

TANZANIA / JUDGMENT

cation of the probate and administration of the estate of the late william hassan kampton granted to william mosses kampton 2 others between brends william kamoton 2 o

COURT
TZHCDECIDED
1 January 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA SUB REGISTRY AT ARUSHA MISC. CIVIL APPLICATION NO 131 OF 2022 (Originating from Misc. Civil Application No. 38 of 2022) IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM HASSAN KAMPTON, THE DECEASED AND IN THE MATTER OF APPLICATION FOR REVOCATION OF THE PROBATE AND ADMINISTRATION OF THE ESTATE OF THE LATE WILLIAM HASSAN KAMPTON GRANTED TO WILLIAM MOSSES KAMPTON KELVIN WILLIAM KAMPTON CAROLINE GODWIN MKWIZU BETWEEN BRENDA WILLIAM KAMPTON..... 1stAPPLICANT JOHNN KAMPTON MRISHA..... 2ND APPLICANT SIX JUSTINE KAMPTON..... 3rd APPLICANT VERSUS WILLIAM MOSES KAMPTON..... 1stRESPONDENT KELVIN WILLIAM KAMPTON..... 2ndRESPONDENT CAROLINE GODWIN MKWIZU..... 3rdRESPONDENT

RULING

24th October & 21st December, 2023 KAMUZORA, J. Page 1 of 15 The Applicants herein brought this application seeking for an order of this court to revoke the probate and administration letters which was granted to the Respondents herein in respect of the estate of the late William Hassan Kampton. The Applicants preferred the current application before this court by way of a chamber summons supported by affidavit sworn by all the Applicants herein. Moving this court under the Provision of section 49(1) (b) (c)(2), 51 (1) of the Probate and Administration of Estate Act, Cap 352 R.E 2019 (PAEA) and Rule 29(1)

(2) (3) of the Probate Rules, the Applicants prays that:

- 1) This honourable court be pleased to issue an order revoking the Probate granted to the Respondents.

- 2) This honourable court be pleased to issue an order removing the Respondents from administering the estate of the /ate William Hassan Kampton.
- 3) This honourable court be pleased to grant tatters of administration of the estate of the late William Hassan Kampton to the Applicants as Administrator of the estate of the late William Hassan Kampton to replace the Respondents.
- 4) This honourable court be pleased to order the Respondents to hand over all the properties, reports, documents, full inventory, accounts and income from bank account and tenants that they have already collected and received concerning the estate of the late William Hassan Kampton to the Applicants for continuation Page 2 of 15 of administration, distribution and accounting of the estate of the /ate William Hassan Kampton.
- 5) Costs of the application to be borne by the Respondents
- 6) Any other relief that the honourable court deems just to grant owing the circumstance of the matter at hand. The Respondents contested the application through a counter affidavit sworn by all the Respondents herein. For better understanding of this application, I will briefly capture the background of this matter. From the records, the affidavit, counter affidavit and submissions from both parties, it is clear that after the deceased's death, Probate and Administration Cause No. 3 of 1999 was filed in court and the decision by Hon. Rutakangwa, J (as he then was) reveals that Mbasha Mwidini Mrisho and Moses William Kampton were dully appointed as administrators of the estate of the late William Hassan Kampton. The Respondents herein through Misc. Application No 38 of 2022 applied before this court for revocation of the administrators on ground of death of one administrator and sickness of the remained administrator. The application was granted by this court on 27th July 2022, before Hon. Massara, J who revoked the letters of administration granted to Mbasha Mwidini Mrisho and Moses William Kampton and eventually appointed the Respondents herein to administer the Page 3 of 15 deceased's estate. Soon after their appointment, the Applicants herein on 29/09/2022 brought this application praying for revocation of the Respondents on the grounds above listed. When the matter was called for hearing, Ms. Mariam Nitume, learned advocate appeared for the Applicants while Mr. Ephraim Kisanga, learned advocate appeared and represented the Respondents. Submitting in support of application, the learned counsel for the Applicants argued that, the deceased was survived by four beneficiaries, among of them are the three Applicants herein. That, the Applicants brought an application for revocation of the Respondents' appointment as administrators of the estate of their late father for the following reasons: - First, that, the said grant of probate to the Respondent vide Misc. Civil Application No. 38 of 2022 was obtained fraudulently and without following proper procedures as provided by the law. That, the Respondents did not proper notice to the public as required by the law and the Applicants herein who are beneficiaries of the deceased's estate could not object their appointment as they were not aware of such appointment. Page 4 of 15 The second reason advanced by the Applicants is that, the Respondents herein made a false statement before this court by claiming that there was no any remaining surviving and suitable person to

administer the estate of the late Wiliam Hassan Kampton something which is not true. On the third reason, the appellants argued that the Respondents advanced untrue allegation that the estate of the late Wiliam Kampton were left unadministered since 1999. He explained that, Moses William Kampton and Mbasha Muhidin Mrisho were appointed to administer the estate after the demise of the deceased and the said administrators continued to administer the estate of their late father till the demise of one of the administrators one Moses William Kampton who passed away on the 8th February 2021. That, on the 11th April 2021 a family meeting was convened where the 1st and 2nd Applicants were nominated to apply and take over the position initial administrators of the estate of their late father after the demise of one administrator and due to illness of the other surviving administrator. That, in the course of such process, they came to know that the Respondents herein had already obtained letters of administration of the late Wiliam Kampton. The counsel for the Applicant argued that Rule 39(f), 71 (1) of the Probate Rules, clearly provides for the requirement of the consent of Page 5 of 15 heirs in an application for letters of administration. That, in Misc Application No. 38 of 2022 consent was not obtained and some of the signatures in the purported clan meeting the minutes attached, were forged. The Applicants counsel further and submitted that, it is a trite law that letters of administration shall be granted to a person who according to the rules for distribution would be entitled to a whole or part of the estate. Reference was made to Rule 33 of the Probate Rules and the case of Naftali Petro Vs. Mary Protas, Civil Appeal No 103 of 2018, CAT at Tabora found at Tanzlii. That, since the Respondents are the grandchildren of the late William Kampton while the Applicants are the deceased's children and immediate legal heirs, the Applicant are more fit to administer their father's estate. The Applicants' counsel finalised with a prayer that by stating that letters of administration granted to the Respondents was improperly procured and therefore, this court be pleased to revoke the said grant. In contesting the application, the learned counsel for the Respondent referred the principle, 'whoever comes to equity must come with dean hands' as found in the case of Gidbaghe Layda Vs. Emmanuel Barie and 2 others, Misc. Criminal Application No. 24 of Page 6 of 15

2022. Pointing at paragraph 2 of the Applicants' affidavit the counsel for the Respondents argued that the Applicants are not the only surviving beneficiaries of the late William Kampton something, as there are four surviving children including Mbasha Muhidin Mrisho. For him, the Applicants' affidavit contain untrue statement thus should not be relied upon by this court. Reference was thus made to the case Uganda Vs. Commission of Prison [1966] 1EA 514. Roberth S. Leva Vs. Ministry of Natural Resources and Tourism and another, Revision No. 742 of 2018. On the merit of the application, the Respondents counsel was of the view that, the grant of letters of administration to the Respondents herein was not obtained fraudulently as alleged by the Applicants. That, the law does not require notice to be issued in respect of the Applicant in an application for revocation of the initial administrator who failed to perform his administration duties. On the argument that the Respondents herein made false statement suggesting and concealing the fact that there were no surviving beneficiaries to administer the estate, the Respondents' counsel

submitted that since 1999 when Mbasha Muhidin Mrisho and Mosses Wiliam Kampton were appointed, they did not file inventory in Page 7 of 15 compliance to the administration duties for the estate of the late William Kampton. That, it was on that reason, the Respondents herein decided to move the court to revoke previous administrators for their failure to perform their duties of administering the estate of the deceased from 1999 until 2022 when the Respondents approached this court to be appointed to administer the deceased's estate. On the argument that the clan minutes contain forged signature, the Respondents' counsel responded that, this court before Hon. Judge Masara agreed that one Mbasha Muhidin Mrisho was unfit person to administer the estate of the late Wiliam Hasan Kampton and decided to appoint the Respondents herein to administer the estate of the deceased by distributing the same to legal heirs or representatives of the legal heirs of the late William Kampton. The Respondents' counsel is of the view that, this application should not be granted because the Respondents are capable of administering the estate of the deceased and that the delay is attributed by the Applicants herein. In her rejoinder, the counsel for the Applicant reiterated her submission in chief and added that, the content of paragraph 2 of the affidavit should not be misconstrued to conclude that the Applicants are not aware of another heir who is Mbasha Muhidin Mrisho as the Page 8 of 15 deceased left four beneficiaries, and three out of four, being the Applicants. She maintained that this court is called to determine as to whether the Applicants have advanced reasonable grounds to warrant the grant of the order sought. From the record and parties' submissions there is no doubt that three Applicants are among four children who survived the late Willian Hassan Campton. Upon his demise, Mbasha Muhidin Mrisha and Mosses Wiliam Kampton were appointed to administer his estate. Both parties agreed that the two administrators never concluded their administration duties until one of the administrators demised. It is also not disputed that the surviving administrator was not in good health to continue with administration duties thus, moving the court for revocation of letters of administration prior issued, was a proper move. The question is whether the new appointment by the Respondents were procedurally and legally obtained. At what time the letters of administration can be revoked is the issue to be determined by this court. Section 49 of the Probate and Administration of estate Act Cap 352 R.E 2019 govern revocation of letters of administration. The said provision read: - "49 (1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons- Page 9 of 15

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;
- (d) that the grant has become useless and inoperative;

- (e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or has exhibited under that Part an inventory or account which is untrue in a material respect.
- (2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the High Court may suspend or remove an executor or administrator (other than the Administrator-General/ or the Public Trustee) and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate." It was contended by the Applicants herein that the Respondents made a fraudulent representation before this court in obtaining the letters of administration as they never informed the court of existence of other beneficiaries of the deceased who could administer the estate of Page 10 of 15 the deceased. They also claimed that the minutes presented before this court for purpose of appointment was forged as some of members signatures were forged. I will not labour much on the allegation for forgery as for the same need be proved beyond the standards provided for in civil cases. See; Omary Yusufu Vs. Rahma Ahmed Abdulkadr [1987] TLR 169. However, I opted to assess the proceedings of this court and see if there was any misrepresentation or false statement made which could be interpreted to mean that something material was concealed from the court. From the pleadings and proceedings in Misc. Application No. 38 of 2022 which appointed the Respondents as joint administrators, the chamber application contains four prayers but of utmost important is the first and the second prayers. The Applicants (Respondents herein) prayed for revocation and annulment of grant of letters of administration issued in Probate and administration Cause No. 03 of 1999 issued on 10th June 2002. They also prayed for order suspending or removing the appointed administrators who are Mbasha Muhidin Mrisho and Moses William Kampton and appoint the Applicants (Respondents herein) to administer the estate of the late William Hassan Kampton. Page 11 of 15 In their affidavit in support of application, the Respondents claimed to be among the descendants of the late William Hassan Kampton who died in 13th January 1999. They were seeking for revocation of the prior appointed administrators on ground that one administrator by the name Mosses William Campton had passed away and the remained administrator Mbasha Muhidin Mrisho was sick and unable to perform administration duties. Their basis for revocation was that the grant of probate and letters of administration to the prior administrators became useless and inoperative hence, new appointment was necessary. Logically, there is no clear description of the Respondents' relationship with the late William Hassan Kampton. However, the submission reveals that they are grandchildren of the late William Hassan Kampton. There is nowhere in the affidavit where they indicated the whereabouts of other children of the deceased apart from the administrator Mbasha Muhidin Mrisho whom they claimed to be sick. When the matter was called for hearing, the trial judge directed for them to call all heirs to appear before the court. On the scheduled date, the counsel for the Respondent simply notified the court that they were able to secure the attendance of one heir who was a prior administrator Page 12 of 15 and that others could

not come. From that address, I agree with the Applicants' argument that they were not notified of the existence of the proceedings intending to revoke letters of administration prior issued. I also agree with the Applicants that being beneficiaries among surviving children of the deceased, they were intitled to know any move subject to the estate of their late father. Thus, the important facts over their existence and capability in appearing before the court and address the court on their wishes in the administration of their father's estate was concealed from them and that being the case, I agree with the argument by the Applicant that the Respondents' appointment was fraudulently procured. That being the case, I find merit in this application and proceed to revoke the grant of letters of administration issued by this court to the Respondents; William Moses Kampton, Kelvin William Kampton and Caroline Godwin Mkwizu. The Respondents herein are ordered to remit to this court, the letters of administration issued to them in Misc. Application No. 38 of 2022. Having revoked the grant, the question that follows is who is a fit person to administer the estate of the deceased William Hassan Kampton. The records reveal that the Respondents herein are Page 13 of 15 grandchildren of the late William Hassan Kampton while the Applicants herein are children and immediate heirs of the late William Hassan Kampton. No issue was raised by the Respondents on the Applicants' ability in administering their father's estate. Thus, in considering the provision of section 33 of the Probate and administration of estate act, Cap 254,1 find the Applicant appropriate and fit persons to be appointed to administer their father's estate. The said provision read: - "33 (1) Where the deceased has died intestate, letters of administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

- (2) Where more than one person applies for letters of administration, it shall be in the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.
- (3) Where no such person applies, letters of administration may be granted to a creditor of the deceased.
- (4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the court may, in its discretion, having regard to consanguinity, amount Page 14 of 15 of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator; and in every such case letters of administration may be limited or not as the court thinks fit." Applying the wording of section 33 (1) this court finds that the Applicants herein are the children of the deceased and immediate beneficiaries to the deceased's estate as opposed to the Respondents herein who are grandchildren of the deceased. In that regard, the Applicants herein are more fit to be given first chance in

administration of estate before reverting to the Respondents herein. Since, one of beneficiaries was reported sick and his grant revoked for that reason, I find appropriate to appoint the remained beneficiaries of the deceased's estate who are also the Applicants herein as joint administrators. I therefore proceed to grant letters of administration of the estate of the late William Hassa Kampton to the Applicants herein; Brenda William Kampton, John Kampton Mrisho and Six Justine Kampton. Application is granted with no order to costs in considering the relationship between parties. DATED at ARUSHA this 21st of December, 2023. D.C. KAM)uZORA JUDGE Page 15 of 15

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