

TANZANIA / JUDGMENT

Ruling Miscellaneous Civil Application No

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IN THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA
MOSHI SUB- REGISTRY AT MOSHI MISCELLANEOUS CIVIL APPLICATION NO. 5556 OF 2024
(Originating from Probate and Administration Cause No. 08 of 2020 in the High Court of Tanzania
at Moshi) IN THE MATTER OF THE ESTATE OF THE LATE JOACKIM VICTOR MINDE AND IN
THE MATTER OF AN APPLICATION BY LAURA JOACKIM MINDE FOR REVOCATION OF LETTERS
OF ADMINISTRATION GRANTED TO SARA JOACKIM MINDE AND LUCY TRACY JOACKIM
MINDE. LAURA JOACKIM MINDEAPPLICANT VERSUS SARA
JOACKIM MINDE.....1ST RESPONDENT LUCY TRACY JOACKIM
MINDE..... 2ND RESPONDENT

RULING

Date of Last Order : 12.06.2024 Date of Judgement: 03.07.2024 MONGELLA, J. The applicant herein has preferred this application under Section 49 (1),(d), (e) and 42(2) of the Probate and Administration of Estates Act [Cap 352 R.E 2002] and Rule 29(1) of the Probate and Administration of Estates Rules seeking for the following reliefs: one, Page 1 of 20 revocation of the respondents as Administratrix of the estate of the late Joackim Victor Minde; Two, appointment of the Administrator General to administer the estate of the late Joackim Victor Minde and; Three, any other relief this Court deems fit to grant. The application was supported by the applicant's own sworn affidavit and vehemently opposed by the respondents as reflected in their sworn counter affidavits. The Applicant also filed her reply affidavit to the respondents' counters affidavits. The brief facts of the matter are to the effect that: the respondents are co-administratrix of the estate of the late Joackim Victor Minde who died intestate. They were appointed to serve the position by this Court on 30.07.2021 vide Probate and Administration Cause No. 08 of 2020. The two were required to file an inventory of the deceased's estate and statement of accounts, but failed to do so in the required time. They sought for extension to perform the said tasks which was granted whereby they were required to complete the task before or by 01.05.2022. However, they still failed to perform the task to date. The late Mr. Minde was survived by a wife (the 1st respondent) and six children including the applicant and the 2nd respondent. Other beneficiaries include one; Emma, Vanesa-Gracias, Brenda and valentine. The application was argued in writing whereby the applicant was represented by Mr. Ikoda O. Kazzy, learned advocate while the 1st respondent stood unrepresented. The, 2nd respondent never filed Page 2 of 20 her written submission nor appeared in Court to explain her failure to do so. In that respect, the 2nd respondent is hereby

considered to have defaulted the court orders. Under the law, failure to file written submissions as ordered by the court is as good as failure to enter appearance on the date scheduled for hearing. The consequences, on the part of the defendant/respondent is for the matter to proceed ex parte as it shall hereby go. See: Harold Maleko v. Harry Mwasanjala, DC Civil Appeal No. 16 of 2000, (HC- Mbeya, unreported); Geoffrey Chawe v. Nathaniel K. Chawe, Misc. Civil Application No. 22 of 1998 (unreported); and Olam Tanzania Limited v. Halawa Kwilabya, DC Civil Appeal No. 17 of 1999 (unreported). Mr. Kазzy commenced his submission in chief by praying for the applicant's affidavit and her reply to the respondents' counter affidavits to be adopted as part of the submission. He listed two reasons as grounds for which the applicant seeks the respondents' revocation. One, that, the respondents failed to exhibit a true inventory of the deceased's properties so that it is known which properties they were able to collect and that they have failed to exhibit accounts of the estate of the deceased. Two, that the grant has become useless and inoperative. He pegged the two grounds for revocation under Section 49(1), (d) and (e) of the Probate and Administration of Estates Act. After the introductory remark, the learned counsel went ahead to address the 1st ground. He contended that the respondents failed to file true inventory of the deceased's estate as well as accounts Page 3 of 20 of the estate as the law requires. In that respect, he considered them to have contravened the requirement of Section 107(1) of the Probate and Administration of Estates Act. In addition, in support of his assertion, he informed the Court that neither of the respondents denied to have failed to file both, the inventory and the statement of accounts. To cement his point, he referred to the record in Probate Cause No. 08 of 2020 arguing that the same also shows that they were never filed. Challenging the reasons advanced by the respondents in their counter affidavits in relation to their failure to implement their duties, the learned counsel found the alleged reasons not holding any water. In the advanced reasons, the respondents alleged that; some of the deceased properties have been placed as collateral to secure loan from the bank; and that there were ongoing cases and other issues that needed to be resolved. Referring to Section 107 of the Probate and Administration of Estates Act he argued that the provision requires administrators to file inventory containing full and true estimates of all the properties that come into their possession as legal representatives, as well as, debts and credits. In his view, inventory is filed to show all assets and liabilities of the deceased. In that respect, he contended that the respondents were supposed to file an inventory to show the deceased's assets and liabilities. Mr. Kазzy further argued that the respondents failed to differentiate between individual and company assets. That, the deceased being a shareholder of companies including Enyati Lodge, Page 4 of 20 Kilemakaryo mountain Lodge and Laitolya Tour Safari, did not mean that the administrators could interfere with the company activities to the extent of failing to file inventory due to company debts. That, the administratrix ought to have dealt with personal assets and liabilities of the deceased and not that of the companies. Asserting the legal position distinguishing companies from individual persons, he cited the case of Solomon vs. Solomon and Company Limited [1897]AC 22 whereby such concept was discussed in detail. Arguing further, he faulted the respondents for failure to discharge their duties as laid down under Section 108(1) of the Probate and Administration of Estates Act. He added that the respondents violated the law and have failed to advance justifications on their delay to implement their duties. Insisting on the respondents' failure to file

inventory and statement of accounts in time and this courts' mandate to revoke grant of probate in such failure, he cited the case of Ndeshukurwa Elisaria Msuya vs. Miriam Steven Mrita (Misc. Civil Application 66 of 2019) [2021] TZHC 6923 (27 October 2021) TANZLII. Mr. Kазzy further pointed out that Section 109 (1) and (2) of the Probate and Administration of Estates Act provides room for administrators of the deceased's estate to seek extension of time to file inventory or statement of accounts. He thus condemned the respondent's failure to seek extension of time prior to expiration of the extended time, that is, 01.11.2022. He held the stance that the extension ought to have been sought prior to such expiration. In Page 5 of 20 that respect, he called for termination of the respondents from their role, an argument he cemented with the case of Beatrice Brighton Kamanga and Another vs. Ziada William Kamanga (Civil Revision 13 of 2020) [2020] TZHC 1428 (10 July 2020). The counsel contended that failure to exhibit an inventory or account is a criminal offence as envisaged under Section 107(3) of the Probate and Administration of Estates Act. However, he submitted that the applicant has no intention to pursue the matter vide such recourse, but only seeks for the respondents' appointment to be revoked. Addressing the 2nd ground to the effect that the grant has become inoperative, Mr. Kазzy averred that the respondents do not get along. He further claimed that they also do not communicate which make it impossible for them to work together to implement their duties. In addition, he averred that the applicant is now being used as the middleman by the respondents and joint administration cannot work in such manner. In his stance, the misunderstanding between the respondents rendered the grant inoperative as they have failed to implement their duties. Submitting further, he contended that it was clear from the 2nd respondent's counter affidavit that they are blaming each other. That the 2nd respondent even showed that she prepared an inventory but the same was not signed by the 1st respondent. That, the 2nd respondent was also blaming the 1st respondent for disposing some of the deceased's properties such as vehicles, Page 6 of 20 monopolizing some properties and distributing some vehicles to the children she had birthed. He alleged that the two do not get along as the 2nd respondent is not one of the children birthed by the 1st respondent. The learned counsel further contended that due to the miscommunication, some properties, such as, Victoria House and Tarangire Camp site, have been left unattended. That, the house in Victoria was renovated by the applicant by her own funds and she sought refund from the respondents. However, later, the said house was left unattended and without security guard leading to the items purchased and fixed in the house to be stolen. That, the property still remains unattended and is deteriorating. With regard to Tarangire Camp site, he averred that the same has also been neglected for more than 4 years now and no one knows what is going on in the said place. In the premises, Mr. Kазzy held the view that revocation was necessary for better administration of the deceased's estate otherwise it stands to suffer worse fate. He pointed out that the applicant seeks for the Administrator General or any other neutral and reputable person to be appointed to administer the estate. He sought to move the Court under Section 49(2) of the Probate and Administration of Estates Act for both, revocation and appointment of another administrator. In reply, the 1st respondent started by praying for her counter affidavit to be adopted as part of her submission. In her submission, Page 7 of 20 she did not dispute that the inventory and statement of accounts of deceased's estate were not filed in court. She however attributed the failure to the estate being engulfed with financial

liabilities to wit, bank debts (outstanding loans) that are yet to be fully settled to date, a fact she challenged the applicant for not traversing it. Referring to Section 108(1) of the Probate and Administration of Estates Act, she averred that administrators ought to collect the deceased's estate and pay debts first prior to distributing the estate to the beneficiaries. She claimed that she and the 2nd respondent are still collecting the estate and struggling to pay debts due on the deceased's estate. She added that settling of the debts has also become extremely difficult due to its magnitude and nature. That, the bank debts also require negotiations with bankers, making decisions and exploring possible buyers for some properties to pay the said debts. In that regard, she contended that filing of the inventory and statement of accounts would be premature and distribution would be impossible. The 1st respondent further claimed that the status of the estate was also communicated to the beneficiaries including the applicant on family meetings. That, it has also been resolved that some of the deceased's estate including, Victoria House at Arusha, be disposed to mitigate settling of the deceased's liabilities. However, she said, they are yet to find potential buyers. She added that there are still pending negotiations with banks on pending cases to have the actual sum settled with waiver of penalties. In her view, the dire Page 8 of 20 state of the estate rendered their failure to meet the deadline despite the granted extension. Replying to the 2nd ground, she refuted the claim that the grant has become useless or inoperative. She averred that the assertion that she and the 2nd respondent do not communicate was unfounded, frivolous and grossly misconceived because: One, that there was no proof that there was miscommunication between them or other beneficiaries for that matter. That, there was also no proof of illegal disposition of the alleged assets as insinuated. She further contended that the applicant and the 2nd respondent share a mother, thus the assertion that she acts as a middleman between the two should be viewed as suspicious. Further, she contended that the assertion was introduced in the applicant's submission and was not part of the pleadings. In that regard she re-echoed the legal position that parties are bound by their pleadings. In her view, the issue ought to have been tabled in a family meeting. Two, she contended that the ground could not be tantamount to inoperative grant. Three, she argued that there is no proof that the 1st respondent or some beneficiaries monopolized any of the deceased's estate and/or prejudicially benefited thereof in exclusion of other beneficiaries. She insisted that communications are done vide family meetings (physical and virtual) whereby progress about administration is given during the said meetings. She challenged the applicant for not disclosing this fact. She added that the purported allegations of misappropriation of the deceased's estate are grossly misleading Page 9 of 20 and were introduced in submissions as an afterthought. In her stance, the insinuations enhance suspicion on the applicant and 2nd respondent. The 1st respondent further opposed the idea of appointment of the Administrator General. She was of the view that the same would enhance liability on the deceased's estate. She added that there was also no family resolution made to revoke their appointment or to appoint the Administrator General. She stated further that the costs and other implications of appointing the Administrator General have never been discussed and agreed on by the beneficiaries, nor were they given opportunity to consider other possible options. She contended further that, neither the family or close associates to the deceased have been approached to support the process. In that respect, she held the view that it would not be in the best interest of the deceased's estate to appoint the Administrator General to

administer the estate in alternative to the respondents. She thus concluded with a prayer that the application be dismissed for being devoid of merits. Rejoining to the 1st respondent's submissions, Mr. Kazzy opted to reiterate his submission in chief. He refuted the claim that the applicant did not traverse the fact that the estate of the deceased is engulfed with various financial liabilities to wit, bank debts, which are yet to be fully settled to date. He contended that such fact was traversed by the applicant in her reply to the 1st respondent's counter affidavit. Page 10 of 20 As to the 1st respondent's allegation that the applicants are still paying debts and distributing the estate at this point would be premature, Mr. Kazzy contended that an inventory, according to Section 106 and 107 of the Probate and Administration of Estates Act, contains full and true estimate of the deceased's estate including all debts owing by any person and all the credits. That, such format is found in Form No. 80 set out in the 1st Schedule to the Rules. In the circumstances, he held the stance that an inventory is filed to show the assets and liabilities of the deceased. Mr. Kazzy further reiterated his argument that the respondents have failed to exercise their duties. He wondered why the respondents failed to exhibit the inventory containing the list of assets and liabilities on deceased's estate if they indeed have been collecting the deceased's assets and liabilities. In his opinion, the respondents wilfully neglected to file the inventory thereby contravening the requirements of Section 107 (1) of the Probate and Administration of Estates Act and the issued order to file inventory on or before 01.11.2022. He found there was no reasonable explanation for their delay to file the inventory and statement of accounts within the prescribed time. With regard to the refuted allegations over the grant being useless and inoperative due to existence of miscommunication between the respondents; Mr. Kazzy reiterated that there was miscommunication between the respondents and the same is admitted by the 2nd respondent under paragraph 10 of her counter affidavit. He maintained his position that the misunderstanding Page 11 of 20 between them has caused them to fail to file the inventory and statement of accounts in time. Mr. Kazzy further pointed out that the 2nd respondent was blaming the 1st respondent for monopolizing the deceased's properties, disposing some assets like his vehicles and distributing assets like vehicles to her biological children. In his view, this shows that the two have failed to perform their duties and resorted into blaming each other. As to there being sharing of progress on administration in family meetings, the learned counsel challenged that the said issue is a new fact not raised in the respondents' counter affidavit, hence the applicant was not afforded the opportunity to address it. Mr. Kazzy insisted that the revocation was necessary for better administration of the deceased's estate otherwise the worst is likely to happen. He reiterated the prayers for appointment of a neutral person without any bias, who would not delay in collecting the deceased's estate, filing inventory and accounts of the estate within time. He again insisted that such neutral person could be the Administrator General or any other impartial person able and willing to perform administration duties. He further reiterated his prayers for the application to be allowed. Upon considering the submissions of both parties, and the filed pleadings, I find it apparent that the applicant seeks for revocation of the appointment of the respondents as Administratrix of the deceased's estate on two main grounds being; One, that the Page 12 of 20 administrators have failed to file inventory and statement of accounts of the deceased's estate. Two, the grant has become useless and inoperative due to miscommunication between the respondents. As to the 1st ground, the

applicant alleged that the respondents are yet to file inventory and statement of accounts despite seeking and being granted extension to file the same on or before 01.11.2024. It is apparent on record that the respondents sought for letters of administration of the estate of the late Joackim Victor Minde before this Court. They were jointly granted letters of administration on 30.07.2021. The grant came with instructions to make a full and true inventory of the properties and credits and exhibit the same before this Court within six months or such time as the Court may appoint. They were also to render to this Court a true account of the estate and credits within a year from the date of the Court order or within further time as appointed by the Court. On 08.02.2022, Mr. Martin Kilasara, learned advocate and the 1st respondent whom he represented, appeared before this Court presided by His Lordship Hon. Mwenempazi J. Mr. Kilasara requested that the Court extends three months' time for the respondents to file the inventory. Mr. Kilasara reasoned that the respondents were still collecting properties of the estate, paying liabilities, and some properties needed to be evaluated to establish their real value. My learned brother Hon. Mwenempazi, J., granted extension of three months as sought, which was to expire on 10.05.2022. Page 13 of 20 On 10.05.2022, Mr. Kilasara solely appeared before Hon. Mwenempazi, J. and the matter was fixed for mention on 28.07.2022. On 28.07.2022, with the 1st respondent in attendance, Mr. Kilasara requested for further extension of time as there were challenges on ascertainment of the deceased's liabilities as most of the activities were handled by the deceased himself. The Court extended the period for further three months. The respondents were ordered to file inventory by 01.11.2022 or otherwise time would be extended for good cause. On 01.11.2022, Mr. Kilasara again appeared before the Court, but addressed the Court that the inventory and account were yet to be filed. However, the respondents never sought for another extension of time. The matter was adjourned to 01.12.2022. On 14.02.2023, the matter was then adjourned to 28.03.2023. On 28.03.2023, Mr. Kilsara informed the Court that the respondents are still in the process of completing the inventory and statement of accounts. Since then, the matter came for mention multiple times and neither the respondents nor their advocate entered appearance. The last mention was on 17.07.2023. It is therefore apparent on record that the respondents never filed an inventory or exhibit a statement of accounts. The requirement to file inventory in six months is mandatory as set under Section 107 (1) of the Probate and Administration of Estates Act, which states: "(1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Page 14 of 20 Court which granted the probate or letters may from time to time appoint or require, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and in the manner in which they have been applied or disposed of." Evidently, the above cited provision expressly requires the administrator to file an inventory prior to filing the accounts. The essence is to identify the assets and liabilities of the deceased's estate. This would enable the administrator to settle debts owed to the deceased and those he owes other persons, funeral expenses or any other expenses involved with the estate and finally to distribute the sustaining sum to the beneficiaries.

Such role of administrators is well provided under Section 108 of the Probate and Administration of Estates Act, which states: "108. (1) The executor or administrator shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of administration, and distribute the estate to the persons or for the purposes entitled to the same or to trustees for such persons or for the purposes entitled to the same or to trustees for such persons or purposes or in accordance with the provisions of this Act, as the case may be." Page 15 of 20 In *Sekunda Mbwambo vs. Rose Ramadhani* [2004] TLR 439, the Court, discussing the qualities and duties of administrators of the deceased's estate, stated: "The objective of appointing an administrator of the estate is the need to have a faithful person who will, with reasonable diligence, collect all the properties of the deceased. He will do so with the sole aim of distributing the same to all those who were dependants of the deceased during his life- time. The administrator, in addition, has the duty of collecting all the debts due to the deceased and pay all the debts owed by the deceased. If the deceased left children behind, it is the responsibility of the administrator to ensure that they are properly taken care of and well brought up using the properties left behind by their deceased parent. After the administrator has so faithfully administered and distributed the properties forming the estate he has a legal duty to file an inventory in the Court which made the appointment giving a proper account of the administration of the estate. This action is intended to help any one of the beneficiaries who feels aggrieved at the way the property was distributed and thus dissatisfied to lodge his/her complaints to the Court which would in turn investigate the same and decide the matter in accordance with the dictates of the law. In view of all this, it is evident that the administrator is not supposed to collect and monopolize the deceased's properties and use them as his own and/or dissipate them as he wishes, but he has the unenviable heavy responsibility which he has to discharge on behalf of the deceased. The administrator might come from amongst the beneficiaries of the estate, but he has to be very careful and impartial in the way he distributes the estate." Page 16 of 20 Section 107(1) of the Probate and Administration of Estates Act has specified the time within which such role of filing inventory and thereafter statement of accounts, which is six (6) months and a year respectively. Such time can also be extended by the granting Court. It is thus settled that inventory and statement of accounts are diverse documents filed at diverse times, one preceding the other. The Court of Appeal in *Joseph Shumbusho vs. Mary Grace Tigerwa & Others* (Civil Appeal No. 183 of 2016) [2020] TZCA 1803 (6 October

2020) gave a detailed explanation on the difference between an inventory and statement of accounts. "Here, we wish to pose and revert back to the difference between the inventory and accounts. An inventory is described under section 107 of the Probate and Administration and rule 106 of the Rules whereupon an heir or an administrator is required to file inventory containing full and true estimates of all the properties which came into his possession as a legal representative, all the debts owing by any person, and all the credits. The format of it is provided in Form 80 set out in the First Schedule to the Rules. Therefore, the inventory is filed in order to show the assets and liabilities of the deceased whereas the accounts are filed in order to show the administration of the

deceased's assets and its format is provided in Form 81 of the First schedule to the Rules. Such accounts must be filed within a period of not more than one year or within such further time as specifically appointed by the Court whereas the inventory is required to be filed within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint or require. In that regard, the inventory is not synonymous to the Page 17 of 20 accounts as the parties would like this Court to take." From the foregoing holding, it is clear that an inventory is taken first prior to statement of accounts. The respondents herein failed to comply with the requirement of the law as to filing the inventory. The argument that the deceased's estate needed attention due to several debts and other related matters epically fails as inventories do not require settling of debts, but just identification of the deceased's assets and liabilities. Further, it appears that the respondents were aware of the deceased's estate. However, both respondents did not even enter appearance before this Court from 17.07.2023 to address the Court as to their progress or intention to file inventory and statement of accounts and thereon seek for further extension of time. In my considered view, the failure to seek further extension of time after expiry of the given time rendered the respondents automatically terminated from their position. The fact that each respondent filed her own counter affidavit and that the 1st respondent appeared to defend her own arguments serves to prove that indeed there was miscommunication or rather bad blood between the respondents. In fact, the 2nd respondent's affidavit did depict that the two are at odds, an argument that the applicant did affirm in her reply to the respondents' counter affidavits. Further, as I have pointed out, the two did not bother entering appearance before this Court to seek for extension to file inventory and statement of accounts since 17.07.2023. This, in my view, evidences that the grant has become inoperative. The two Page 18 of 20 are not communicating as required of co-administrators and neither are they implementing any of their duties. Since the respondents were jointly appointed as administratrix, they are both jointly and severally liable as far as administration of the deceased's estate is concerned. In that regard, according to the powers vested in me under Section 49(d) and (e) of the Probate and Administration of Estates Act, I hereby revoke the appointment of both respondents as administrators of the estate of the late Joackim Victor Minde. I understand that it is within my powers under Section 49(2) of the Probate and Administration of Estates Act to appoint another person to administer the estate after revocation. The applicant has sought for this Court to appoint the Administrator General to administer the deceased's estate. Somehow, in the applicant's submission, such request was modified by adding a prayer that "or any other person this Court deems fit." Of course, the modified request was not pleaded, thus cannot be considered. As to the appointment of the Administrator General, I find no ample reasons advanced as to why this Court should appoint the Administrator General. I am of the considered view that the appointment of the Administrator General should serve as a last resort. There should be no any other trustworthy person to administer the deceased's estate which I hardly believe is the case on this matter for lack of proof to such effect. The Applicants and respondents make the 3 out of 7 beneficiaries of the late Joackim Page 19 of

20 Victor Minde. There is barely any reflection of the involvement of the rest of the beneficiaries in this application or their consent on appointment of the Administrator General. In that respect, I am of the view that the beneficiaries are still in the position to find a trustworthy and able person to administer the deceased's estate. In the foregoing, this second prayer is hereby dismissed. I recommend the parties and all the beneficiaries of the late Mr. Joackim Victor Minde to immediately convene to discuss and propose a person fit to administer the estate of the deceased. Such party shall be required to appear in Court to request for letters of administration. The party appointed shall resume the duties of administration from where the respondents stopped. The application is thus allowed to such extent. Considering the relationship between the parties, I make no orders as to costs. Dated and delivered at Moshi on this 03rd day of July, 2024. X L. M. MONGELLA JUDGE Signed by: L. M. MONGELLA Page 20 of 20

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