

TANZANIA / JUDGMENT

MISC

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA SUB- REGISTRY AT ARUSHA MISC. CIVIL APPLICATION NO. 08 OF 2024 (1012 OF 2024) (C/F Probate Administration Cause No. 26 of 2022 from High Court of Tanzania at Arusha) DEVOTHA STEPHANO APPLICANT VERSUS THE ADMINISTRATOR GENERAL RESPONDENT

RULING

18/06/2024 & 23/08/2024 BADE, J. This Ruling corresponds to the Application that was brought under Order 49 (1) a, b, c, and d of the Probate and Administration of the Estate Act, [Cap 352 R.E]. The Chamber Application filed was supported by an affidavit deposed by the Applicant. The Applicant in this Application was aggrieved by the decision of this court in Probate and Administration Cause No. 26 delivered on 19th day of May 2023, which appointed Administrator General to administer the estate of late Stephano Kibobori Mollel. The Applicant prays for the 1 of 15 letters of administration of the estate of the late Stephano Kibobori Mollel granted to the Administrator General on 19/05/2023 to be revoked. To understand the context, I will recapitulate a brief background that prompted this Application. The Applicant successfully petitioned and got appointed as administratrix of the estate of her late husband Stephano Kibobori Mollel by the Arusha Urban Primary Court, vide Probate Cause No. 200 of 2017. Her appointment was objected by one Amani Steven Mollel, deceased's son, which objection was overruled. He appealed unsuccessfully to the Arusha District Court. After he lost in his appeal, he again appealed to this Court (before Kamuzora, J.), this time he succeeded, and the order that appointed the Applicant as administratrix was quashed and set aside. The matter was ordered to be heard de novo before another magistrate. Instead of the parties instituting the matter de novo at the trial court as ordered, it seems that some of the beneficiaries preferred to have the Administrator-General apply for the letters of administration and administer the estate of late Stephano Kibobori Mollel. The said prompt made the Administrator-General apply for letters of administration before this court on 31/10/2022 and the probate was granted without objection on 19/05/2023. The Page 2 of 15 Administrator General filed an inventory before this Court on 03/11/2023. After the said inventory was filed, the Applicant on 26/01/2024 lodged the instant Application praying for this court to revoke the appointment of Administrator General on the reasons stated in her affidavit to the effect that;

- i. The inventory form filed in this court included her properties. ii. The letters of administration acquired through administration cause no. 26 of 2022 before this court was done fraudulently. iii. The heirs were not consulted in the preparation of the inventory and accounts. iv. The administrator has failed to provide information to the beneficiaries and heirs thus, has breached his fiduciary duty as an administrator and has failed to act transparently and in good faith.
- v. The properties contained in the inventory do not give a true picture of the properties of the deceased. vi. The proceedings to obtain a grant were defective in substance. Page 3 of 15 vii. The letters were obtained concealing some issues material to the matter. As both parties enjoyed legal representation, with the Applicant being represented by Ms. Ednah Mndeme, learned advocate while Respondent was represented by Mr. Samwel Mutabazi, State Attorney, where the matter was ordered to be disposed of by written

submissions.

Arguing the Application, Ms. Mndeme had the ball rolling adopting first the contents of the Applicant's affidavit to form part of this submission. She submitted that there is no dispute that the beneficiaries did not appear before this court as it can be seen that most of them have their affidavits in support of the Application. It is Ms. Mndeme's contention that as it can be seen in the decision of Kamuzora, J. the matter which was filed in the Primary Court is still pending in that court and the order of the court was that the matter should proceed before another Magistrate with competent jurisdiction. In her view, filing a fresh case while another one is pending and without informing and summoning the other beneficiaries to attend the court was irregular. She also lamented that the one who moved the administrator of the estate concealed 15 that information denying the beneficiaries, in consequence, their right to be heard. She cited the case of Amani Steven Mollel vs Devotha Stephano (sueing as an administrator of the estate of the late Stephano Kibobori Mollel), (PC) Civil Appeal No. 30 of 2021 to support her argument. Ms. Mndeme added that looking at the decision of the cited case, the case filed before this court did not reflect the decision, as it was against the order of the court. She contends that looking at paragraph 5 of the counter affidavit, the Respondent admits that the Applicant was never involved in any meeting regarding the said administration although the Respondent submits that the Applicant became aware of what was going on through a phone call. He does not have any proof, so to speak, of how the Applicant was made aware of the pendency of the matter. In further contention, she argues that there is no dispute that the Applicant was not summoned to appear as one of the beneficiaries of her deceased husband with no service of any document on herself, it is pretentious to say she was aware of what is going on. Moreover, the counsel for the Applicant submitted that there is no evidence that the Applicant was aware of what was going on especially the Probate and Administration Cause no. 26 of 2022 and its outcome. That, most of the deceased's properties are in the hand of the deceased son one who illegally and in the ways known to himself had caused the Administrator General to apply for probate of the estates of the Applicant's late husband, insisting that, there is nowhere the court ordered the Administrator General to administer the estate of the deceased. Further, the acquisition of letters of

administration of the estate of the late Stephano Kibobori acquired through Administration Cause no. 26 of 2022 before this court were done fraudulently, as the Administrator failed to provide information to beneficiaries and heirs, in essence, breaching his fiduciary duty as an administrator. In further contention, she argues the properties contained in the inventory form do not give a true picture of the properties of the deceased, as some of the properties belong to herself. Opposing the Application, Mr. Mutabazi submitted that the Applicant's argument should be disregarded for not only being devoid of merit but also misleading on the fact that the same was built on mere speculations and ignorance of the law because it is the heirs and beneficiaries of the late Stephano Kibobori Mol lei who approached the Page 6 of 15 office of the Respondent to get rid of their long-time family feud on the probate of the estate of the late Stephano Kibobori Mollel. Mr. Mutabazi contends that once the Administrator General is appointed as Administrator of an estate, he cannot be revoked from the office unless at the time of the appointment, the Applicant is not aware of his appointment, and that the Application for revocation can only be made within 6 months after the grant of the letters of administration. To support his argument, he cited section 49 of the Probate and Administration of Estate Act, Cap 352 R.E 2002 (the "PAEA") and section 17 of the Administrator General (Powers and Functions) Act, Cap 27 R.E 2002, (the "Act"). Mr Mutabazi insisted that the Applicant's Application is bad in law for being premised in contravention of the law as enlightened above and it deserves to be dismissed with costs for contravening the law. He further argues that the decision by Kamuzora, J. was on the condition that the same be placed to another magistrate in compliance with legal procedures including publication of notice of hearing of all interested parties to attend the hearing before appointment of an administrator of the said estate. That, until the time when Probate and Administration Cause no. 26 of 2022 was instituted, it is neither Page 7 of 15 the Appellant in the aforementioned Appeal one Amani Steven Mollel nor the Applicant herein who was the Respondent in the said Appeal, had decided to take any further action either to restore or commence a new probate cause in the Primary Court of Arusha Urban after the said decision of this Court. That is what caused some of the beneficiaries to approach the office of the Respondent for assistance. Moreover, Mr. Mutabazi contended that the petition for the appointment of Respondent to be the administrator of the aforesaid estates was legally made in the ambit of the provision of section 5 of the Act and Section 75 of the PAEA which provides that the Administrator General has to adhere to the required procedures including publishing of notice of the petition to invite any interested parties to appear in Court and contest such an appointment where it is believed to be justifiable. He argues thus, the allegation that the Respondent contravened the decision of the court is unfounded as the Applicant has decided to sit over the rights of the other beneficiaries for an unknown period of time. On the allegation that beneficiaries were not notified and as such could not appear in court at the time of appointment of Respondent, alleging the grant of the letters as being fraudulent, Mr. Mutabazi Page 8 of 15 submitted that the Applicant is misleading this court, since under paragraph 7 of the counter affidavit it clearly deponed that the Respondent has complied with the legal requirement to publicize the petition to the public, via Government Gazette ISSN 0856-023 of 30/12/2023. Following such publication, the Applicant failed to file an objection despite the ample time given through the aforesaid publication, arguing it is an indication of negligence and the fault of the Applicant herself which should not be fitted

to any other person or be condoned by this court since it is trite law that the court should not condone negligence of the person who seeks to prayers emanating from their own fault. It is further argued by the counsel that the Respondent has accomplished collecting the properties of the late Stephano Kibobori Mollel and prepared inventory ready to administer this matter to finality, proposing that any allegation on collected and uncollected properties should be posed to the court for determination rather than pleading the prayers which this court is without powers to grant. Page 9 of 15 It is the counsel's view that the Applicant still has a chance to object to the inventory or account of the estate as filed in this court rather than moving for revocation of the Respondent. The counsel concludes his argument that the Applicant is abusing the court process by initiating vexatious claims like the present one, adding that for what it is worth, this Application is hopelessly time- barred as it was supposed to be done within 6 months after the grant of the letters of administration, and that the Applicant has failed to demonstrate sufficient or good cause that would entitle her prayers. In rejoinder, Ms. Mndeme joined the issue that this application was made out of ignorance of the law as submitted by the counsel for the Respondent, misapplying section 49 (2) of the PAEA on the premises that it is not the section under which the present Application was brought. In her view, the circumstances that the said section is applicable are where the court is satisfied that due and proper administration of the estate and the interests of the persons beneficially entitled thereto so requires this court would suspend or remove an executor or administrator other than administrator general Page 10 of 15 or the public trustees, arguing that this is not the case at hand as there is no proper administration of the estates of the deceased. On the contention that this Application is time- barred, Ms. Mndeme retorted that the six-month rule applies where the Application is brought under section 17 of the Act, and in her view, the said section does not apply to the present Application which is made under section 49 (1) a, b, c and d of the PAEA. She further argues that the Respondent has not denied that it was ordered that another magistrate should hear the case which is still pending. Further, the affidavit supporting the application, depone that the Applicant did make a follow-up for the file to be remitted back to the trial court for retrial without any success, a fact which was not disputed by the Respondent. In further argument, she refutes the allegation by counsel for the Respondent that the family of the Applicant applied for the Administrator General to administer the estates is a lie since there is no evidence to that effect and indeed it is not true that the widow of the deceased knew anything and the one who is behind this theft or malice is the stepson of the wife of the deceased. That, the proper remedy for whoever moved the court or Administrator General was to 'age 11 of 15 ask the file to be remitted back to the court as ordered by the Hon. Kamuzora, J. rather than make forgeries. On the allegation that, before the Administrator General is granted letters of administration there was a publication, Ms. Mndeme rejoined that in her view, such publishing of notice does not mean to allow one to mishandle the estate or provide wrong information to the court and denying the other beneficiaries their rights, the one who maliciously moved the Administrator General has been fighting for these properties for a long time, and should have informed the Administrator General properly of all pending issues. Ms. Mndeme insist that the Administrator General cannot force to close the case while there are disputes with some properties against the one who is holding almost half of the properties of the deceased claiming to be the firstborn, whose

properties are nowhere in the inventory form, a fact which was not disputed. Having considered the rival submission by both sides, I find the issues for determination are twofold, whether this Application is time- barred, and if the answer will be in the negative, then whether this Application has merits. Page 12 of 15 From the record, the Administrator General was granted letters of administration by this court on 19/05/2023 and the present Application was filed on 26/01/2024. Counting from 19/05/2023 to 26/01/2024 is about 8 months which is in contravention of section 17 of the Act requiring applications of this nature to be brought within six months from the date of the grant of the letters of administration. For ease of reference, the section provides: "If an executor or next-of-kin of the deceased who has not been personally served with a notice or who has not had actual notice in time to appear pursuant to that notice, establishes to the satisfaction of the court a claim to probate of a will or to letters of administration in preference to the Administrator- General, any letters of administration granted in accordance with the provisions of this Act to the Administrator-General may be revoked, and the probate or letters of administration may be granted, to such executor or next-of-kin, as the case may be. Provided that letters of administration granted to the Administrator-General shall not be revoked under this section, upon the application of the next-of-kin of the deceased, unless such application be made within six months after the grant to the Administrator-General and the court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which application is made". The argument by Ms. Mndeme that section 17 of the Act does not apply as the instant application was brought under section 49 (1) a, b, c, and d of the PAEA is misconceived on the reason that the said section does not deal with revocation of the Administrator-General's appointment. Revocation of Administrator-General appointment is dealt under section 17 of the Act. In her affidavit, the Applicant did not adduce any reasons explaining why she had failed to make the Application for revocation within time. Having answered this first issue in the affirmative, I see no pressing need to discuss the remaining issue as this issue disposed of the present Application. In any case, as correctly argued by the counsel for the Respondent, if the Applicant is objecting the inventory filed, she can challenge it if the said inventory left out some of the deceased's property or if it included in the list any properties that do not form part of the deceased's estate by producing the evidence showing which property was left out or which Page 14 of 15 property was included while it does not form part of the deceased's estate. The Respondent would be required to produce the evidence to contest the said fact and this court would have been prompted to make a final determination on the issue. Having said so, this Application is hereby dismissed for being hopelessly time-barred. It is so ordered. DATED at ARUSHA this 23rd day of August 2024 Judge 23/08/2024 Ruling is delivered in the presence of the Appellant and the Respondent I their Representative in chambers on the 23rd day of August 2024. A. Z. BADE JUDGE 23/08/2024 Page 15 of 15

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