

TANZANIA / JUDGMENT

MISC CIVIL APPL NO

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TANZLIIDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB
REGISTRY AT DAR ES SALAAM MISC. CIVIL APPLICATION NO. 828 OF 2025 (Arising from
Probate and Administration Cause No. 57 of 2015)

IN THE MATTER OF THE ADMINISTRATION OF THE ESTATE OF THE LATE ARON EZEKIEL
CHANIMBAGA alias EZEKIELY ARON CHANIMBAGA AND IN THE MATTER OF THE
APPLICATION FOR LETTERS OF ADMINISTRATOR BY LEAH NEEMA CHANIMBAGA

RULING

Date of last order: 25th March 2025 Date of Ruling: 3rd April 2025 MTEMBWA, J.: Under section 46 of the Probate & Administration Act, Cap 352, R.E 2019, and rule 46 of the Probate Rules, the Applicant has preferred this Application seeking an order of appointment as administratrix of the estate of the late ARON EZEKIEL CHANIMBAGA alias EZEKIELY ARON CHANIMBAGA, who passed away at Apollo Specialty Hospital in Chennai, India, on 30th June 2015. In summary, the late ARON EZEKIEL CHANIMBAGA, also known as EZEKIELY ARON CHANIMBAGA, died testate, leaving a written will dated 27th August 2014, in which he appointed his daughter, REHEMA 1 ALATUNYAMADZA, as the sole executrix of the probate. On 15th August 2015, this Court granted her the probate of will through the probate and administration of estate cause No. 57 of 2015. Unfortunately, REHEMA ALATUNYAMADZA passed away in Dar es Salaam on 11th July 2021, leaving part of the estate unadministered. The records also reveal that the late ARON EZEKIEL CHANIMBAGA, also known as EZEKIELY ARON CHANIMBAGA, left behind the following surviving relatives: Rehema Alatunyamazda (deceased), Leah Neema Chanimbaga (applicant), Lulu Carmen Chanimbaga, Emma Chanimbaga, Nuru Ngailo, Epiphanius Chanimbaga, Eric Chanimbaga, Aron Chanimbaga, and Lazaro Chanimbaga. The properties that are still unadministered include a house on Plot No. 2051, Kunduchi-Mtongani within Kinondoni District, Dar es Salaam Region, with an estimated value of Tshs. 50,000,000/=; a house on Plot No. 45611, Kunduchi – Mtongani within Kinondoni District, Dar es Salaam Region with an estimated value of Tshs. 50,000,000/=; a hotel known as Saadani Wildlife Hotel, at Saadani, Bagamoyo District, Coast Region, situated on a piece of land constituting 70 acres with an estimated value of Tshs. 70,000,000/=; a land containing a fish pond (prawns) with an estimated area of one hundred and fifty acres (150 acres) situated at Saadani, Bagamoyo, with an estimated value of Tshs. 20,000,000/

=; a 2 house at Plot No. 1 Block “J” Njombe within Njombe Region with an estimated value of Tshs. 20,000,000/=; a garage situated on Plots Nos 30 and 31, Industrial Area, Njombe Region, with an estimated value of Tshs. 300,000,000/=; a farm with an estimated 325 acres at Wikichi, Njombe, with an estimated value of Tshs. 50,000,000/=; a plot at Ruhuji, Njombe Urban, was purchased from Ramadhani, measuring 6.2 hectares with an estimated value of Tshs. 10,000,000/=; a house and farm at Sodike, Njombe with an estimated value of Tshs. 10,000,000/=; a farm situated on the valley at Sodike, Njombe Region, with an estimated value of Tshs. 10,000,000/=; a farm at Sodike, Njombe Region with an estimated value of Tshs. 10,000,000/= a farm at Sodike, Njombe Region with an estimated value of Tshs. 10,000,000/=; household items in the residential houses with estimated value of Tshs. 3,000,000/=; Motor Vehicles not specified in the Will with estimated value of Tshs. 5,000,000/= and Bank Accounts maintained at different banking institutions. On 25th March 2025, when the matter came for orders, Mr. Victor Alexander, the learned counsel for the Applicant, informed this Court that they were able to electronically file the affidavits of consent from Lulu Carmen Chanimbaga, Emma Chanimbaga, Nuru Gairo, Erick Chanimbaga, and Aron Chanimbaga. He further added that the Applicant had sworn an affidavit stating that Epiphanius Chanimbaga and Lazaro Chanimbaga were 3 not secured. Additionally, he informed this Court that Rehema Alatunyamadza is no longer alive. Finally, he implored this Court to grant the Application. Having dispassionately considered the petition and the attached documents, the question is whether this Application is meritorious. As said before, the Applicant has preferred this Application seeking an order of appointment as administratrix of the estate of the late ARON EZEKIEL CHANIMBAGA alias EZEKIELY ARON CHANIMBAGA, who passed away at Apollo Specialty Hospital in Chennai, India, on 30th June 2015. On 15th August 2015, this Court granted the probate of Will through the probate and administration of estate cause No. 57 of 2015 to REHEMA ALATUNYAMADZA, who, unfortunately, passed away on 11th July 2021, leaving part of the estate unadministered. To support her assertion, the Applicant attached to the Petition, the certificate of death (Annexure LEAH –

- 2) to signify that REHEMA ALATUNYAMADZA is no longer alive. According to section 3 of the Probate & Administration Act (supra), this Court has jurisdiction in all matters relating to probate and the administration of the deceased's estates, with the power to grant probates of wills and letters of administration to the estates of deceased persons and to alter or revoke such grants. Powers to revoke the grant or 4 remove executors by this Court are provided for under section 49 (1) and (2) of the Act. It provides as follows;
 - (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;
 - (e) that the person to whom the grant was made has wilfully 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. The Court of Appeal of Tanzania in *Ahmed Mohamed Al Laamar vs. Fatuma Bakari & Another* (Civil Appeal 71 of 2012) [2012] TZCA 22 (6 July 2012) noted as follows; 5 the High Court is vested with powers to revoke or annul the grant of probate and/or letters of administration for reasons stated in section 49(1) (a) to (e) of the Act. The word 'revoke' has its origin in a Latin word "revocare," which meant "to call again or back" In both legal and ordinary English language, this word means to cancel, withdraw, reverse, repeal, vacate, put to an end, etc. In our respectful opinion, both common sense and logic dictate that one can only annul, repeal, vacate, put to an end, etc, what was previously granted or passed and is still operative or existing. Nothing which has already come to an end can be put to an end or vacated, etc... As mentioned before, the only reason advanced for the removal is the death of REHEMA ALATUNYAMADZA, to whom the probate of Will was granted through the probate and administration cause No. 57 of 2015. In my opinion, the grant has now become inoperative. In law, the object of the power given to the Court to revoke an earlier grant or remove the executor by reason that the same has become inoperative is to ensure the administration of the estate is done properly with the view to protect the estate itself and the interests of heirs or beneficiaries and other interested parties. This principle was articulated in the Ugandan case of *Late Etadu Eliphas (deceased) and Abunyo Naume (daughter)*, Misc. Application No. 009 of 2022, High Court of Uganda at Soroti, where also the case of *In the Goods of William Loveday* [1900] P154 was referred. The 6 Court stated; The real object which the court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto, and I can see no good reason why the court should not take fresh action in regard to the estate where it is made clear that the previous grant has turned out abortive or inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate and it turns out that the person so appointed will not or cannot administer, I do not see why court should not revoke an inoperative grant and make afresh grant. I subscribe to the above principle. This Court was satisfied that a grant of probate of Will to REHEMA ALATUNYAMADZA would suffice to manage the estate of the late ARON EZEKIEL CHANIMBAGA alias EZEKIELY ARON CHANIMBAGA. Still, it has now turned out that the appointed executrix is no longer alive.

Invariably, I do not see why this Court should not remove her from office by reason that the grant has become inoperative and issue letters of administration to the Applicant. The Applicant herein has proved on a balance of probability that REHEMA ALATUNYAMADZA is dead and that her death has rendered the earlier grant to her inoperative. In the circumstances, I am constrained to conclude that this Application is meritorious and has not been brought to subvert the cause of 7 justice. Accordingly, I do exercise my powers under section 49 (2) of the Probate & Administration Act (supra) and remove REHEMA ALATUNYAMADZA from the office as the executrix on the basis that the earlier grant has become inoperative and ineffectual. I order that the letters of administration be issued to the Applicant for the administration of the estate of the late ARON EZEKIEL CHANIMBAGA alias EZEKIELY ARON CHANIMBAGA. I order accordingly. Right of appeal explained. DATED at DAR ES SALAAM this 3rd April 2025. H.S. MTEMBWA JUDG 8 9 10

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