

TANZANIA / JUDGMENT

20061113 TZHC Dar es Salaam

COURT
TZHCDECIDED
13 November 2006

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1 IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM PROBATE AND ADMINISTRATION
CAUSE NO. 48 OF 1996 · IN THE MATTER OF AN APPLICATION FOR REVOCATION OF GRANT OF
THE LETTERS OF ADMINISTRATION TO DAUD MAHENDE KICHONGE JOSEPH MNIKO AND
OTHERS APPLICANTS Date of Last Order 30/8/2006 Date of Ruling 13/11/2006

RULING

SHANGWA, J. LJ 1 This is an application for revocation of the grant of letters of administration of the estate of the late Faustine Mniko Mahende granted to Daudi Mahende Kichonge and for the grant of the same to John Mniko and Robert Mniko in lieu thereof. It is supported by affidavit of Joseph Mniko and Frank Mniko. The nine applicants who are the sons of the late Faustine Mniko Mahende and the beneficiaries of his estate are praying this court to grant this application on the following major grounds:

1. That Daudi Mahende Kichonge has misapplied and misappropriated their estate-
----- late father's -
2. That Daud Mahende Kichonge has never filed any inventory account in this court.
3. That Daud Mahende Kichonge has been leasing the house at Plot No. 4 Kawe Dar es Salaam which is part of the deceased's estate from the time of his appointment without accounting for the proceeds of rent to them. 3
4. That he has failed to pay school fees in time for Paulo Mniko and Faustine Mniko who are studying at St. Mary's International School. The said grounds are contained in the affidavit of Joseph Mniko and Frank Mniko which was filed in support of this application. In his counter-affidavit, the respondent opposed those grounds and said that he has never misapplied or misappropriated any proceeds from the administration of the deceased's estate and that he has been administering the estate according to law and in accordance with the deceased's will. In addition to that, he said that the applicants did benefit from the rent which was collected in respect of house No. 4 Kawe, Dar es Salaam and are quite aware on how it was spent. He said also that he has been paying and continues to pay school fees for the deceased's children namely Paulo Mniko and Faustine Mniko. In their written submissions, learned counsel for the applicants Messrs Mkono & Co; Advocates submitted in depth and in great details against the respondent's conduct in the administration of the

deceased's estate. They pointed out that since his appointment which is nine years ago, the respondent has failed to file the inventory and that he has been misapplying and misappropriating the proceeds of the deceased's estate from the rent collected from the tenants in respect of Plot No. 4 Kawe area, Dar es Salaam, and that he has subjected the beneficiaries to severe hardships for the past nine years and failed to comply with the mandatory provision of law regarding the administration of the deceased's estates namely S.107 of the Probate and Administration of Estate Act [Cap 352 R.E 2002] which requires among other things that an executor or administrator should exhibit in court an inventory within six months from the date of the grant of probate and letters of administration. In their reply submissions, learned counsel for the respondent Messrs Marando, Mnyele & Co; Advocates submitted on his behalf that although it is true that so far he has not filed the inventory since his appointment, his grant of letters of administration cannot be revoked on grounds that he has so far not done so. They contended that the remedy is to extend time for him to do so under 5.103 (3) of the Probate and Administration of Estate Act [Cap 352 R.E 2002]. Further more, they submitted that the respondent has been administering the deceased's estate properly and according to law, and that actually, he is not clinging to administer the same as he is not getting any benefits from it. If not, and that he is simply contesting this application to clean his name which has seriously been tarnished by the applicants. From the affidavit which was filed by Joseph Mniko and Frank Mniko in support of this application and the submissions filed by Mkono & Co; Advocates, it is quite plain that the applicants who are the beneficiaries of the estate of the late Faustine Mniko Mahende have totally lost faith in Daudi Mahende Kichonge (respondent) who was appointed as administrator of the said deceased's estate. It is quite plain also that his conduct in the administration of the deceased's estate is highly questionable and very doubtful. In my considered opinion, his failure to file the inventory for the past nine years since his appointment disqualifies him from continuing to be administrator of the deceased's estate. I am sorry to say that this court cannot give him an extension of time to file the same. His bad tendency of misapplying and misappropriating the proceeds of rent received from the deceased's house at Plot No. 4 Kawe Dar es Salaam makes things worse and disqualifies him also from continuing to be administrator of the deceased's estate. For these reasons, I allow this application. Consequently, I hereby revoke the grant of letters of administration of the estate of the late Faustine Mniko Mahende to the respondent. In his place, I hereby appoint John Mniko, Robert Mniko, Raphael Mniko and Jackson Mniko to be joint administrators of the deceased's estate in accordance with his will. Each party to bear own costs. A. SHANGWA JUDGE 13/11/2006 th Delivered in open court this 13 day of November, 2006 . . JUDGE . .

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