

TANZANIA / JUDGMENT

margreth mdaki semzaba and edwin semzaba 2021 tzhc 12531 10 december 2021

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TZHCDECIDED
10 December 2021

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 321 OF 2021 (Arising from Probate and Administration Cause No.
64 of 2016) MARGRETH MDAKI SEMZABA..... PETITIONER AND EDWIN
SEMZABA..... DECEASED Date of last order: 05/11/2021 Date of Ruling:
10/12/2021

RULING

MGONYA, J. The applicant before this Court has approached this honourable court with an application that arises from Probate Cause No. 64 of 2016 seeking for the following orders:

1. That, this Honourable Court be pleased to grant the applicant Letters of Administration limited to the collection and preservation of the estate of the late Edwin Semzaba who died intestate and whose estate is not under any administration and requiring urgent collection and preservation thereof i
2. Costs of this application to come from the estate in issue.
3. Any other relief (s) as this Honourable Court deems fit and just to grant. The Application before this Court has been made in support of an affidavit sworn by one MAGRETH MDAKI SEMZABA. When the matter was due for hearing the Court ordered that the application be heard by way of written submission. With the Applicant's submissions in place the same is hereby determined. The Applicant in her submission submitted that, this application is preferred by the applicant since her interests are barred by the former Administrator of the estate of the deceased. In Probate and Administration Cause No. 64 of 2016 Laurence Fredrick Semzaba who was appointed administrator of the deceased's estate, the Late Edwin Semzaba. In the above named matter the Applicant herein filed an objection hence became a Caveator. The Court heard the matter and ruled out as it can be traced by the attached judgment of the Court. The Court went further in appointing the administrator with instructions to perform his duties within six months according to the law. The administrator is said to have never attended to his duties as an administrator which led to his revocation

and an order to surrender the letters of appointment and other required document. Further there is a ruling of Miscellaneous Application No. 521 of 2020 by Honorable Mlacha, J., that ordered the family of the late Edward Semzaba to propose another person to petition for letters of administration to replace the one revoked, so as to take over the activities in Probate and Administration Cause No. 64 of 2016. The actions of the revoked administrator as reiterated in the applicant's submission are criminal in nature since the same has not complied to the Court orders of Misc. Application No. 521 of 2020 and is in control of the deceased's estate. However, the applicant herein has interest in the deceased estate since she was the deceased's former wife who had been divorced from him. And that before the execution of the Court's decision on the division of the matrimonial properties the former husband passed away. It is from the interest of the above said properties that she seeks this Court to grant her the prayers in this application. Having gone through the application and submission of the applicant, it is in my awareness that the applicant before this Court has moved the Court under two laws. First is the 3 Probate and Administration of Estates Act Cap. 352 R. E. 2002] together with the Probate Rules of 1963. The Applicant cited section 39 of the Probate and Administration of Estates Act (supra) which states that: "1/7 any case in which it appears necessary for preserving the property of a deceased person, the Court may grant, to any person whom it thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate and to such other acts (other than the distribution of the estate as the Court shall think fit) subject to the directions of the Court." Moreover, the Probate and Administration of Estates Act is read together with the Probate Rules and the same are in supportive of each other. Having moved the Court under section 39 of the Probate and Administration of Estates Act. Rule 51(1) of the Probate Rules was also cited to complete the above-named section. Rule 51(1) states that: "Where an application for letters of administration under section 39 and of the Act is made by a person who has already lodged in the Court a petition for a grant in respect of the same estate, 4 such application shall be made by chamber summons supported by an affidavit in the form prescribed in Form 38 set out in the First Schedule setting out grounds for such application." From the above rule, it is required that a party making an application under section 39 of the Probate and Administration of Estates Act has to have lodged a Petition in Court for a grant in respect of the deceased estate. In the circumstance of this application the applicant has not in any way revealed that she has a petition lodged seeking for grant of letters of administration. The applicant in her submission states to be seeking for collection and preservation of the deceased for the interest of her share in the estate as a former wife to the deceased. It is for the reason that the prior appointed administrator has been revoked and the family have not appointed anyone to petition as directed in the decision by Hon. Mlacha, J. It is my firm view that the application before this Court is misconceived and premature since the applicant has no pending Petition before the Court as required by Rule 51 (1) of the Probate Rules. However, since the applicant has interest in the deceased estate for her share under the Matrimonial Cause No. 52 of 5 2012 where the two were divorced, she can petition for the letters of administration of the deceased estate so long as the prior administrator has been revoked

and the family is reluctant in proposing another person to petition. Section 33 (1) of the Probate Act states: "Where the deceased has died intestate, letters of administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate." Therefore, I find from the submission of the applicant that she is eligible from the content of section 33 (1) of the Probate and Administration of Estates Act to file for grant of letters of administration if she desires to do so. In the event therefore this application before this Court from the reasons set out above is hereby dismissed. It is so ordered. L. E. MGONYA JUDGE 10/12/2021 6 Court: Ruling delivered in chamber in the presence the Applicant and Mr. Richard RMA. 10/12/2021 7

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