

TANZANIA / JUDGMENT

Probate No

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TANZLIIDECIDED
25 March 2024

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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. 50 OF 2023 In the Matter of Estate of the Late MODESTUS EDWARD LILUNGULU.....DECEASED and In the Matter of an Application For Letters of Administration By GLORIA LILUNGULU..... PETITIONER and In the Matter of Caveat by EDWARD LILUNGULU (By JOYCE MODESTUS LILUNGULU)..... 1st CAVEATOR DOROTHEA EDWARD LILUNGULU..... 2nd CAVEATOR FIDELIS MODESTUS LILUNGULU..... 3rd CAVEATOR

JUDGEMENT

25th March, 2024 & 20th June, 2024 BARTHY, J.: Following demise of Modestus Edward Lilungulu on 30th December 2022, Gloria Lilungulu, the deceased wife, petitioned for letters of administration. General citation was issued to the public and as the result the deceased's granddaughter, daughter and son mentioned above filed a caveat on 17th May 2023, opposing the petition. The matter took pattern 1 | Page of a normal suit where issues were framed and parties were given opportunity to give their side of story. At the hearing of the suit Mr. Constantine Kakula, learned Advocate appeared for Petitioner who now turned into the Plaintiff while Mr. Majula Magafu learned advocate appeared for the caveator as the Defendant. For the plaintiff's side one witness testified and for defendant's side total of four witnesses appeared to testify. The Gloria Lilungulu testifying as PW1, she stated she celebrated Christian marriage with Modestus Edward Lilungulu (the deceased) on 4/8/2018 and they lived at Oysterbay. Her husband died on 30/12/2022 and buried on 3/1/2023 at Kinondoni grave yard. Then, the clan meeting was convened and appointed Cletus Lilungulu to administer the deceased estate. On March, 2023 another clan meeting was convened and ordered her to vacate their house and leave the house to the deceased child who before used to live at Nairobi. Then PW1 decided to petition for letters of administration of deceased estate as one of the beneficiaries. She went further to state that Joyce brought to their home some people not known to her then she had to report the matter to the police station. Pertaining to this matter, she stated being a wife of the deceased person, she is 2 | Page entitled to be appointed the administratrix of the estate. Thus, praying to the court to appoint her as administratrix of the deceased estate. Upon cross-examined PW1 stated she had lived with the deceased for 3 years and one month as her first husband. She knew the deceased before marriage as they worked together and knew his family. She denied to have the relationship

with the deceased before his wife passed away. However, she admitted not to be in good terms with the deceased family. She stated apart from the house at Oysterbay and a motor vehicle she also knew the deceased properties at Nachingwea, Mtwara and Mbagala. She insisted she was told to vacate the house according to her husband's custom, although she was not married under customary. She insisted she will be fair in administering the estate as she knows all the assets, debtors and creditors. The plaintiff's case was brought to a rest as there was no any other witness to call. This gave chance for the defendant to take the bow ready to proceed. DW1 Cletus Mathew Lilungulu testified that the deceased was his cousin who died on 30/12/2022. The deceased first got married in 1968 to a wife who passed away in 2016. In his first marriage the deceased was blessed with three children; Joyce, Edward, and Fidelis who is now the deceased, survived with a child by the name of Doroth. Basing on their custom, the deceased was to inherit another wife but they could not find a person therefore he was allowed to marry another person. One day the deceased told him his intention to find a wife to live with but his children did not accept the woman he wished to marry. DW1 made inquiry to the deceased children and he was told the woman whom their father was to marry was considered as a sister to them as she was a secretary at their father's office for a long time and she became a family member. However, their late mother came to know that their father had an affair with her consequently their mother got sick with stroke and paralysed. He went on stating that after burial services they went to finalize burial service at Nachingwea. The clan meeting sat and among other things they nominated him to administrator the deceased estate. DW1 then started making follow up of the death certificate so to petition for letters of administration of the deceased estate. Misunderstanding occurred between plaintiff and Joyce and had meeting to resolve the misunderstanding. He proposed the widow to go and live in her house pending for the court procedures but finally it was 4 | Page decided both of them to live harmoniously pending other process. He never chased the widow out of their home but requested her. He added the petitioner should not be appointed on the reason that she has no blood relationship with the children and she has no knowledge of the properties of the deceased. Some properties were already gifted by the deceased to people he had desired. The plaintiff was not in good relations with the husband's relative which resulted into complaints and the efforts to resolve them had failed as the widow would take no be advise. During cross examination, DW1 admitted the Plaintiff to have been lawful wife of the deceased. DW2 testified under oath that the deceased was his uncle, married to Doris Lilungulu, who is also deceased. He lived with them from the age of 10 or 12 until he left their home, but he remained close to their family. He stated that Gloria Lilungulu was also married to the deceased and lived at Oysterbay. Following the deceased's death, the family traveled to the village to conclude the 40-day lantern period. DW2 was informed that Cletus Lilungulu (DW1) was nominated as the administrator of the deceased's 5 | Page estate, but later he learned that Gloria had petitioned for letters of administration. He further stated DW1 was nominated because he knew all the assets of the deceased, unlike Gloria, who had only been married to the deceased for three years. Considering the relationship between the petitioner and the beneficiaries, the administration of estate will not be fairly as efforts to reconcile the petitioner and the family have proven futile. Regarding the assets, DW2 said the plaintiff found all the assets with the deceased; however, during their marriage, they bought a car and they have constructed a house at Wazo, as well as

running a maize milling business. During cross-examination, DW2 said he did not know when the house on plot no. 93 was bought, and he believed that Gloria would not distribute the deceased's estate fairly and equitably. He insisted that DW2 should petition for letters of administration. He admitted it is not proper to exclude the widow before the administration of the estate. Another witness Doroth Edward Lilungulu as DW3 is the granddaughter of the deceased. She knew Gloria Lilungulu was married to her grandfather. She stated the petitioner is not a fit person to be 6 | Page granted letters of administration because the deceased complained that she had been forcing him to bequeath all the properties to her, claiming he had little time left to live. She was informed with the deceased the plaintiff did not want the assets in the southern part, but she wanted those in Dar es Salaam and the car she was driving. She further stated that the deceased showed her a title and his password, instructing her to pass the information to the relatives as he realized the plaintiff wanted the properties. She believes the plaintiff wouldn't administer the estate fairly as she was capable of acting unjustly in the presence of her grandfather and now that he is dead, she cannot be fair. When cross-examined, she stated the plaintiff had told her that she was interested in certain assets. She locked away some documents after the death of his grandfather according to his instructions. Last defence witness was Fidelis Modestus Lilungulu as DW4 testified that he is the third and last born of the deceased, who died of cancer on 30/12/2022 After the funeral ceremony in Dar es Salaam, they traveled to Nachingwea to finalize the funeral. The clan meeting appointed Cletus Mathew Lilungulu to petition for letters of administration in the presence of the plaintiff and her brother, Fredrick Mkwizu, and her 7 | Page brother-in-law, Ally Msengi. After a month, Gloria petitioned for letters of administration. He insisted the plaintiff is not a fit person to be granted letters of administration. He stated Cletus was fit to be granted because he was nominated by the family. After their father's death, their relationship with the plaintiff deteriorated and it was already strained before his death. He was denied access by the plaintiff to see his father a day before his death when he was critically ill. When cross-examined, he said he did not support the petition and that the plaintiff as she is only interested in the deceased's estate, although she has entitlement as a widow. The defence side rested their case, and this court had the opportunity to thoroughly examine the root of the dispute for determination. During the hearing of this matter, this court led the parties to frame two major issues:

1. Whether the petitioner is entitled to be appointed the administrator of the deceased's estate.
2. What reliefs the parties are entitled to? To jolt with the first issue, during the hearing, the petitioner expressly admitted that DW1 was appointed by the clan meeting to administer the estate. When DW1 obtained the death certificate but could not pursue the assigned responsibilities to petition for letters of administration, and instead he wanted the petitioner to vacate the matrimonial home. This prompted the petitioner to lodge this petition. On the defendant's side stated that there is the sour relationship between the petitioner and the children of the deceased that has started before the death of the deceased and now has escalated. Due to that reason, they sought the petitioner would not be fair in administering the estate of the deceased. The law is clear under section 33(1) of Probate and Administration Act, Cap 352 R.E. 2019 (the Probate and Administration of Estate Act) that

where the deceased had died intestate, letters of administration of his estate may be granted to any person who, would be entitled to the whole or any part of such deceased's estate. In the instant case, gathering from the evidence of both sides and according to the petition lodged before this court, there is no dispute that who are claiming to be the beneficiaries of the deceased estate were all listed in the petition for letters of administration. However, the evidence as from the caveat side claims that the family has nominated Cletus Mathew Lilungulu (DW1), to petition for letters of administration with regard to the deceased estate.

9 | Page Three months later, the petitioner learned that DW1 was still in a deep sleep without a dream and has not initiated any legal process. Upon another meeting been convened and the petitioner being required to vacate her matrimonial home, she sought it would be best for herself to petition for letters of administration. The allegations of conflicts and misunderstandings between the petitioner and the children of the deceased have escalated to the point where the petitioner had to report them to the police. There were also allegations that the petitioner is overly interested in the assets of the deceased; she also did not know the locations of most of the deceased properties, which raises concerns about her ability to administer the estate properly. According to the evidence presented by both sides in this matter, they emphasized that DW1 was nominated by the family/clan. Also, witnesses from the defendants' side stated DW1 possessed comprehensive knowledge of the deceased's assets. DW1 was also said to be close to the deceased and familiar with his assets. In light of these circumstances, the administrator of the estate should be a person who demonstrates diligence and the ability to collect and distribute the deceased's estate to the beneficiaries according to the 10 | Page law. This principle was also emphasized in the case of Sekunda Bwambo vs. Rose Ramadhani [2004] TLR 439, where the Court observed that: "The object of appointing an administrator of the estate is the need to have faithful person who will, with reasonable diligence, collect all the properties of the deceased. He will do so with the sole aim of distributing the same to all those who were dependants of the deceased during his life-time." This aligns with the decision of this court in the case of Limi Musa Mboqo & Others vs, Christina Alexander Ntonqe (Misc. Civil Application 211 of 2020) High Court at Dar es salaam, TanzLII [2022] TZHC 13416, where the court held that; "The exercise of administrator's duties in the office as collector of estate and discharger of all debts of the deceased before distribution of the estate, partly depends on the cooperation and trust he/she is accorded with the beneficiaries to the estate. His appointment therefore invites a need to have a person who is trustworthy and willing to exercise diligence when occupying the office so as to make sure that the estate is distributed to all entitled beneficiaries". [Emphasis is supplied].

11 | Page The above authorities demonstrate the supervisory role of the court in overseeing the actions of an administrator while they manage a deceased's estate. This oversight is crucial in ensuring that conflicts, misunderstandings, and family instabilities do not disrupt the administration process or undermine the rights of lawful heirs. By monitoring the administrator's actions, the court helps maintain a fair and orderly process, protecting the interests of all beneficiaries and ensuring the estate is managed according to legal standards. This judicial supervision acts as a safeguard, promoting transparency and accountability in the administration of the estate. Given these reasons, it is clear that the

relationship between the plaintiff and the other beneficiaries is severely strained. The extent of the quarrels, which have escalated to the point of being reported to the police, indicates that the administration of the estate cannot proceed smoothly as required by law. Given the contentious nature of the relationships among the beneficiaries and the conflicts that have arisen, it is crucial that a neutral and unbiased individual handles the administration of the estate. This approach ensures that the estate is managed fairly and impartially, preventing further disputes and safeguarding the rights of all 12 | P a g e beneficiaries. By appointing a neutral administrator, the court aims to facilitate a smooth and equitable distribution of the estate in accordance with the law. In light of these events, I find that the caveat entered has merit based on the circumstances discussed. The first issue has been answered in the negative. Therefore, I proceed to dismiss the petition. A neutral person should petition for letters of administration to serve the interests of all beneficiaries. The parties are to bear their respective costs. It is so ordered. Delivered in the presence of petitioner in person, Mr. Constantino Kakula learned advocate for the petitioner, the caveators in person and RMA Ms. Bernadina SGD. G. N. BARTHY JUDGE 13 | P a g e

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