

TANZANIA / JUDGMENT

PROBATE NO

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR-ES-SALAAM DISTRICT REGISTRY AT TEMEKE (ONE STOP JUDICIAL CENTRE) PROBATE AND ADMINISTRATION CAUSE NO. 32 OF 2020 In the Matter of the Estate of the Late Rev. Dr. GETRUDE PANGALILE RWAKATARE and In the Matter of Filling the Inventory and Account of Estate by HUMPHERY KAULILA KENNETH RWAKATARE, TIBE KENNETH RWAKATARE AND TIBE KENNETH RWAKATARE (Lawful Attorney of MUTTA ROBERT RWAKATARE) and In the Matter of Objection of Inventory and Account of Estate by KELLEN ROSE RWAKATARE KUNTU

RULING

26th November & 6th December, 2024 BARTHY, J.: This ruling arises from an objection raised by Kellen Rose Rwakatare Kuntu, the administratrix of the deceased's estate, against three other administrators, namely Humphrey Kaulila Rwakatare, Tibe Kenneth Rwakatare, and Mutta Robert Rwakatare, concerning the amended inventory and accounts of the estate filed by them. i The genesis of this matter revolves around the administration of the estate of the late Rev. Dr. Gertrude Pangalile Rwakatare, which led to a petition being filed before the High Court of Tanzania, Dar es Salaam District Registry (now at Temeke One Stop Judicial Centre at Temeke). This petition resulted in the appointment of all four children of the deceased as co-administrators of her estate In the course of administering the estate, disputes arose among the administrators, leading to several objections, some of which were raised against one another. However, on the 17th of October 2024, counsel for . administrator Tibe Kenneth Rwakatare, Mr. Rweyongeza, informed the court that the administratrix and administrators had agreed to resolve their differences and file the amended inventory and accounts for the deceased's estate. When the matter was fixed for hearing on the 26th of November, 2024, learned counsel Mr. Derick Kahigi, representing the administrator Tibe Kenneth Rwakatare, informed the court that the amended inventory and accounts had been duly filed. However, Mr. Didas, counsel for the administratrix, Kellen Rose Rwakatare Kuntu, submitted that the forms were prepared and signed by only three administrators out of the four, excluding his client. fl 2 Mr. Didas further submitted that it had been agreed among the heirs that all beneficiaries should acquire shares in the deceased's company. He noted that his client, Kellen Rose Rwakatare Kuntu, is the majority shareholder of the company St. Mary's International Academy at Tabata, as reflected in item 38 (a-i) on page 6 of the amended accounts. He contended that the assets owned by the company should be distributed to the named beneficiaries in the amended accounts. Regarding specific

assets, Mr. Didas argued that:

1. Item 22, concerning Plot Nos. 109 to 137, Block A at Tabata, owned by St. Mary's International Academy, should be removed from the list as it is not part of the deceased's estate.
 2. Item 38(g), containing Plots 673, 675, 676, and 677 at Kijitonyama, which are also owned by St. Mary's International company properties and not part of the deceased estate.
 3. Conversely, Plot No. 701, Block 46 at Kijitonyama, is the property of the deceased and should be included in the inventory. He also stated that it was agreed that the sale of Plot No. 701 would be used to settle debts of approximately TZS 550 million owed to Cecilia Pangalile and TZS 130 million owed to Zithay Kabuga, as well as to cover legal fees. Mr. Didas emphasized that his client, Kellen, is being prejudiced because she was supposed to be bequeathed St. Mary's International 3 Academy. He submitted that if her concerns were accommodated, she would be willing to sign the amended inventory and accounts of the estate. In his personal submission, administrator and beneficiary Humphrey Kaulila Kenneth Rwakatare stated that none of the heirs had contributed to acquiring the properties in question and that he was prepared to accept his apportioned share, however large or small. Responding for remaining two administrators, Mr. Kahigi submitted that the contents of the amended inventory reflected the agreement
- reached by the majority of heirs, which is why most had signed. Regarding Item 22, he stated that the property was allocated to the majority shareholders of the company, namely Kellen Rose Rwakatare Kuntu and Humphrey Rwakatare. Regarding Item 38(g), concerning plots 673 to 677 and Plot 701, Mr. Kahigi clarified that these properties are located in one area. The heirs had agreed that the majority shareholders would own these properties, including Kenton High School, where Tibe Rwakatare is the majority shareholder. He argued that there was no proof that these properties belonged to St. Mary's Academy, and Plot 701, was owned by the deceased in her personal capacity. - 4 On the debts to Cecilia Ngamongwa, Mr. Kahigi submitted that the heirs had agreed Tibe Rwakatare would settle the debt using Plot No. 265, Block J, located at Jangwani, Mbezi Beach. Legal costs would be covered by Humphrey Kaulila by selling Plot No. 11, located at Mbezi Beach, as outlined in Item 20 of the inventory. In conclusion, Mr. Kahigi insisted that courts are guided by the law, not personal whims, and that the actions of one administratrix, when outweighed by the majority, can bind the others under section 104 of the Probate and Administration of Estates Act. He prayed for the court to adopt the amended inventory and accounts, emphasizing that unanimous consent among administrators is not legally required when the majority have agreed and signed. This court, having heard the opposing arguments of the co-administrators and the administratrix, has the duty to address the objections raised. The objections center on challenging the inclusion of certain properties in the inventory, with some argued not to form part of the deceased's estate and others not being included in the estate, as well as challenging the accounts of the estate, particularly concerning the distribution of the deceased's estate with regard to properties under the companies.

Therefore, this court will address the objections raised in the following issues: 5

- i. Whether the allocation of plots 109-137 Block A at Tabata, plots 673-677 at Kijitonyama, and property 701 Block 46 at Kijitonyama in the amended final inventory is appropriate. ii. Whether the inclusion of properties owned by St. Mary's International Academy, the company in which Kellen Rose holds significant shares, in the estate distribution to other heirs constitutes a conflict of interest or prejudices her entitlement. iii. Whether it is legally necessary for all administrators to sign the amended inventory and accounts of estate.
- Before addressing the issues raised, it is desirable to state in the outset that, after the appointment of the administrator or administratrix of the deceased estate, he/she becomes personal representative of the deceased, vested with powers under the law. These duties are provided under section 99 to 113 of the Probate and Administration of Estate Act, Cap 352 R.E. 2002, (the Probate and Administration of Estate Act). The administrator of an estate manages and distributes the deceased's assets by safeguarding them, preparing an inventory, settling debts, and identifying beneficiaries. They must submit accurate accounts and distribute the residue of the estate to the heirs. The duties must be discharged in the estate's best interests, upholding fiduciary duties with 6 honesty, care, and impartiality while avoiding conflicts of interest. For clarity of these duties see the cases of Sekunda Mbwambo vs. Rose Ramadhani [2004] TLR 439 and Abbas Ally Athuman Bantulaki & Another vs Kelvin Victor Mahity (Civil Appeal 385 of 2019), Court of Appeal at Dar es Salaam [2022] TZCA 509 (18 August 2022). This court will begin by addressing the third issue: whether it is necessary for all administrators to sign the inventory and accounts of the estate before filing them in court. The records reveal that, on 17th of October 2023, Mr. Rweyongeza, < had informed the court that all administrators, including the administratrix, had agreed to meet and prepare a single amended inventory and accounts for submission. Following this, the court directed the administrators and administratrix to file the amended documents. However, during the proceedings, objections were raised by Mr. Didas, who argued that the refusal of the first administratrix to sign the amended inventory and accounts rendered them incomplete and invalid. In response, Mr. Kahigi, refuted these claims. He pointed out that the majority of the administrators had signed the amended inventory and accounts of estate and emphasized that section 104 of the Probate and 7 Administration of Estates Act, permits one administrator to act on behalf of others unless otherwise specified by the will or letters of administration. The said provision provides a mechanism to address such impasses by allowing the powers of multiple administrators or executors to be exercised by any one of them under special circumstances. This provision is designed to ensure that the administration process is not unduly delayed or obstructed among administrators. In this case, there has been a prolonged and contentious dispute between the administrators and the administratrix regarding the inclusion of certain assets in the estate and the distribution of those assets. These disagreements have caused delays in the administration process, leaving the estate unresolved and the beneficiaries without closure for about four years now. The court notes that three of the appointed administrators have signed and filed the amended inventory and accounts, representing a majority consensus. The refusal of the

administratrix to sign does not invalidate the documents, as she was involved in discussions and was aware of their content. Her decision not to sign reflects her disagreement with the contents but does not amount to a legal bar against filing the documents. 8 The court finds this to be a special circumstance warranting the acceptance of the inventory and accounts filed by the majority administrators. Requiring unanimous agreement in such a contentious matter would unnecessarily hinder the progress of the estate's administration, contrary to the estate's best interests. Taking into account that, the estate distribution has been delayed for years due to unresolved disputes. Allowing the majority of administrators to file the necessary documents helps break the impasse, facilitating the resolution of the matter and ensuring the estate's , administration proceeds without further unnecessary delays. The court recognizes that the role of an administrator or administratrix is to serve as a fiduciary to the estate, acting in the best interests of the estate and its beneficiaries as a whole. This responsibility requires impartiality and cooperation among administrators to ensure a smooth and efficient administration process. In this matter, while three administrators have demonstrated their commitment by preparing and signing the amended inventory and accounts, the administratrix has refused to do so, issuing an ultimatum that she will only sign the forms if her demands are met. Such a position undermines the collaborative spirit required of estate administrators and 9 appears to prioritize individual interests over those of the estate and its beneficiaries. The court finds this stance to be contrary to the purpose and intent of estate administration. Administrators are not entitled to use their position to impose conditions or advance personal preferences that disrupt or delay the administration process. It is in those special circumstances the law, specifically section 104 of the Probate and Administration of Estates Act, allows the administration to proceed even if one administrator/adminstratrix refuses to act, provided the others fulfill their duties in accordance with the law. The refusal of the administratrix to sign the amended inventory and accounts is therefore not fatal to the process, especially since the majority of administrators have signed the documents and followed due process. The court acknowledges that requiring unanimous consent would only serve to perpetuate unnecessary delays in resolving the estate. For these reasons, the court finds it appropriate to rely on the amended inventory and accounts filed by the three administrators. Given that the administratrix was involved in the discussions prior to the filing of the inventory and accounts, the court deems these forms valid and sufficient for the determination of the objection raised for estate's 10 administration, ensuring the process moves forward without further unwarranted delays. Accordingly, the court dismisses the objection raised. The court will now proceed to address the first issues raised in this matter, regarding the allocation of plots 109-137 Block A at Tabata, plots 673-677 at Kijitonyama, and property 701 Block 46 at Kijitonyama in the amended accounts is appropriate. Regarding this issue, Mr. Didas raised an objection alleging that the inventory included properties purportedly owned by companies and not by the deceased, arguing that such properties should not form part of the deceased's estate. Specifically, he pointed to plots located at Kijitonyama, asserting that these were held under a company's ownership. In response, Mr. Kahigi, representing the administrators who filed the amended inventory, firmly stated that the mentioned plots at

Kijitonyama were owned solely by the deceased in her personal capacity and were never registered under the ownership of any company. He maintained that these properties rightly belong to the deceased's estate. It is a well settled principle of law that, a person who desires the court to enter judgment on his or her favour must prove his/her case on the standards required. This has been provided under Section 110 and 112 of the Evidence Act Cap 6 R.E. 2019. In this case, Mr. Didas bore the responsibility of substantiating his allegation that the disputed plots were owned by a company. However, he failed to provide any evidence to support his claim. Without documentary proof or testimony to establish company ownership, his assertion remains unsubstantiated. Moreover, this court considers that no third party has come forward to claim ownership of the said properties. This absence of competing claims reinforces the administrators' position that the properties were personally owned by the deceased and are therefore part of the estate. Consequently, this court finds no merit in the objection raised and , dismiss it. The properties at Kijitonyama are deemed part of the deceased's estate and are subject to distribution among the heirs. The final issue for determination in this matter concerns whether the inclusion of properties owned by St. Mary's International Academy, a company in which the administratrix, Kellen Rose Rwakatale Kuntu, holds significant shares, in the proposed distribution of the estate, constitutes a conflict of interest or prejudices her entitlement. The objection raised by Mr. Didas, on behalf of his client, asserts that as the majority shareholder of St. Mary's Academy, Kellen Rose Rwakatale Kuntu should be exclusively bequeathed the said estate and its properties. He argued that the proposed distribution unfairly allocated properties 12 owned by the company to other heirs, thus prejudicing Kellen Rose's interest. In response, Mr. Kahigi, clarified that the proposed distribution, as outlined in item 38 of the amended inventory, specifically allocates St. Mary's International Academy in Tabata entirely to Kellen Rose, who owns 300 shares in the company. Furthermore, item 38 outlines the distribution of the deceased's shares across several companies, with each heir proposed to inherit shares corresponding to various schools and properties associated with these companies. The court reviewed the amended inventory and noted that item 38 explicitly outlines the transmission of the deceased's shares in several companies to her heirs. The proposal, sub-divided under item 38 (a-i), allocates specific company shares with its properties to each of the four heirs, ensuring that every heir benefits from the distribution of the deceased's estate. It is undisputed that the shares subject to distribution are those belonging to the deceased and not the individual person. While the companies themselves own various properties, the heirs inherit only the deceased's shares in the companies. The distribution proposal considers the value underlying the properties held by each company, ensuring 13 fairness and equity in the division. This approach aligns with the principle of ensuring fair and equitable distribution among the beneficiaries. The court further observed that the deceased had, during her lifetime, allocated shares in these companies to each of her children. This pre-existing allocation significantly influenced the proposed distribution, which aimed to match heirs with properties or companies where they held majority or significant shares. This rationale ensures continuity and minimizes disputes. The chart provided under item 38 demonstrates this principle, showing that < properties and shares

were allocated as follows: S/No. Property/Company Shares Beneficiary 38

- a. St. Mary's International 300 All shares to Kellen Academy Tabata Rose Rwakatare Kuntu
 - b. St. Mary's International 300 All shares to Tibe Mbagala Kenneth Rwakatare
 - c. St. Mary's International 50 All shares to Mbagala Humphrey Kaulila Kenneth Rwakatare 14
 - d. St. Mary's International 1000 All shares to Kellen Academy Mbeya Ltd. Rose Rwakatare Kuntu
 - e. St. Mary's Teachers Training 60 All shares to Mutta College Ltd. Robert Rwakatare
 - f. St. Mary's High School Mbezi 50 All shares to Humphrey beach Kaulila Kenneth Rwakatare
 - g. Kenton High School Ltd on 50 All shares to Tibe Plot No. 70, 673, 675, 676, Kenneth Rwakatare 674 and 677 Block 46 Kijitonyama, Kinondoni, Dar es salaam
- The court finds that the argument by Mr. Didas, claiming that St. Mary's International Academy Tabata was distributed to other heirs, lacks merit. The inventory clearly shows that the entirety of distribution of in this property was allocated to Kellen Rose. Moreover, the chart reflects that other heirs also hold significant shares in various properties, dispelling the notion that Kellen Rose Rwakatare Kuntu was unfairly treated. The court is satisfied that the proposed distribution ensures an equitable and fair allocation of the deceased's shares among the heirs. It is evident that the deceased's intention to distribute her shares proportionately among her heirs has been respected. The objection raised by Mr. Didas is therefore unfounded and it is dismissed. The court affirms the validity of the proposed distribution under item 38 of the amended inventory, which sufficiently addresses the interests of all heirs while upholding the principles of fairness and equity in estate administration. Given that the remaining assets and their distribution are not contested, the court hereby orders that the process of distributing the estate proceed in accordance with the amended accounts of the estate as filed. It is so ordered. Dated at Temeke this 6th day of December, 2024. 16

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