

TANZANIA / JUDGMENT

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THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM
MISCELLANEOUS CIVIL APPLICATION NO. 19464 OF 2024 (Arising from the Probate and
Administration Cause No. 16 of 2008) KHAULAT AMANI KASSIM AMANI
.....APPLICANT VERSUS KASSIM AMANI KASSIM (Administrator of the
Estate of the Late Amani Kassimu) RESPONDENT

RULING

12th December, 2024 & 11th March, 2025 BWEGOGGE, J. The above-named applicant has instituted an application herein praying for revocation of the letters of administration granted to the respondent in respect of the estates of the late AMANI KASSIMU, and appoint the applicant as administratrix of the estate in lieu of the respondent. This application is brought under the provisions of sections 49(1), (b), (c) and (e), and 49(2) of the Probate and Administration of Estate Act [Cap. 352 R.E. of 2019]; and supported by the affidavit of the applicant herein. 1 The depositions in the supporting affidavit and records annexed thereto depict that the probate of the Estate of the late Amani Kassimu is an eventful one. The deceased is survived by one wife and five children born by two different women. Two children namely, Sabrina Amani and Kassim Amani Kassim (the respondent herein) were begotten by the deceased's first wife, Maimuna Musa before the couple divorced in 2002 [Matrimonial Cause No. 9 of 2001 in the Resident Magistrates' Court of Dar es Salaam]. Eventually, the deceased remarried. During the cohabitation with the later and surviving spouse namely, Mwamvita Mwimanzi, the duo were blessed with three children namely, Amani Kassim Amani, Saumu Amani Kassim Amani and Zukaiyatun Amani Kassim Amani, the applicants herein. After the demise of the deceased person, his estate was administered by different persons. The first appointment was granted to the applicant's mother [Mwamvita Mwimanzi] on 05/04/2011 and revoked on 26/11/2013. Thereafter, the probate was granted to Asha Ramadhani, the deceased mother, who demised before she could discharge her legal obligation. Lastly, the probate was granted to the respondent herein. Allegedly, in petitioning for the administration of the deceased estate, the respondent herein deposed untrue and false statements respecting the estate and beneficiaries 2 entitled to the inheritance of the deceased's estate. Hence, this application. The applicant was represented by Messrs Meswin Masinga and Peter Nyangi, learned advocates; and the respondent fended for himself. In substantiating this application, the applicant's counsel submitted that the applicant herein is seeking the revocation of the letters of administration of the estate of her late father lately

granted to the respondent. The grounds for revocation advanced by the applicant's counsel are as follows: First, in instituting the petition for grant of probate, the respondent intentionally omitted the names of the deceased's three children born by the surviving wife who are entitled to inheritance in the deceased's estates as depicted by pleadings in Probate Cause No. 16 of 2008 instituted in this court and the consequential ruling of this court [Kakolaki J.] dated 28/10/2022 wherein it is mentioned that the deceased is survived with two issues namely, Sabrina Amani and Kassimu Amani Kassimu as sole beneficiaries of the deceased's estate together with Mwamvita Mwimanzi, the surviving wife; and Maimuna Musa, the deceased's former wife (divorcee). Allegedly, the respondent made the alleged averments while aware that the children born by the deceased's surviving wife (Mwamvita Mwimanzi) are entitled to a share in the estate. 3 Further, the applicant's counsel contended that the respondent's counter-affidavit deposing that the alleged non-inclusion of three heirs was just a human error is an afterthought. Hence, the remaining inference is that the respondent intended to disinherit the lawful heirs. Moreso, the counsel alleged that the pleadings of this application were served to the respondent on 02/09/2024 whereas the same responded by amending the accounts of estates on 26/09/2024; including the names of the omitted heirs in the list of beneficiaries to pre-empt this application. Secondly, the counsel alleged that the respondent has maliciously included the name of his mother, one Maimuna Mussa, as one of the beneficiaries of the deceased's estate despite being aware that she was previously divorced and entitled to a share in matrimonial properties acquired during the substance of marriage as decided in Matrimonial Cause No. 09 of 2001. The counsel enlightened this court that the properties subject to equal division between the parties thereto mentioned in the decree of the relevant matrimonial cause were the goods constituting the wholesale cosmetics shop at Kariakoo-Uhuru Street and the retail cosmetics shop at Kinondoni. That the house on Plot No. 161, Block 19 Kinondoni was not part of the matrimonial properties subject to division. 4 Thirdly, the disclosure made by the respondent in that Maimuna Mussa was entitled to 50% shares in the disputed house was maliciously and fraudulently calculated to deceive the lawful heirs and mislead this court. For the foregoing reasons, the applicant's counsel opined that the respondent herein is not a fit person to be an administrator of the estate; and the reasons stated above constitute sufficient reasons for the court to revoke letters of Administration granted to the respondent pursuant section 49 (1) (b) of the Probate and Administration of Estates Act. The case of Hayawi Binti Bugaza vs. Hadija Salum, Probate and Administration Cause No. 31 of 2008, HC (unreported) was cited to reinforce the point. In reply, Mr. Abdillahi Bakari Mohamed, the learned advocate (hired for drafting written submission in reply) contended that on 26th September, 2024 the respondent filed an amended inventory and accounts including all the beneficiaries after obtaining an approved valuation report of the property in dispute [Plot No. 161 Block 19 Kinondoni Area]. That the respondent did not intentionally omit the names of some beneficiaries, but his effort to seek communication with the respective heirs proved futile partly due to the subversive acts of their mother. 5 Further, the counsel contended that the respondent included the name of his mother [Maimuna Mussa] among the beneficiaries due to the directives given to the former Administratrix by this court [Hon. Shangwa J.] in Probate and Administration Cause No. 16 of 2008. The counsel opined that the fact that the respondent included the name of the applicant's mother among the beneficiaries establishes that the respondent had no ulterior

intention against any of the beneficiaries of the deceased estate. The counsel summed up his submission by asserting that for the application for revocation to be granted, there must be evidence that the probate was obtained fraudulently, among others, which the applicant herein failed to discharge. The case of *Herieth Peter Shemweta vs. Beatrice Joel Mkumbwa*, Civil Appeal No. 61 of 2020 [2021] TZHC 3933 was cited to bring the point home. The counsel prayed this application to be dismissed for being devoid of merit. In rejoinder, the applicant's counsel reiterated their submission in chief and insisted that the respondent is not trustworthy to administer the deceased's estate for the interest of all beneficiaries. 6 The question for determination is whether the application herein has substance. Foremost, I find it pertinent to state that the provision of section 107 (1) of the Probate and Administration of Estates Act imposes a duty to the administrator of the estate appointed by the court to exhibit in that court, within a prescribed period, an inventory containing a full and true estimate of all the property in possession, all the credit and debts owing by any person. Likewise, the law requires the administrator to exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of. The relevant provision was interpolated by the Apex Court in the case of *Shumbusho vs. Mary Grace Tigerwa and 2 Others*, Civil Appeal No. 183 of 2016 [2020] TZCA 1803 wherein it was stated: "In the performance of his duty as a legal representative, the law requires him to act in accordance with his oath. And what does this mean? Section 66 of the Probate and Administration Act requires the grantee of the probate or letters of administration to take an oath that he/she will faithfully administer the estate of the deceased and will account for the same. That is the administrator will faithfully administer the deceased's estates by first paying the just debts of the deceased, distributing the residue according to the law, making and exhibiting a full and true inventory of the deceased's properties 7 and credits and rendering a true account of the administration. The rationale for exhibiting the inventory and accounts is to keep the beneficiaries informed and to have transparency in the execution/administration of the deceased's estates. It is therefore implicit in the Probate and Administration Act that a legal representative owes a fiduciary duty to the heirs and beneficiaries. By way of emphasis, we wish to reiterate here that such a fiduciary duty is inferred from the oath taken by the grantee of the probate or letters of administration. As such, contrary to the view of the learned counsel for the appellant, the law is very much clear on the fiduciary duty imposed upon the grantee of probate or letters of administration." Further, borrowing a leaf from the decision of the Supreme Court of India in the case of *Central Board of Secondary Education and Another vs. Adiya Bandopadhyay and Others* [2011] 8 SCC 497, the Court underscored that: "The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) 23 in regard to his affairs, business or transaction(s). The term a/so refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary and use good faith and 8 fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or

to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.” Suffice it to say that the administrator of the deceased’s estate is expected to act faithfully in discharging his legal duty for the interests of the beneficiaries by virtue of his position as the legal representative. Thus, in so doing, he is required to furnish a full and true inventory of the deceased's properties and credits and render a true account of the administration. Now, the pertinent question arises herein, whether the respondent herein has breached his legal obligation. Allegedly, the respondent herein with no justifiable cause omitted to include the names of Amani Kassim Amani, Saumu Amani Kassim Amani and Zukaiyatun Amani Kassim Amani (applicant) in the probate in which he was appointed administrator. Likewise, it is alleged that, despite being aware that his mother (Maimuna Mussa) was divorced by the deceased before his demise, yet the respondent included her as one of the deceased’s heirs. 9 In the same vein, it is alleged that, despite being aware that the property on Plot No. 161; Block 19 Kinondoni area was not one of the matrimonial properties distributed by the court in Matrimonial Cause No. 9 of 2001, still, the respondent allotted 50% share to his mother, as her entitlement. Admittedly, the petition for grant of letters of administration of the deceased’s estate instituted by the respondent herein speaks volumes in that the respondent omitted the names of Amani Kassim Amani, Saumu Amani Kassim Amani and Zukaiyatun Amani Kassim Amani (applicant) in the list of beneficiaries thereof. Likewise, it is an uncontroverted fact that the names of beneficiaries mentioned above are missing in the subsequent account of estate filed by the respondent. I subscribe to the opinion of the applicant’s counsel in that it was until this application was lodged that the respondent succumbed to amending the document to include the missing beneficiaries. The reason given by the respondent for his failure to include the respective beneficiaries in the probate in that they refrained from cooperating and, or their mother deliberately obstructed the respondent’s initiative, doesn’t appeal to my mind. The mere act of enlisting the beneficiary in the probate, in my opinion, doesn’t require deliberations between the administrator and the beneficiary. It was until the distribution stage that consultation between 10 the duo is required, but not to the extent of obstructing the administrator’s legal functions. In responding to the allegation that he unjustifiably included the name of his mother in the list of beneficiaries, the respondent found refuge in the decision of the subordinate court in Matrimonial Cause No. 9 of 2001 and instruction given by this court in Probate and Administration Cause No. 16 of 2008. I join hands with the respondent in that the subordinate court in Matrimonial Cause No. 9 of 2001 ordered that the enlisted matrimonial properties acquired by the deceased person and his former wife (Maimuna Musa) be distributed equally. Likewise, this court in appointing the former administratrix of the deceased’s estate, instructed the same to abide by the order of the subordinate court respecting the matrimonial share of the deceased’s former wife in the estate. However, the matrimonial property (house) in dispute was not among the matrimonial properties enlisted for distribution. Having painstakingly read between the lines of the fading judgment of the trial court, I wholly agree with the applicant’s counsel in that the matrimonial properties for distribution between the deceased and his former wife (Maimuna Musa) were wholesale cosmetics goods in a shop 11 located at Kariakoo-Uhuru Street and retail cosmetics goods in a shop at Kinondoni. Even assuming that the property in dispute was among the enlisted

matrimonial properties to be distributed, still, the respondent was not entitled to enlist her mother (Maimuna Musa) among the entitled beneficiaries of the deceased's estate since her entitled unpaid share could be dealt with as just debts (liabilities) of the deceased person. The provisions of sections 49(1)(b)(c) and (e); and 49(2) of the Probate and Administration of Estate Act invoked by the applicant to move this court to revoke the grant of probate made by this court in favour of the respondent provides grounds upon which the grant of probate may be revoked. The relevant provisions state as follows: -

49. (1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons:—
- (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; 12
 - (e) that the person to whom the grant was made has willfully 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. Admittedly, the ascertained allegation that the grant of probate was obtained fraudulently by making a false suggestion, or by concealing from the court material facts to the case and, or the allegation that the person to whom the grant was made has willfully exhibited an inventory or account which is untrue in a material respect enjoins the court with power to revoke the grant of probate and appoint another administrator to take over the office of the predecessor administrator in terms of sections 49(1)(b) and (e); and 49(2) the Probate and Administration of Estate Act. 13 Arguably, the 2nd and 3rd charges levelled against the respondent might be honest mistakes which may be excused, but the first charge. Indeed, as aforementioned, the allegation of dishonesty on the part of the respondent which has not been satisfactorily rebutted, in my opinion, goes to the root of his entrusted legal duty. Therefore, I find the respondent unsuitable to act as administrator of the deceased's estate for the interest of the beneficiaries thereof. The applicant prayed that upon grant of this application, the same be appointed the administrator of the deceased's estate. I have gone through the record of this case. The applicant's mother (Maimuna Musa) happened to be the administratrix of the deceased's

estate. The reason she was removed, among others, was mistrust among the beneficiaries especially between the children of the former deceased's wife in one part; and the deceased's later wife and her children on the other hand. Hence, appointing the applicant to administer the deceased's estate would not save any purpose. 14 Thus, taking into consideration the nature of the probate in question, mistrust and competing interests among the beneficiaries, coupled with the lengthy period in which the deceased's estate remains undistributed to the detriment of the lawful heirs, I hereby invoke the provision of section 49 (2) of the Probate and Administration of the Estates Act and appoint the Administrator General to administer the deceased's estate. Before penning down, I find it pertinent to clarify one matter. There was a tug of war between the parties to this case pertaining to the property in dispute (house located on Plot No. 161 Block 19 Kinondoni Area) on whether the relevant property was among the matrimonial properties subject to division between the deceased person and his former wife. Based on the record, I answered the issue in the negative by asserting that the relevant property was not among the matrimonial properties subject to matrimonial distribution between the deceased person and his former wife (Maimuna Musa). However, my assertion doesn't in any way exclude the respective property from the deceased's estate. The question whether the relevant property constitutes the deceased's estate or not had been determined by my learned sister, Hon. Muruke -Judge (as she then was) in Misc. Civil 15 Application No. 168 of 2014 between Asha Ramadhani vs. Mwamvita Mwimanzi, HC (unreported). In tandem with the above, I find it crucial to enlighten the appointed administrator that previously, as depicted by the record of this court in the above-mentioned case, the disputed property was identified as Plot No. 77 Block 36 C, Isele Street before the title was recently altered to read Plot No. 161, Block 19 Kinondoni Area. That said, I hereby find this application with substance. I would allow the application. Accordingly, I hereby enter orders as follows:

1. The grant of the letters of administration of the estate of the late AMANI KASSIMU to KASSIM AMANI KASSIM is hereby revoked.
2. I hereby appoint the ADMINISTRATOR GENERAL to administer the deceased's estate for the benefit of all the beneficiaries involved.
3. The respondent shall hand over the relevant documents related to the deceased estate which came into his possession by virtue of his position as administrator of the deceased's estate to the ADMINISTRATOR GENERAL to enable him to execute his vested legal obligation.
4. The parties hereto to remit the record of previous cases related to the deceased's probate to the ADMINISTRATOR GENERAL to enlighten him on the instruction made by this court in Probate and Administration Cause No. 16 of 2008 respecting the order entered by the subordinate court in Matrimonial Cause No. 09 of 2001. 16
5. The respondent to surrender the letters of administration of the deceased estate to the court which made the grant.

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6. No order as for costs. So ordered. DATED at DAR ES SALAAM this 11th March, 2025. O. F. BWEGOGGE JUDGE 17
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Prepared on 13 October 2026 · Esheria