

TANZANIA / JUDGMENT

probate no 215 of 2022

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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. 215 OF 2022
In the Matter of The Estate of the Late MOHAMED AHMED SOMO and In the Matter of an Application for Letters of Administration by MANCA SIRILI MSHANGA AND SALMA MOHAMED AHMED SOMO and In the Matter of Objection of the Accounts of Estate by NURU SHENI

RULING

09th May & 07th June 2024 BARTHY, J.: The late Mohamed Ahmed Somo died intestate on 16th June 2022, prompting the family to convene a meeting on 14th July 2022, during which they nominated Salma Mohamed Ahmed Somo to petition for the letters of administration of the deceased's estate. The petition was subsequently filed, and at this time, Manca Sirili Mshanga and Salma Mohamed Ahmed Somo jointly petitioned for the 1 letters of administration. They were appointed by this court as joint administratrices of the deceased's estate. In the course of administering the deceased's estate, the administratrices were ordered to file an inventory and accounts of the estate, which they did as directed. The beneficiaries were summoned to appear in court regarding the inventory and accounts presented. During the hearing, an objection was raised by Nuru Sheni concerning a house in Kipawa, which was included in the estate but she claimed to belong to herself, who also asserted that she was a lawful heir of the deceased as the wife, yet was not listed among the heirs. At the hearing of the objections, Mr. Aidan Kitari, learned advocate, appeared for the interested party Nuru Sheni, while both administratrices appeared in person. The first administratrix informed the court that the objector, Nuru Sheni, had been divorced by the deceased about 20 years prior to his death. She insisted that she was the only wife of the deceased at the time of his death, as his other three wives, formerly married at different periods, had also been divorced. Thus, she named the lawful heirs of the deceased's estate to include the children of the objector, other children of the deceased, and herself. 2 She further stated that the house in Kipawa belonged to the deceased making part of his estate. She insisted the proof was tendered during the hearing of the caveat to this matter. The second administratrix, the deceased's first child, insisted that the objector had been divorced by the deceased and was now married to another person. She stated her mother was married first and divorced, followed with another wife and the objector whom were all divorced. She added that Leah @Manka (the first administratrix) had been the last wife married to the deceased and lived with him for 14 years until his death and observed Iddat according to Islamic rites, unlike the

objector who did not observe it, indicating that she was not the wife of the deceased. She reiterated that the house in Kipawa belonged to the deceased, not the objector. On the other hand, submitting in favour of the objector Mr. Kitari argued that Nuru Sheni should be included as an heir of the deceased, stating that she married the deceased on 6th July 1983 and remained married to him until his death. He contended that there was no proof of their divorce or separation, thereby entitling her to be included as an heir. Regarding the house in Kipawa, Mr. Kitari stated that it was purchased by Nuru Sheni on 24th March 1983, presenting the title as proof, along with a letter from the Land Office at City Council dated 26th June 1987, requesting a survey of the land. The administratrices maintained their position, asserting that the deceased bought the house from Mzee Kara and that Nuru Sheni was not married to the deceased at the time of his death, as she had remarried. Having heard the arguments from both sides concerning the objections, this court is now tasked with determining the following issues;

1. Who are the lawful heirs of the deceased estates?
2. Whether the house on Plot No. ILA/KPWM0G39/1 at Kipawa Ukonga Dar es Salaam forms part of the deceased estate In probate and administration of estate matters, once an administrator or administratrix is appointed, the court entrusts them with the noble duty of serving as the personal representative of the deceased. This role involves several critical responsibilities, including collecting the assets, identifying the heirs, and distributing the deceased's estate according to the will or the law of intestate succession. Typically, this duty should not be interfered with by any other person. However, when necessary, the court may intervene to provide direction or guidance to ensure the proper administration of the estate. This principle aligns with the decision in the case of Monica Nyamakare Jigamba 4 vs. Muqeta Bwire Bhakome & Another (Civil Application No. 199 of 2019) Court of Appeal at Dar es salaam [2020] TZCA 1820 (16 October

2020) (Tanzlii) the court observed that; "...The probate or letters of the administration court has no powers to determine the beneficiaries and heirs of the deceased. Similarly, it has no power to distribute the estate of the deceased. Law has vested that power to the grantee of probate or letters of administration". Also, in the case of Mariam Juma vs. Tabea Robert Makanqe (Civil Appeal 38 of 2009) [2016] TZCA 736, where the court held that; The High Court Judge did not have any mandate to determine who should be a beneficiary from the deceased's estate. This role was to be played by the Administrator of the deceased's estate. In the matter at hand, Nuru Sheni is objecting to the accounts of the deceased's estate because she has been left out as a beneficiary or heir of the estate, claiming to be the wife of the deceased at the time of his death. She presented marriage certificate No. 047786 as proof of their marriage. The administratrices, however, argued that the objector lost the right to inherit because she was divorced by the deceased under Islamic law where she was issued with a divorce about 20 years before the deceased passed away. Considering that the administratrices, being the wife and eldest child of the deceased, are in a better position to know who are the lawful heirs of the deceased's estate and present them before the court for the distribution of the estate. Their argument is supported by the minutes of the clan/

family meeting, which were presented when petitioning for letters of administration. These minutes clearly identified the first administratrix as the wife of the deceased, and the objector was neither present at that meeting nor recorded as one of the beneficiaries of the deceased's estate. However, one of her children sired with the deceased attended the said meeting as the minutes reveal. This stance aligns with the precedent set in the case of *Godfrey Moses Mapalala vs. Flora Neema Daud* (Civil Appeal 51 of 2020) Court of Appeal at Mwanza [2023] TZCA 217, where the Court considered the minutes of the clan meeting to verify the status of the wife of the deceased. In that case, the Court stated; The fact that in the minutes of the dan meeting found on pages 5-9 of the record of appeal, which were also attached 6) to the application for letters of administration of the estate of the deceased in Probate Cause No. 56 of 2018, the respondent's name is listed as a person who was absent, undoubtedly infers that even the family recognized her as part of the deceased's family dan. This fact negates the assertion by the appellant that the respondent's status in the family was that of a concubine and not recognized by the family as a wife/partner of the deceased especially after he divorced his first wife. The evidence was further supported by the argument of the second administratrix, the oldest child of the deceased from the first wife of the deceased whose mother was also divorced. She stated the objector was not the wife of the deceased, it was only the first administratrix who observed Iddat period as the wife of the deceased after the burial as required under Islamic marriage rites. In these circumstances, since the administratrices are in a better position to know the heirs of the deceased's estate, the objector, having been separated from the deceased for 20 years despite having no legal decree of divorce, cannot be considered an heir to the deceased's estate. Turning to the second issue, whether the house on Plot No. ILA/KPWMOG39/1 at Kipawa, Ukonga, Dar es Salaam forms part of the deceased's estate, I want to clarify that in probate matters involving land disputes, the court does not directly determine land ownership but may state who appears to be the owner based on the title. This was fortified in the case of *Amina Maulid Ambali & 2 Others vs. Ramadhani Juma*, Civil Appeal No. 35 of 2019, where the Court of Appeal at Mwanza held that; "In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained" . [Emphasis is supplied]. In addition, the provisions of Section 35 of the Land Registration Act, Cap 334 R.E 2019, clearly state that the owner of landed property must have a certificate of title. Section 40 of the same Act indicates that the certificate of title will be used as evidence of ownership. For clarity, I reproduce Section 40, which states; "A certificate of title shall be admissible as evidence of the several matters therein contained." Thus, based on the above decision and case law, proof of ownership is determined by a certificate of title. In the case at hand, the objector produced two documents: a sale agreement and a letter to the Dar es Salaam City Municipal dated 26th June 1987. When examining these documents, they do not clearly establish the ownership of the house in question. The sale agreement shows that Mzee S.M Kara sold his house to Noor Bint Sheni, who then transferred it to her two children, Sabaha Bint Abubakr and Sakini Bint Anuwar. In this matter, it is neither Sabaha nor Sakini contested or claimed to

be owner of the said house. Another contradiction is found in paragraph 4 of the letter seeking to survey the area. It was stated by the Land Office that they could not clearly define the boundaries of the said land or trace Mzee Kara's certificates to establish who is the owner, as Mzee Kara also wanted to survey the same land. Therefore, it remains unclear as to who is the rightful owner of the land. Due to these inconsistencies, the court believes that the objector did not prove ownership. In the events, the court finds that the true status of ownership of the house at Kipawa is unclear. Therefore, the parties are free to bring the matter before the appropriate authorities for resolution. 9 Having said this, I hereby order that the filed inventory and accounts of the estate be amended to remove the landed property at Kipawa until the dispute of ownership is resolved by the proper tribunal. It is so ordered. ares Salaam this 7th day of June, 2024. G. N. BARTHY JUDGE
Delivered in the presence of the administratrices and the objector in person and RMA Ms. Bernadina. 10

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