

TANZANIA / JUDGMENT

grace reynold kaheza vs nmb bank plc 2021 tzhc 6053 24 august 2021

COURT
TZHCDECIDED
24 August 2021

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IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISRTY OF SHINYANGA AT SHINYANGA PROBATE CAUSE NO.1 OF 2021 IN THE MATTER OF PETITION OF THE LETTERS OF ADMINISTRATION OF THE ESTATE OF HAWA ZOZO alias ZOZO RAMADHANI, HAWA WHO DIED INTESTATE And IN THE MATTER OF PETITIONING FOR THE APPOINTMENT FOR OPERATING THE BANK ACCOUNT OF THE DECEASED FOR MEETING THE BURIAL EXPENSES. GRACE REYNOLD KAHEZA PETITIONER VERSUS NMB BANK PLC RESPONDENT

RULING

23th & 24th August, 2021. KULITA, I.: This is an application for petition for letters of administration. It has been filed by the Applicant in terms of the provisions of section 42 of the Probate and Administration of Estates Act Cap. 352 RE 2002 and Rule 39 1 of the Probate Rules. Together with it, the Applicant has filed a chamber summons, made under the provisions of Rule 67(1) and (2) of the Probate Rules where she prays for this Court to dispense with a requirement of depositing bond and sureties in the application for appointing the petitioner as administrator. On 23rd August, 2021 the matter came for hearing. On that date, Mr. Frank Samweli, Advocate appeared for the applicant. As this is an ex parte application, no one appeared for the Respondent. Submitting in support of the application Mr. Frank stated that, the petitioner prays to be appointed the administrator in the exceptional way under section 42 of the Probate and Administration of Estates Act RE 2002 read together with rule 39 of the Probate Rules. He went on submitting that, the petitioner seeks for temporary administration so that she can have the right to access deceased's bank account No. 30702401116 NMB Shinyanga with the name of Zozo Ramadhani Hawa (deceased). Mr. Frank provided the exceptional circumstances to be, the nature of the deceased's sickness to death, that took a lot of money from relatives then the deceased's herself. To fortify his assertion, he stated that, through Misc. Civil Application No. 21 of 2021, the District Court of Shinyanga allowed withdrawal of Tshs. 2,000,000/=. Though that amount 2 did not meet the needs, he added. As a result, the applicant applied again through Misc. Civil Application No. 22 of 2021. On this Mr. Frank submitted that the Court allowed the Applicant to withdraw unlimited amount per the needs of the patient (deceased). Mr. Frank went on stating that, through that order, the applicant managed to withdraw Tshs. 5,000,000/= for treatment of the patient (deceased). Again, Mr. Frank submitted that, the patient died on 14th August, 2021 and

added further that, by the time this application was filed, the deceased was no yet buried. He went on stating that, their money estimate over the burial expenses was Tshs. 10,000,000/= while in their application they prayed for Tshs. 15,000,000/=. On those he said, as burial ceremony has already taken place, in reality they have incurred 14,000,000/=. He provided further that; as condolences covered Tshs. 3,500,000/=. then the applicant seeks to withdraw the remaining sum of Tshs. 10,500,000/= from the Deceased's bank account. Mr. Frank while understanding that under rule 39 of the Probate Rules this application requires to be accompanied with bond and sureties, he argued that, they have in addition made an application under rule 67(1) and (2) of the Probate Rules seeking this court to dispense with such requirement. To supplement his assertion, he prayed for the 3 applicant's affidavit be adopted as part of their submission. Mr. Frank formed a considered opinion that, as the applicant's prayer is not to administer for the whole of the deceased's estates but Tsh 10,500,000/= only for settling debt incurred in the burial ceremony of the deceased, then the requirement of sureties and bond can be waived. He finally, prayed the applicant be appointed the administrator under section 42 of Cap. 352 only for operating the deceased's account by withdrawing only Tshs. 10,500,000/=. This is the end of submissions. I have earnestly passed through and taken into consideration the entire pleadings and the applicant's submissions as well. The issue is whether the application fits to be granted. To be appointed temporarily to access the deceased's bank account, the applicant has moved this Court with section 42 of the Probate and Administration of Estates Act. The section provides; -

42. Whenever the nature of the case requires that an exception be made/ probate or letters of administration with or without the will annexed shall be granted subject to such exception.
- 4 The cited provision of the law requires the Applicant to prove to the court that there exist exceptional circumstances to warrant such appointment. The applicant in her pleadings together with submissions has provided us with information that relatives have exhausted all of their money to the end and decided to use the deceased's money for treatment expenses. As they have no other means and their patient has died, she has filed this application on the 18th August, 2021 under certificate of urgency so that to meet the burial ceremony expenses, which would take place on 19th August, 2021. Now that burial ceremony has already been done, the applicant seeks to settle the debts incurred under the same application. I agree with the applicant that, meeting burial ceremony expenses under circumstances that there are no any other means, is among the special circumstance that section 42 of the Probate and Administration of Estates Act intended to cover. But, as burial ceremony has already been done as submitted by the applicant's counsel, then I find that exceptional circumstance provided in the applicant's application has already passed. The applicant's application does not state the debt incurred for burial ceremony to be their exceptional circumstance to warrant appointment. On that account, this application has been overtaken by event. 5 Moreover, the counsel for applicant in his submission stated that, the applicant withdrew Tshs. 5,000,000/= when she was allowed unlimitedly so to do, by the District Court. That withdrawal is not stated in the applicant's pleadings and it is not even proved by bank statement at this Court. On that note, with the absence of any averment on the time limit to settle the debt incurred for burial ceremony, together with its

consequences if not settled in time, then I am settled in my mind that, the exceptional circumstances this court was called for, by now, does not exist. On that account, I find this application to have failed, and I thus proceed to dismiss the same. It is so ordered. ~ S.M. Kulita JUDGE 24/08/2021 DATED at Shinyanga this 24th day of August, 2021. 1k- S.M. Kulita JUDGE 24/08/2021 6 ORDER

1. The fact that the person for whom the order for unlimited withdrawal of money was granted (patient) by the district court in order to meet the medical expenses has passed away, the said order of the district court made in the Mise. Civil Application No. 22 of 2021 is overtaken by event, hence seizes to apply.
 2. The Respondent (NMB BANK PLC) to be notified. S.M. Kulita JUDGE 24/08/2021 7
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