

TANZANIA / JUDGMENT

PROBATE AND ADMINISTRATION CAUSE NO

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA SUB- REGISTRY AT ARUSHA PROBATE AND ADMINISTRATION CAUSE NO 1632 OF 2024 IN THE MATTER OF THE ESTATE OF THE LATE DENNIS LENGIYEU MOLLEL AND IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION BY FRANK PAULO MOLLEL AND SARAH DENNIS LENGIYEU MOLLEL PETITIONERS AND IN THE MATTER OF A CAVEAT FILED BY MAGRETH SHIFAYA MUSHI CAVEATOR

RULING

11/06/2024 BADE, J. In this matter, the Caveator Magreth Shifaya Mushi had filed a caveat against a probate and administration cause for the late Dennis Lengiyeu Mollel, deceased, which was petitioned by Frank Paulo Mollel and Sarah Dennis Mollel. Mr. Mnyiwala Mapembe represented the Caveator while the petitioners were both represented by Sr. Esther John Kilato, Advocate. Page 1 of 9 When the matter was called up for hearing, the advocate for the Petitioner Sr. Esther John Kilato raised a concern that the matter before the court has flouted a procedure, to wit the petitioners have not cited the Caveator, as required by section 59 and Form No 63 of the Probate and Administration Cause Act Cap 352 and the Rules made thereto. On the other hand, Mr. Mnyiwala Mapembe counsel for the Caveator responded that as a matter of fact, they have now gone a step further providing a notice of appearance together with an affidavit verifying the caveat. This was after he had prayed in court to have the citation by the Petitioner to the Caveator be dispensed with. Meanwhile, he also raised a concern of his own wondering if the court will allow them to file a Preliminary Objection on a point of law hinging on the jurisdiction of this court to entertain the matter since the Caveator herein had already been appointed the administrator of the estate of the late Dennis Lengiyeu Mollel, deceased, in another probate matter pending in Temeke District Court in Dar es Salaam. He also intimated that the said Administrator I Caveator has taken further steps in the probate administration including the filing of the inventory. Page 2 of 9 While the counsel for the Petitioners insists on following the procedure to cite the Caveator, as well as stay the matter in this court to make room for the conclusion of the matter in Dar es Salaam Temeke District Court, the Caveator's counsel was of the view that the application for citation has now been overtaken by events as the Caveator in the present matter has gone a step further and have filed the notice and the affidavit verifying the

caveat. Meanwhile, the court had engaged the counsel to address the issue of the propriety and legality of the pendency of the current probate matter before this court in the wake of the fact that there is a concession by both counsel for the parties that there is pending in court in the District Court of Temeke before a district delegate a probate matter regarding the estate of the late Dennis Lengiyu Mollel, deceased. The counsel submitted that before the District Court of Temeke in Dar es Salaam, the Caveator has already been granted letters of administration through a Probate Cause No 834 of 2023. The said grant is dated 08 November 2023. Mr. Mnyiwala was of the opinion that upon such grant, the issue of petitioning for letters of administration is concluded. As a matter of fact, the Caveator has also filed the inventory and account on the estate on 15/02/2024, before the matter pending in this court was underway. 3 of 9 He maintains that those are the content of the affidavit verifying the caveat presently before this court, concluding that in that vein, this court lacks jurisdiction to entertain this matter, urging this court to strike out the petition before it. Responding, Sr. Esther Kilato counsel for the Petitioner was quick to concede that they had been served with the Caveat and had perused the court file in Temeke District Court, noting that letters of administration were granted to the Caveator, and noting further that the probate matter is still open, with the same coming up for mention on 10th July 2024. She also intimated that they have filed a Revocation Application vide DC-DSM-CIV-PRB-4036036 of 2024 at Temeke through the Court of District delegate. She ultimately concurred that there cannot be two proceedings at the same time. She made a reservation in defending their move to file the present petition due to the fact that the petitioners who were the recommended administrators by the clan meeting had no information that another petition had been filed in Dar es Salaam, and they did not sign their consent as heirs. She pressed this to be her reason to want the matter before this court to be stayed pending the determination of the Revocation Application filed before the court in Temeke. ^age 4 of 9 Having heard both counsels, this court is called to determine whether the matter before it is legally tenable. I will first address myself regarding the citation by the Petitioner after the caveat was lodged. The procedure for lodging a caveat is governed by sections 58 and 59 of the Probate and Administration of Estates Act, Chapter 352, RE 2002 (hereinafter referred to as "the Act"), read together with rules 82 and 83 of the Probate and Administration of Estates Rules (hereinafter referred to as "the Rules"). Customarily, upon lodging a caveat, the petitioner is required to make an application for citation to the Caveator vide Form No. 63 of the Rules within thirty (30) days. Then the same is to be served to the Caveator accompanied by a copy of the petition that was filed by the petitioner together with all other documents that were used to petition for the grant of probate administration. Then the Rules went on to specify the penalty if the petitioner fails to make such application for citation within the timeframe specified, where the Registrar of the court is mandated to issue a notice to the petitioner directing the petitioner to lodge the application for citation to a Caveator within a further period of twenty-one (21) days. Page 5 of 9 If upon receiving the notice and after the lapse of the additional twenty-one

- (21) days the petitioner fails to make the application for citation to the Caveator, then the petition filed by the petitioner is deemed to have been withdrawn with no further recourse to the Petitioner, that is to say, the probate or letters of administration will not grant unless the

Petitioner applies for restoration. Now let us pose for a moment and think of the reason why the rules require that the Caveator be cited by the Petitioner. In my considered view, this process serves to avail the Caveator with all the documents as filed in court by the Petitioner, to enable the Caveator to prepare the required affidavit to verify their filed objections. On this matter, the Caveator through her counsel Mr. Mnyiwala Mapembe did pray and was granted leave to be marked by the court to be so cited and proceed to file their affidavit verifying their objection to the pending petition. If anything, the Caveator would have been the one to complain if they were dissatisfied with not being cited. But as it happened, they were able to obtain all the necessary documents and filed the appropriate documents in court. Meanwhile, I wonder how is the Petitioner prejudiced for not being Page 6 of 9 required to cite the Caveator. At least I could not see how, and they have not shown this court in which way are they prejudiced. Rather, the processes have gone a step further, and I see no usefulness in regressing the same. I must say procedural laws are in place to ensure certainty of procedures, which means they are certainly not simple niceties, however then, they are not supposed to hold back the process of justice to avoid prejudice to the administration of justice or to avoid undue distress or embarrassment. The object of the courts is to decide the rights of the parties and not to punish them for the mistakes in the conduct of cases by deciding otherwise than in accordance with parties' rights as courts exist for the sake of deciding matters in controversy, not for the sake of procedures. See *Samson Ngwalida vs Commissioner General TRA*, Civil Appeal No. 86 of 2008 where the Court held that courts have to dispense justice without too much regard to procedural rules; and *Maisha Muchunguzi vs Saab-Scania Tanzania Branch*, Civil Appeal No. 41 of 1998 (unreported) where the Court of Appeal stated that the Rules are there for guidance and in certain circumstances,..... they can be departed from. I thus hold that this court has applied its discretion and dispensed with the rules on citing the Caveator as no prejudice is on any of the parties before the court. Further, in the wake of the concession by the parties that the matter before this court is subjudice in the District Court of Temeke, I hereby strike out the Probate and Administration Cause No 1632 of 2024 for being incompetent before this court. The parties should pursue their rights through the Probate matter filed in Temeke. Given the fact that this is a probate matter, I make no order as to costs. It is so ordered. DATED at ARUSHA this 11th day of June 2024 A. Z. Bade Judge 11/06/2024 Page 8 of 9 Ruling is delivered in the presence of the parties / their counsel / representatives in chambers on the 11th day of June 2024. /VM A. Z. BADE JUDGE 11/06/2024 Page 9 of 9

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