow up, she found out that the petitioners have filed a probate cause at primary court where she objected and the said petition thereat was dismissed for lack of jurisdiction. Starting with the first issue on whether the plaintiffs are competent to be appointed as administrators of the estate of late Emil Peter Sabas. PW1 testified that she and the deceased contracted a Christian marriage and tendered exhibit 'PE2' a marriage certificate indicating the same, the evidence that the caveator also did not dispute. Her evidence was aligned with that of PW2, PW3 and PW4 who testified that PW1 was the one who were married to the deceased and not the caveator. The Caveator on the other side (DW1) testified to live with the deceased for six years as a husband and wife. The marriage law in Tanzania is regulated by the Law of Marriage Act Cap 29 RE 2019 'LMA' there are two kinds of marriage recognizable under LMA which are monogamous and polygamous. Under this case it is obvious 7 that the deceased was in a monogamous marriage with PW1 because exhibit 'PE2' clearly shows their marriage was Christian marriage and he never divorced her as there are no evidence presented that they were divorced. Thus, the law under section 9 (2) of LMA stipulates plainly that Christian marriages are monogamous between one man and one woman to the exclusion of all others. However, the same was not disputed by the caveator but simply said the deceased and PW1 were separated and the wall was built between their resident. Be that as it may, the evidence presented by the caveator that she was living with the deceased as the husband and a wife for some time, in my view do not suffice to create another marriage on top of earlier or existed monogamous marriage, rather in my view remained a concubine relationship between a deceased and a caveator, also falls short as the deceased never divorced his wife, hence even presumption of marriage never arises. (see the decision of Francis Leo vs. Paschal Simon Maganga [1978] LRT 22.) Hence in my considered view, since the caveator and the deceased never legally got married as explained above, the only suitable candidates competent and fit to be appointed as administrators of the deceased estate 8 are the plaintiffs/petitioners herein who are; first, PW1 who the law still recognizes her as the legal wife to the deceased and PW2 the brother of the deceased who in my view both are close relatives and members of the deceased family, therefore there are at better position of

knowing the estate of the deceased than the caveator, second; their relation with the deceased would be entitled to any deceased's estate, and third; they were nominated by the clan meetings, by doing so as nominees accrue interest from the clan upon being believed to do such job. Thus, I am of the view under the above circumstances, petitioners have immediate interests in the deceased's estate in priority than the caveator. (See sections 33(1) and (2) of the Probate and Administration of Estates Act, Chapter 352). Therefore, having observed as above, I am settled they are capable of administering the deceased estate in good faith and in effective way as they do have interest in the deceased estate. Thus, the first issue is answered in affirmative. Coming to the second issue as to Whether the Caveator/defendant has advanced sufficient grounds to support the objection. 9 The caveator in her evidence testified that she was a fit candidate to be appointed as an administrator of the deceased estate and in a good position to administer the estate of the deceased since the petitioners listed some of her properties jointly acquired with the deceased as of the deceased. The caveator further alleged that she was not invited to a clan meeting which listed the deceased estates. In reply the plaintiffs PW1 and PW2 testified that the listed properties were never jointly acquired by the caveator as she was not married to the deceased rather, she was a tenant to some of deceased properties and that the listed deceased properties were acquired jointly during subsistence of the marriage between PW1 and the deceased. I have considered the above evidence as to whether stand a chance as a sufficient ground supporting the objection, in my view disqualifies the caveator as a suitable candidate to properly administer the estate of the deceased. This is because the caveator has already gauged and listed deceased estate alleging that were acquired jointly with the deceased. Nonetheless, I have grasped inconsistencies from the affidavit of petitioners and caveator, the petitioners initially said the deceased died testate while the caveator is saying the deceased died intestate, but also 10 under paragraph 5 of her affidavit, the caveator has listed to wit One farm estate located at Tabata Segerea, with developments i.e Three Rooms house, Godown/office, Five Commercial rooms now turned Dispensary, One Printing office and avows that do not form part of estate of the late Emil Peter Sabbas. But on the same affidavit at paragraph 9 said she acquired jointly with the Deceased and she was worried may be attached to form part of the Deceased estates. Moreover, when she testified in this court under oath said the same were jointly acquired. In my view despite of the above contradictions, since there is no marriage between the caveator and the deceased, those listed properties cannot be matrimonial properties. But it is my observation, whatever the relation the caveator had with the deceased owes a duty to prove with evidence in respect to properties she alleges were jointly acquired or those she says should be excluded from the estate of the deceased. Although she has endeavored to prove with contradiction above. In my opinion, I think, if indeed it was acquired jointly, it means each of them, I mean herself and deceased have shares on those listed properties. I have asked myself, is she supposed to take also the shares of the deceased as she claimed? while deceased left heirs to inherit its shares. Be that as it may, does this 11 court possess powers to decide which properties belong to the deceased and which belong to caveator at this stage. In my view I think it is not, and this is because of the above proved relation of caveator and deceased. In my

considered opinion, the issue of extent of ownership under the above circumstance can be determined after appointment of administrators of estate whom they are duty bound to identify, collect properties and debts of the deceased and finally distribute to legal heirs. It is therefore my settled view this is not a proper forum to determine the ownership of the deceased estate as the same can be done after the administrators are appointed and any dispute arising concerning the ownership of the deceased estate thereto can be dealt with. The above insight was well elaborated in the decision of Ibrahim Kusaga vs. Emmanuel Mweta [1986] TLR 26 where the court held that; "I appreciate that there may be cases where the property of a deceased person may be in dispute. In such cases all those interested in determination of the dispute or establishing the ownership may institute proceedings against the administrator or the 12 administrator may sue to establish claim of deceased's property" Therefore, the court do not distribute the estate of the deceased but has a duty to make sure administrators of estate are appointed, thus, if any of the property is alleged not to belong to the deceased, then the person to be used in court is the administrator of the deceased estate. (See Samson Kishosha vs. Charles Kigongo Gobba [1990] TLR 133.) In the circumstances above, it is my settled view that the caveator failed to adduce sufficient grounds to support her objection against the petitioners herein to be appointed as administrators, therefore her caveat lodged in this court fail forthwith. In the circumstance I therefore proceed to appoint Beata Ngandaku Emilius and Paul Sabas Shayo to be the administrators of the deceased estate of the late Emil Peter Sabas. The administrators are ordered to file within a prescribed time an inventory of the deceased properties and accounts of the deceased estate. Having considering the nature of this matter, I make no order as to costs. 13 It is so ordered. DATED at MOSHI this 25th day of April, 2024. X JUDGE Signed by: A. P. KILIMI Court: Judgment delivered in chamber by the Deputy Registrar today on 25th day of April, 2024 in the presence of Mr. Philip Njau advocate for the plaintiffs/ Petitioners and also caveator and petitioners present in person. Sgd; S. MWAISEJE DEPUTY REGISTRAR 25/04/2024 Court: Right of Appeal explained. Sgd; S. MWAISEJE DEPUTY REGISTRAR 25/04/2024 14

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