

TANZANIA / JUDGMENT

Probate Cause No

COURT
TANZLIIDECIDED
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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA TEMEKE SUB-REGISTRY (ONE STOP CENTRE) AT TEMEKE PROBATE AND ADMINISTRATION CAUSE NO. 238 OF 2022 In the Matter of the Estate of the Late FELIX FAUSTINE CHUWA and In the Matter of an Application for Letters of Administration by PATRICIA FELIX CHUWA, ANSILA MAIDELI KAVISHE AND RUTH FELIX CHUWA

RULING

15.03.2024 & 6.5.2024 BARTHY, J.: The deceased, Felix Faustine Chuwa, passed away on the 5th of July 2022 intestate, leaving behind his wife, Ansila Maideli Kavishe, and two daughters, Patricia Felix Chuwa and Ruth Felix Chuwa, who petitioned to court for letters of administration. All were appointed to administer his estates. During the administration of the deceased estate, complaints were raised by the daughters of the deceased who are the first and third administratrices; regarding the second administratrix's failure to properly account for the assets of the deceased estate, therefore hindering the proper administration of the deceased estate. The court consequently ordered the second administratrix to file an inventory and true estimate account of all the money collected and expenses used from the estate, as previously directed. The same was filed in court and again contested by the first and third administratrices, hence the parties were invited to address the court. However, at the hearing, the first administratrix informed the court that the documents presented by the second administratrix did not reflect the income collected and expenses incurred, as ordered by the court. She specifically pointed out several businesses and properties whose income and ownership were not accounted for in the inventory filed by the second administratrix. Similarly, the third administratrix highlighted additional discrepancies in the forms filed by the second administratrix, including unaccounted funds, debts, income, and properties of the deceased. She also contested the inclusion of certain properties in the inventory that were acquired before the second administratrix's marriage to the deceased. In response, Mr. Gwamaka, representing the second administratrix, argued against the claims raised by the other administratrices. He emphasized that the assets should be distributed equally among all legal heirs, as mentioned in the original petition. He also refuted the allegations regarding the ownership and distribution of various properties and businesses. Additionally, the second administratrix herself provided explanations for the use of certain funds and disputed the ownership of certain properties claimed by the other administratrices. In conclusion, the first and third administratrices, presented their arguments and counterarguments regarding the

administration and distribution of the deceased estate. The third administratrix requesting the court to consolidate the two sets of filed inventory and account of estate and ensure fair distribution of assets to all heirs. After hearing submissions from the parties, the court is tasked with carefully considering the evidence and rendering a fair and just decision in this matter, regarding the complaints lodged against the second administratrix. I would first address the issue raised regarding the inclusion of properties acquired before the second administratrix was married to the deceased, which were included by second administratrix in the inventory and account of estate for distribution to the heirs of the deceased. 3 | Page The petition filed indicates that the deceased had left behind a widow and two daughters, both of whom were appointed as administratrices of the estate. However, according to the arguments presented it was revealed that the deceased was previously married to Anneth, the mother of the first and third administratrices, who passed away in the year 2000. Subsequently, the deceased married the second administratrix. The issue at hand is whether assets acquired before the second administratrix married the deceased should be subject to division in this matter. The first administratrix argues that properties acquired in the presence of Anneth, such as those at Kunduchi Beach, should not be distributed to the second administratrix. Similarly, the four business shops at Shekilango and Sinza are claimed to be the result of their mother's efforts and therefore not entitled to the second administratrix. This claim is based, on Anneth's contribution to the acquisition of these assets, which should not be shared with Ansila (the second administratrix), who was not married to the deceased at that time. In my analysis, if this court were to accept this position, it would essentially introduce matrimonial principles into a probate matter. This issue has been extensively discussed by the Court of Appeal of Tanzania 4 | Page in the case of *Stephen Malivatabu & Another v, Consolata Kahulananqa* (Civil Appeal No. 337 of 2020) at Tabora (TanzLII) [2023] TZCA 132 where the court held that; a matrimonial dispute cannot be adjudicated in a probate and administration cause... In matters pertaining to probate and administration of estates, the court's mandate is distinctly focused on handling the assets solely belonging to the deceased individual, acquired either in their name or held prior to their demise, rather than those of the spouse. In the present case, based on the arguments and evidence presented, it is evident that several properties namely; plot No. 187 Block A Sinza, plot No. 22 Block A Sinza, plot No. 249 Block A Sinza, plot No. 98 Bahari beach, plot No. 96 Bahari beach, plot No. 98 Bahari beach, plot No. 74 Bahari beach, plot No. 25/1 Bahari beach, and plot No. 73 Bahari beach; the first and third administratrices contested their inclusion and distribution, stating that they should be excluded from the deceased estate as they were acquired by their deceased father and late mother, Anneth. 5 | Page Having considered that these assets were not registered under Anneth's name prior to her passing, they cannot rightfully be considered part of her estate. Thus, it can safely be said these assets belong to the estate of the deceased, Felix Chuwa. Therefore, the second administratrix, who has been legally designated as the beneficiary, is entitled to her share of these estates, irrespective of the timing of their acquisition in relation to her marriage to the deceased. In a similar vein to the four-business premises located at Sinza and Shekilango, since there is evidence to demonstrate that they were owned by the deceased prior to his passing, then they rightfully constitute part of the deceased's estate, which is subject to division among the designated heirs. Regarding assets not explicitly

listed, the first administratrix asserted that the second administratrix had omitted to include the house at Kunduchi and Moshi in the inventory of the deceased's estate. In response, Mr. Gwamaka contended that certain plots had been allocated to the first and third administratrices, while others were designated for the second administratrix, which are currently undergoing initial survey 6 | Page stages. However, no substantiating evidence was presented to support this assertion. Given that these plots remain registered under the deceased's name being six plots in Moshi (one with a house), together with the house in Kunduchi, an event hall in Sinza, construction equipment, a generator, and eight tricycles (Bajaj), all of which are confirmed to be the assets of the deceased then they form part of his estate. It is therefore imperative that should be included in the inventory forming part of the deceased's estate and subject to distribution among the three named heirs as listed. As for the other landed property in Moshi, it remains unclear whether it was held in joint occupancy or tenancy in common with the deceased, as the evidence provided was insufficient for the court to determine the mode of ownership or ascertain whether there exists any interest subject to division within the deceased's estate. Another issue pertains to plot No. 22 and 24 at Mapinga Bagamoyo, which the first and third administratrices suggested were acquired dishonestly by the second administratrix. According to the arguments of both sides, these plots are held under certificates of occupancy, with plot No. 22 Block 'EE' bearing title no. 184064 and plot 7 | Page No. 24 Block 'EE' with title No. 184072, both registered under the name of Ansila Maideli Kavishe (the second administratrix). It is also a common ground that the titles acquired before the deceased's passing, therefore they cannot form part of deceased's estate. Concerning the letter purportedly written by the deceased to the District Executive Director, requesting the cancellation of the titles for the two plots, on this argument present I concur with Mr. Gwamaka's arguments that there is no evidence proving the receipt of the letter by the office. Even if the letter were received, the titles would still remain in the name of the second administratrix. Since the titles were acquired before the deceased's demise, with the claim of fraudulent acquisition, the dispute should be addressed in the appropriate forum. Therefore, plot No. 22 and 24 at Mapinga Bagamoyo will not form part of the deceased's estate. The remaining plots, constituting part of the deceased's estate, are subject to distribution among the listed heirs of the deceased estate. Regarding the income generated from the rental event hall, business premises, tricycles, guest house, and other businesses of the deceased, which are part of the estate, the responsibility squarely falls upon the administratrices, as stipulated in section 108(1) of the Probate 8 | Page and Administration of Estate Act Cap 352 (PAEA). The administratrices are empowered to collect debts, investigate the income generated from the estate, and take necessary actions to administer the assets. The administratrix upon grant of the letters, in discharging the duties in her office, she has the duty to safeguard the interest of heirs according to her oath under section 66 of PAEA. This was well elaborated in the case of Joseph Shumbusho v. Mary Grace Tigerwa & Others (Civil Appeal 183 of 2016) [2020] TZCA 1803, where the court held that; Sect/on 66 of the Probate and Administration Act requires the grantee of the probate or letters of administration to take an oath that he/she will faithfully administer the estate of the deceased and will account for the same. That is the administrator will faithfully administer the deceased's estates by first paying the just debts of the deceased, distributing the residue according to the law, making and exhibiting a full and true inventory of the deceased's

properties and credits and rendering a true account of the administration. The rationale of exhibiting the inventory and accounts is to keep the beneficiaries 9 | Page informed and have transparency in the execution/administration of the deceased's estate. Given the second administratrix's inability to provide a detailed account of the income and expenses of the assets that were still utilized with her despite the order of this court, other administratrices may choose to pursue legal action under section 138 of PAEA or take action under section 49(l)(e) of PAEA. As these provisions are in place to ensure the deceased estate is not mishandled or benefitting the administratrix against the other. With that being said, the administratrices are required to file a proper inventory in accordance with court directives. Additionally, any assets with uncertain title should have their disputes resolved through the appropriate legal channels. It is so ordered.

Dated at Dar es Salaam this 6th day of May, 2024. G. N. JUDGE 10 | Page

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