

TANZANIA / JUDGMENT

Probate No 8 Dr Lamwai Objection Inventory

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE SUB-REGISTRY (ONE-STOP JUDICIAL CENTRE) AT TEMEKE PROBATE AND ADMINISTRATION CAUSE NO. 8 OF 2021
In The Matter of The Estate of The Late DR. MASUMBUKO ROMAN LAMWAI And In the Grant of Letters of Administration of Estate By MERCEDES BENJAMIN KIMARYO AND GERVAS MASUMBUKO LAMWAI And In the Matter of an Application for Inventory and Accounts of Estate By MARCEDES BENJAMIN KIMARYO And In the Matter of Objection of Inventory and Accounts of Estate By GERVAS MASUMBUKO LAMWAI

JUDGMENT

8th August & 18th September, 2024 BARTHY, J.: Upon the death of the late Mr. Masumbuko Roman Lamwai, who passed away intestate on May 5th, 2020, the court appointed Marcedes Benjamin Kimaryo and Gervas Masumbuko Lamwai as co-administratrix and co-administrator, respectively, of the deceased's estate.

1 During the administration of the estate, a controversy arose between them as they disagreed on which assets constituted the estate of the deceased. Consequently, the court ordered each of them to file their own amended inventory and accounts of the estate and present them before the court so that each could defend which assets form part of the deceased's estate. This ruling addresses the objection raised before this court by Mr. Killey Mwitasi, learned advocate representing Gervas Masumbuko Lamwai, the co-administrator of the deceased's estate. Mr. Mwitasi stated that, in a previous order, the court had directed that the inventory and accounts of the deceased's estate be filed at least three days before the date fixed for the matter. However, the co-administratrix, Marcedes Benjamin Kimaryo, filed her inventory and accounts on August 6th, 2024, approximately one day before the hearing date. Meanwhile, the co-administrator had filed his inventory and accounts within the prescribed time and had served the co-administratrix accordingly. Mr. Mwitasi prayed that the court disregard the late submission for failing to comply with the court's timeline. He cited the case of Tanzania 2 Breweries v. Edson Zobe and 19 others, Misc. Civil Application No. 96 of 2000 (High Court), which emphasized that court orders must be obeyed. He also referenced the case of P.3528 Carnal Maganga Gregory vs. Judge Advocate

General, Court Martial Criminal Appeal No. 4 of 2002 (High Court), which stressed adherence to court orders. It was, therefore, his prayer that the court consider only the inventory and accounts filed by Gervas Masumbuko Lamwai and disregard those filed by Mercedes Benjamin Kimaryo. In response, Mr. Iman Dafa, learned advocate for the co-administratrix, Mercedes Benjamin Kimaryo, argued that the deceased's estate contained numerous assets and that, as an elderly and unwell woman, Mercedes Benjamin Kimaryo took longer to prepare the necessary documents. He prayed for the court to exercise its powers under section 95 of the Civil Procedure Code and consider the inventory and accounts she had filed. In his rejoinder, Mr. Mwitasi reiterated his initial arguments. He added that the reasons provided by Mr. Dafa should have been raised when seeking an extension of time, as Mr. Dafa had admitted that the forms were filed late. He emphasized that the court should not condone non-compliance with court procedures, particularly in probate matters. Regarding the claim that the co-administratrix was elderly and unwell, Mr. Mwitasi suggested that if she was unable to fulfill her duties, the court could appoint a suitable person to administer the estate. The court, having heard the arguments from both sides, must determine whether or not it should disregard the inventory and accounts filed late by the co-administratrix, Mercedes Benjamin Kimaryo. It is an established principle of law that court orders must be adhered to strictly. The cases cited by Mr. Mwitasi, learned advocate for the co-administrator, reinforce this principle. Furthermore, as stated by Hon. Judge Ngwembe (as he then was) in the case of Shabani Amuri Sudi (Administrator of the Estates of the Late Amuri Sudi) vs. Kazumari Hamisi Mpala, Misc. Land Application No. 30 of 2019, High Court at Mtwara, [2020] TZHC 4114 (10 November 2020), court orders must be respected, obeyed, and complied with religiously. Failure to do so undermines the authority of the court and the administration of justice. However, this court also recognizes that procedural rules are designed to serve the broader purpose of ensuring justice. When justified, the court invokes overriding objectives imbedded under section 3A (1) of the Civil Procedure Code, Cap 33 R.E. 2019, which encourage courts to facilitate just resolution of disputes. In this matter it is noted there are minor procedural irregularities, which essentially do not prejudice the opposing party or compromise the fair administration of the matter at hand. In this case, while it is undisputed that the co-administratrix filed her inventory and accounts beyond the prescribed deadline, there are mitigating factors that this court must take into consideration. First, the estate in question is substantial and involves numerous assets, many of which are in dispute. The complexity and magnitude of the estate require careful handling by the court to ensure that the assets are not mismanaged to the detriment of the heirs and other beneficiaries. The court has a duty to safeguard the estate and ensure that all assets are properly accounted for, especially when they are in dispute. Furthermore, there is no evidence to suggest that the co-administrator, Gervas Masumbuko Lamwai, as the personal representative of the deceased, would suffer prejudice if the court allows the inventory and accounts filed by the co-administratrix to be considered. The primary objective of the court is to ascertain what properties form part of the deceased's estate and to determine the debts owed by or to the deceased. By allowing both sets of inventories to be evaluated, the court can ensure that all relevant assets and liabilities are properly accounted for and that the interests of the estate and its beneficiaries are protected. In exercising its discretionary powers under section 95 of the Civil Procedure Code, this court is inclined to

prioritize the substantive administration of justice over strict procedural compliance in this instance. The one-day delay in filing, while a technical breach of the court's timeline, does not constitute a material violation that would justify excluding the co-administratrix's submissions. Denying consideration of the late-filed documents would risk compromising the integrity of the estate administration process, particularly when the delay is minimal and there is no evidence of bad faith or deliberate non-compliance. In light of the above considerations, the court hereby dismisses the objection raised by Mr. Killey Mwitasi on behalf of Gervas Masumbuko Lamwai. Additionally, the court grants the co-administratrix, Mercedes Benjamin Kimaryo, an extension of seven days to file an amended 6 inventory and accounts of the deceased's estate. She is also directed to serve the amended documents on the co-administrator, Gervas Masumbuko Lamwai, within this period. Upon the filing of the amended inventory and accounts, the court will proceed to consider both submissions in determining the assets and liabilities of the deceased's estate, ensuring that justice is served for all parties involved. It is so ordered. Dated at Temeke this 18th of September, 2024. BARTHY NJUDGE Delivered in the p'res^nte_oM4r. Iman Dafa Learned Advocate for the 1st Administrator, Mr. Killey Mwitasi Learned Advocate for Co-Administrator, also holding brief for Mr. Masumbuko Lamwai and Verena Clemence for Roman Masumbuko. 7

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