

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE SUB-REGISTRY (ONE-STOP JUDICIAL CENTRE) AT TEMEKE PROBATE AND ADMINISTRATION CAUSE NO. 26900 OF 2023 In The Matter of the Estate of the Late MUHIDIN AHMAD NDOLANGA and In the Matter of Application for Letters of Administration by ZAINABU WALII ALI..... PETITIONER In the Matter of Caveat Against the Grant of Probate by SALUM MUHIDIN NDOLANGA..... CAVEATOR

JUDGMENT

06th November & 18th December 2024 BARTHY, J.: Upon the demise of Muhidin Ahmad Ndolanga, who passed away at TMJ Hospital in Kinondoni Municipality, Dar es Salaam, on the 18th of September 2021, Zainabu Walii Alli petitioned for letters of administration to administer the deceased's estate. The petition was contested by a caveat filed by Salum Muhidin Ndolanga, who objected to the issuance of the letters of administration on the following grounds;

- i. The Petitioner is a stranger and has no legal connection in the deceased estate, ii. The Petitioner has no relationship with the deceased as alleged, iii. The Petitioner omitted to enlist all the deceased assets, iv. The Petitioner included the estate not of the deceased,
- v. The caveator was not invited on the clan meeting and those who attended the meeting were not the deceased relatives and vi. The Petitioner is not a fit person to administer the estate for not being impartial. Therefore, the matter became contentious and it was treated nearly to any other civil suit in accordance with Section 52 (b) of the Probate and Administration of Estate Act, Cap 352, R.E 2002 (PAEA). This principle is well articulated in the case of Monica Nyamakere Jigamba vs Mugeta Bwire Bhakome & Another, Civil Application No. 199/1 of 2019, (Court of Appeal
- of Tanzania), Dar es Salaam Registry [2020] TZCA 1820 (16 October 2020). Before the hearing of the matter, by consensus the parties agreed to the following issues for determination;
 1. Whether the petitioner was legally married to the deceased.
 2. Whether the petitioner is eligible to be granted letters of administration for the deceased's estate.

3. What reliefs, if any, the parties are entitled to? In this petition for letters of administration, the petitioner, Zainabu Walii Ally, was represented by learned counsel Abraham Hamza Senguji and called six witnesses to support her case in the following evidence. PW1: Ally Said Tunku, who served as the secretary of the Makonde Association under the deceased's chairmanship, testified that he knew Zainabu as both the deceased's secretary and second wife. He recalled attending their wedding in 2003 at Ilala, which involved religious rituals, celebrations, and a shared meal, though he could not recall the officiating Sheikh. PW1 also confirmed that Zainabu lived with the deceased until his death and was acknowledged as his wife during family meetings he chaired after the deceased's first wife had passed away. PW2: Mohamed Dadi Kammany, a father figure to the deceased, testified that Zainabu was known to him as the deceased's wife. He stated that he was informed of the deceased's death by Zainabu but did not attend the family meetings. He acknowledged the defendant as the deceased's son. PW3: Athumani Hassani Chapo, a relative of the deceased, testified that he knew both Zainabu and Salum. He attended a family meeting held at the home of Ally Said Tunku in Chanika, where Zainabu was nominated to petition for letters of administration. PW3 explained that the deceased's children, mostly living abroad, were informed but did not attend the meeting. He supported plaintiff's nomination, citing her familiarity with the deceased's properties and highlighting that Islamic law permits a man to marry up to four wives. PW4: Hussein Dreva Walii, the petitioner's brother, testified that he had lived with the deceased and Zainabu at their Mikocheni home for two years starting in 2006. He later returned during the deceased's illness to assist in caregiving. PW4 noted that the deceased's children were largely absent, except for Salum, who occasionally visited. After the deceased's death, a family meeting was held, and it was agreed that the plaintiff would administer the estate. PW5: Zainabu Walii Ally, the petitioner, testified that she met the deceased in 1989 while working at the Tanzania Wildlife Corporation in Arusha before transferring to Dar es Salaam. She claimed they got married on 26th December 2003 at Ilala, with Sheikh Abubakar Saleh officiating, and PW6 presented a marriage certificate (Exhibit P1). She explained that she moved to the deceased's Mikocheni home in 2010 following the death of the deceased's first wife. She testified that she had actively participated in the deceased's affairs, including managing renovations and averting the auctioning of the Mikocheni house due to debts. She alleged that the deceased's children excluded her from the estate and refused to attend the family meeting where she was nominated to petition for administration of estate. She also listed the deceased's properties and confirmed she had handed over a firearm to the police via the defendant. PW6: Abubakar Hussein Swalehe, an Assistant Imam at Manyema Mosque, testified that he prepared the government-issued marriage certificate (Exhibit P1) for the deceased and Zainabu. He stated that the certificate was based on information provided by the deceased, who described the marriage as monogamous, claiming his prior wife had passed away. However, PW6 admitted that the certificate did not clarify whether the deceased's earlier marriage ended by divorce or widowhood, and he could not verify the circumstances of the deceased's first marriage. The collective evidence presented by the petitioner and her witnesses primarily sought to establish her status as the deceased's lawful wife and her suitability to administer the estate.

In opposing the petition for letters of administration filed by Zainabu Walii, the caveator, Salum Muhidin Ndolanga (DW1), and other family members presented evidence contesting her suitability as the deceased's estate administrator. DW1: Salum Muhidin Ndolanga, testified that he was the biological son of the deceased, who had four children: Ahmad, Rahibu, Salum, and Muhidin Jr. (Totoo). He described the deceased's properties, which included houses in Mikocheni B, Temeke, Mtwara (Shangani), and Mkunya village, farms in Mkunya and Kibaha, three firearms, and two DW1 opposed Zainabu's petition on grounds that she was merely the deceased's secretary, had no familial ties, and lacked sufficient knowledge of the estate. He presented a letter from RITA (Exhibit DW1), highlighting discrepancies in the alleged marriage certificate, and a ruling from Kawe Primary Court (Exhibit D2). DW1 also questioned the validity of the clan meeting nominating Zainabu, citing inconsistencies in its details. DW2: Sefu Salum Nambili, a maternal nephew of the deceased, testified that the deceased had four children and had lived with his secretary in his final days. He denied any familial relationship with Zainabu or other witnesses supporting her. DW2 affirmed the deceased's ownership of properties in Mkunya and Mtwara, including a house and a cashew farm. DW3: Faraji Said Amani, a neighbour with the deceased at Mikocheni B, testified that the deceased was a friend of his father. He stated that the deceased had only one wife, Fatuma Salehe Mwanauta, who passed away in 2009, and never remarried. DW3 confirmed the deceased's ownership of houses in Mikocheni, Temeke, and Mtwara, as well as farms in Kibaha. DW4: Abdallah Salehe Mwanauta, a sibling of the deceased's late wife, supported the objection, asserting that Zainabu lacked the authority to administer the estate. He presented proof of his role as administrator of Fatuma Salehe's estate (Exhibit D2) and maintained that the deceased had not remarried after her death. DW5: Rahibu Muhidin Ndolanga, the deceased's daughter, testified virtually, asserting that Zainabu was the deceased's secretary and had no personal relationship with him. She expressed concern over Zainabu's lack of knowledge about the deceased's debts and assets. DW5 listed the deceased's properties, which included houses in Mikocheni, Temeke, Shangani, and Mkunya, farms in Kibaha and Mkunya, vehicles, and firearms. DW6: Muhidin Muhidin Ndolanga (Totoo), the deceased's son, also testified virtually. He expressed confidence in Salum's ability to manage the estate, reiterating the list of properties, which included houses in Mikocheni, Temeke, Mtwara, and Mkunya, farms, two vehicles, and firearms. The collective evidence presented by the caveator and supporting witnesses sought to establish that Zainabu lacked both a familial relationship with the deceased and sufficient competence to manage the estate, thereby making her unsuitable for appointment as administrator. The parties' counsels presented their final submissions, focusing on the petitioner's eligibility to administer the estate of the late Muhidin Ahamad Ndolanga, raising legal and factual arguments supported by case law and precedents. The plaintiff's counsel argued that misunderstandings among the deceased's children caused delays in filing the petition, which was eventually met with a caveat. The counsel contended that the petitioner was the legal wife of the deceased, married as a second wife in 2004, and had cohabited with him for 17 years. This claim was supported by the testimony of PW6, who issued the marriage certificate. Allegations of forgery were dismissed as unsubstantiated, with no

witness from relevant authorities appearing to validate them. He emphasized that the petitioner cared for the deceased, refuting the caveator's claims about excluded assets. Fraud in the administration of the deceased's first wife's estate was also alleged. It was also submitted that the petitioner's nomination at a clan meeting was corroborated by testimony of DW6, further bolstering her suitability as administrator. He also relied on case law to argue the role of clan meetings in nominating administrators. Citing cases of *James Peter Midelo vs. Asia Mzee Ngoto and Another*, Civil Appeal No. 223 of 2018, and *Obeth Wange vs. Anyagenge Mwasubila*, Probate Appeal No. 1 of 2007, which recognize the role of clan meetings in nominating administrators. However, *Flora Augustine Mmbando vs. Abdul Daud Chang'a*, Civil Appeal No. 243 of 2021, was also referenced, clarifying that clan meetings are not a strict legal requirement. J In conclusion, the plaintiff's counsel asserted that she was qualified to administer the estate and argued that the defendant's demonstrated bias disqualified him from managing the estate fairly. The defendant's counsel opposed the petition, raising three key issues: the validity of the petitioner's marriage, her eligibility as an administrator, and the appropriate reliefs. On the claim of validity of the marriage, the defendant's counsel argued that the plaintiff had failed to prove a valid marriage. Witnesses described her as the deceased's secretary, and the marriage certificate (Exhibit P1) was deemed invalid due to anomalies and insufficient 4 verification by RITA. PW6 denied conducting the ceremony, further invalidating the certificate under the law. On the eligibility of the plaintiff to administer the deceased estate, Mr. Bruder submitted that the plaintiff had no legal interest in the estate, asserting that she committed fraud by presenting fabricated family meeting minutes. In contrast, the caveator was endorsed by other beneficiaries as a capable administrator with a legal interest in the estate. The defendant's counsel prayed for dismissal of the petition, arguing that appointing the caveator as sole administrator would ensure proper estate management. Having carefully analyzed the evidence presented by both parties and reviewed their respective submissions, this court now proceeds to 9 ----- determine the issues framed in this matter, specifically concerning the caveat entered against the plaintiff/petitioner, PW5, seeking appointment as the administratrix of the deceased's estate. This being a probate and administration matter, it is guided by the Probate and Administration of Estates Act, Cap. 352 R.E. 2002 (PAEA). Section 33(1) of PAEA provides that, in cases of intestacy, letters of administration may be granted to any person entitled to the deceased's estate. It is within this legal framework that the court must determine the petitioner's suitability for appointment as administratrix. The first issue to be addressed in this case is whether the ' petitioner/plaintiff (PW5), was legally married to the deceased, as this would determine her standing to claim interest in the estate. The plaintiff, has based her claim to the estate on her assertion that she was the deceased's second wife. She tendered a marriage certificate (Exhibit P1) to substantiate her claim and called several witnesses in support. PW6, who issued Exhibit P1, initially supported the petitioner's claim but admitted under cross-examination that the certificate contained significant anomalies. For instance, the seal on Exhibit P1 belonged to Manyema Mosque, which had not officiated the alleged marriage. Furthermore, the certificate was issued on 5/4/2007, four years after the purported marriage date, and it was signed at the petitioner's

residence instead of a formal religious setting. These irregularities cast doubt on the validity of Exhibit Pl. Additionally, the petitioner's brother, PW4, testified that he stayed with the couple and believed them to be husband and wife. PW1, PW2, and PW3 also recognized the petitioner as the deceased's wife. However, the respondents, comprising the deceased's children and close relatives, presented consistent and credible evidence refuting the petitioner's marital claims. DW1, DW5, and DW6, the deceased's children, firmly stated that their father did not remarry after their mother's death in 2006. They « maintained that PW5 was merely the deceased's secretary or assistant. This position was corroborated by DW2, DW3, and DW4, who testified that they were unaware of any marriage between the petitioner and the deceased. In analyzing the evidence, the court observes that in probate matters such as this, the court's role at this stage is limited to determining whether the petitioner has sufficient interest and suitability to be appointed as the administratrix. It is not within the court's present mandate to conclusively determine the rightful heirs or beneficiaries of the estate; that responsibility lies with the administrator or administratrix once appointed. zy This principle has been emphasized in cases such as Stephen Maliyatabu & another vs Consolata Kahulananga (Civil Appeal No. 337 of 2020) and Mariam Juma vs Tabea Robert Makange (Civil Appeal No. 38 of 2009, unreported), which clarify that issues of beneficiaries are to be dealt with after the appointment of an administrator. In the present matter, the court finds that the petitioner's interest in the estate is highly contested. The anomalies in Exhibit Pl, the contradictions in the evidence presented, and the credible rebuttal by the witnesses on defendant's side all create considerable doubt regarding the . petitioner's interest on the estate of the deceased. At this juncture, the court finds that the issue has been prematurely raised and the first issue is answered in the negative. As the appointed administrator will be in the position to ascertaining the rightful heirs in accordance with the law for equitable distribution of the deceased's assets among the lawful heirs. The second issue for determination by this court is whether the Petitioner, Zainabu Walii Ally, is eligible to be granted letters of administration for the estate of the late Muhidin Mohamed Ndolanga. In determining suitability, the court is guided by legal principles and precedents emphasizing reputation, capability, and impartiality in administering the estate to the rightful heirs. This principle was outlined in Saleli Doto vs. Maganga Maige & others, (PC Probate Appeal No. 6 of

- 2018) [2019] TZHC 2120, where the court held; "In appointing the administrator of the deceased's estate, the main consideration is the reputation and capability of such person to act faithfully, diligently and impartially in administering the estate to the rightful owners. Therefore, Court can appoint any reputable person who is not even a member of the family or officer of the Court for that matter to be an administrator of the estate of the deceased." Similarly, in Sekunda Mbwanambo vs. Rose Mbwanambo [2004] T.L.R 439, it was held; 'J4/7 administrator may be widow/widows, parent or child of the deceased or any other dose relative. If such persons are not available or if they are found to be unfit in one way or another, the Court has the power to appoint any other fit person or authority to discharge this duty.' The law, therefore, permits the court to appoint any fit and capable person,

whether a family member or another individual, provided that such a person meets the criteria of reputation, capability, and impartiality required for the administration of the deceased's estate. Based on the evidence presented by both sides in this matter, the court must exercise caution and carefully evaluate whether the proposed nomination might compromise the faithful and impartial administration of the estate. In cases where close relatives, such as the children of the deceased, contest the suitability of a proposed administrator, the court must critically assess whether such an appointment could undermine the impartial administration of the estate. Bearing in mind the evidence presented and the importance of ensuring transparency and impartiality in the management of the deceased's estate, the court finds that the petitioner, despite her close connection to the deceased, does not currently meet the required threshold for appointment as an administrator. This conclusion is primarily due to the significant hostility between her and the deceased's children. Consequently, the second issue is answered in the negative. This court is left with the last issue of what is the relief left for the parties. The defendant had sought to this court to appoint him to be the administrator of the deceased estate in place of the plaintiff. In light of the contentious nature of the relationships among the beneficiaries and the disputes surrounding the petitioner's eligibility, this court finds that a neutral and unbiased individual should handle the administration of the estate. Such an approach ensures transparency and equity in the distribution of the deceased's assets. Accordingly, the caveat entered by the respondents is upheld. The court hereby appoints the Administrator General to administer the estate of the late Muhidin Mohamed Ndolanga under section 5(1) of the Administrator-General (Powers and Functions) Act, Cap. 27 R.E. 2002. The Administrator General is ordered to administer the estate impartially and in accordance with the law. Also, to prepare and file an inventory and accounts of the estate within two months from the date of this decision. It is so ordered. Dated at Temeke this 18th day of December, 2024. N. BART JUDGE Delivered in the presence of petitioner in person, Ms. Bernading Tayari, RMA and in the absence of the caveator and his advocate.

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