

TANZANIA / JUDGMENT

rhoda kokumanya ishengoma and another vs pulcheria emmanuel rusizoka 2021 tzhc 5971 31 august 2021

COURT
TZHCDECIDED
31 August 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MWANZA DISTRICT
REGISTRY) AT MWANZA MISC. CIVIL APPLICATION NO. 139 OF 2020 (Arising from PROBATE
AND ADMINISTRATION CAUSE NO. 2 OF 2005) In the Matter of the Estate of the Late
EMMANUEL RUSIZOKA KAZINJA alias EMMANUEL MUTAKAYANA.....
DECEASED And In the Matter of Application TO COURT FOR DIRECTIONS TO ADMINISTRATORS
IN REGARD TO DISTRIBUTION OF ESTATE OF LATE CHARLES EMMANUEL RUSIZOKA By
RHODA KOKUMANYA ISHENGOMA, WIFE OF THE DECEASED PERSON ONE CHARLES
EMMANUEL RUSIZOKA AND THEOPISTER EMMANUEL RUSIZOKA BOTH BEING THE
INTENDED BENEFICIARIES BETWEEN RHODA KOKUMANYA ISHENGOMA..... 1st
APPLICANT THEOPISTER EMMANUEL RUSIZOKA..... 2nd APPLICANT AND
PULCHERIA EMMANUEL RUSIZOKA (Administratrix of the Late EMMANUEL RUSIZOKA alias
EMMANUEL MUTAKAYANA ~ RESPONDENT

RULING

22nd July, & 31st August, 2021 ISMAIL, J. This application has been taken at the instance of the
applicants, moving the Court to grant two substantive prayers as follows:

- (i) That the Court be pleased to investigate and issue directives on the status and legality of
inventories filed in court by the respondent (the administratrix of the estate) on 1st
September, 2020. (ii) That the honourable court be pleased to issue an order directing the
respondent herein (the administratrix of the estate) to file a proper inventory of the estate
and final accounts containing true information which reflects the true picture and reality of
the deceased's estate and the beneficiaries and heirs with their entitlement or right of
inheritance therein. The application is made under the provisions of section 65 of the
Probate and Administration of Estates Act, Cap. 352 R.E. 2002 and Rules 14
- (1) and 105 of the Probate Rules, GN. No. 369 of 1963. The joint affidavit sworn by the applicants
supports the application. The joint averment in the affidavit is that the respondent has
altered the distribution of the estate of the deposed administrator thereby disinheriting the
applicants and children of Charles Emmanuel Rusizoka. It is further alleged that the

inventory filed in Court on 16th October, 2020, contains false information on account of the fact that it has not included other properties that form part of the deceased's estate. There is also an allegation that the said inventory contains a single signature of the respondent while that of the co-administrator is missing. It 2 is the applicants' further averment that the inventory of the estate and financial accounts filed on 16th September, 2020, has attempted to allocate to the applicants a property that does not constitute part of the deceased's estate. The application has encountered an opposition, through a counter- affidavit sworn by Pulcheria Emmanuel Rusizoka, the respondent. The view held by the respondent is that the respondent, the administratrix of the estate, filed proper provisional accounts and inventories that reflect the distribution of the deceased's estate to all legal heirs, and after payment of all liabilities. The liabilities include government taxes, fees and administration costs. When the matter was called on for orders on 22nd July, 2021, the applicants were represented by Mr. Geoffrey Kishosha, learned counsel, while the respondent enjoyed the services of Ms. Neema Massame, learned advocate. In unanimity, the counsel urged the Court to have the application disposed of by way of written submissions, consistent with the schedule that was drawn by the Court. This schedule was conformed to the letter. Kicking the first ball was Mr. Kishosha who restated the substance of the application that is before this Court. The learned counsel submitted that the trite law and general principle is that, once he assumes office, the 3 administrator of the deceased's estate has a responsibility of collecting the properties constituting the estate, pay all debts due from the deceased, pay all government taxes, outline and list the beneficiaries and make a just, fair and prompt distribution of the estate to the beneficiaries. Mr. Kishosha contended that, in this case, the statement of accounts filed by the respondent does not contain true and correct information. He argued that some of the deceased's properties, such as statements of the deceased's bank account, are not included in the list of properties. He also argued that properties listed in paragraph 14 of the affidavit are excluded, while some of the properties distributed to the beneficiaries are not part of the estate. These include Furaha Bar & Guest House, which is along Rwagosore street, Nyamagana, Mwanza. He contended that the inventory shows that the said property belongs to NCU. The counsel argued that the false information is intended to disinherit the applicants. The learned counsel further argued that the inventory is unmaintenable and illegal in view of the fact that the same is inconsistent with the provisions of section 107 of Cap. 352, in that, the same (inventory) is discriminatory as the beneficiaries of the late Charles Emmanuel Rusizoka, including the applicants have been denied right to inherit the deceased's 4 The counsel further contended that, besides exclusion of some of the properties, the respondent has included properties which do not constitute the estate of the deceased. These include the property on Plot No. 2 Block 'C' Nyegezi Mwanza, which was distributed to the 2nd applicant, and the property known as Kantima Hotel, on Plot No. 153 Block 'T' Kenyatta Road Mwanza, which was distributed to Charles Emmanuel Rusizoka, the 1st applicant's husband, but the respondent re-distributed it to somebody else. The applicants' counsel contended that entry of false information in the inventory was offensive of the provisions of section 66 of Cap.352 which require the grantee of the letters of administration to take an oath to faithfully administer the estate and to

account for it. He urged the Court to expunge the inventory from the court record, and that the respondent be ordered to file fresh and true statement of accounts that reflects the true account of the deceased's estate. The counsel argued further that the distribution which was done in 2006 handed the late Charles Emmanuel Rusizoka the Kantima hotel whose building was occupied by him for 15 years without any interference. During that time, the counsel contended, the property has undergone some developments, borne out of the deceased's coffers, together with payment of the taxes, and that the income that takes care of the family is earned from the business run from the said property. The counsel submitted that this has been reversed after the decision by the respondent to illegally dispossess the property and re-distribute it to herself and other beneficiaries. He called upon the Court to investigate the inventory and make an appropriate finding. The applicants urged the Court to grant the application with costs. For her part, Ms. Massame was firmly of the view that the application is misconceived and that the same should be dismissed with costs. She began her submission by bringing to the Court's attention, the fact that the respondent in these proceedings is not an administratrix of the estate of Charles Emmanuel Rusizoka as to require the Court to give directions with respect to administration of his estate. She submitted that it is not well understood from the title of the chamber summons in which estate are the applicants interested or have any beneficial interest. This, the counsel contended, is in view of the fact that, whereas the heading in the chamber summons talks about the directions with respect to the administration of the estate of the late Charles Rusizoka, in respect of which the respondent has no interest, the affidavit in support gives a different factual account that touches the estate of Emmanuel Rusizoka Kazinja. The respondent's counsel argued that the 2nd applicant has nothing to do with the estate of Charles Rusizoka, meaning that her involvement in the matter lacks the basis. Ms. Massame argued that the averments in the affidavit do not support the application, and that directives sought are in respect of the estate of Emmanuel Rusizoka Kazinja over which the applicants have no role. As such, she contended, the question of legality of the inventory cannot arise with regards to Charles Rusizoka's estate, whose administrator is yet to be appointed. That being the case, the 1st applicant cannot claim to have a legitimacy of arguing in respect of the estate. With respect to the 2nd applicant, the contention is that she is not a beneficiary of the estate who should be involved in the proceedings pertaining to Charles Rusizoka's estate. Coming to the substance of the application, Ms. Massame argued that claim of the property on Plot No. 153 Block 'T' Kenyatta Street is premised on the Kantima Hotel business which is said to have been housed in the said property. She argued that neither the applicants nor the late Charles Rusizoka have any legal ownership or interest in the property. The counsel further argued that, in any case, the decision of the Court (Hon. Mgeyekwa, J) clearly stated that the distribution of assets, done by the former administrator of the estate was as good as nothing, and that this included building which houses Kantima Hotel. It was the counsel's argument that the annulment of the administration was not challenged, meaning that the assets constituting the estate of the late Emmanuel Rusizoka were duly distributed, and this is evidenced by the inventory filed on 16th September, 2020. With respect to the contention that the property along Kenyatta

Road was developed by the late Charles Rusizoka, the argument by Ms. Massame is that the late Charles Rusizoka, a co-administrator of the estate, ought to have known that the appointment of Deogratias to administer the estate had been revoked, and so was the distribution done by the him, including the property in dispute. It was her contention that the alleged improvements, if truly done, were done at his peril and aware that the distribution of the estate had been annulled. The respondent's further contention is that the applicant's deceased husband was occupying the premises not as a legal owner but as a mere tenant without any title. With regards to collection of rent, the counsel argued that, while it is true that the respondent was collecting the rentals, the 1st applicant's husband was doing the same with the former administrator. She argued that it is the 1st applicant who is collecting proceeds from the hotel and misappropriate them, knowing that she is not one of the beneficiaries of the estate. \ 8 Ms. Massame maintained that the respondent deserves 50% of the estate as her matrimonial share and another 50% of the estate as the beneficiary. With regards to the inventory, the argument by the respondent's counsel is that such document is yet to receive the Deputy Registrar's attention. The respondent argued that any criticism of the inventory is premature and untenable. The respondent's counsel argued that revocation of the letters of administration that appointed the first administrator was at the instance of the 1st applicant's husband, and that this decision was not appealed against. The respondent took the view that the 1st applicant's admission that they have been enjoying the benefits of the estate for almost 15 years places the 1st applicant in a position where she has to make good all money collected and spent. Overall, the respondent prayed that the application be dismissed with costs. These rival submissions bring out one profound question. This is as to whether the application carries any merit for its grant. As stated earlier on, the instant application has been filed under the provisions of section 65 of Cap. 352 and rule 105 of the Probate Rules, GN. No. 369 of 1963. These provisions state as hereunder: Section 65: "The court may give to an executor or administrator any general or special directions in regard to the estate of in regard to the administration thereof." Rule 105: 'M/? application to the court for directions to an executor or administrator in regard to the estate or in regard to the administration thereof shall be by chamber summons supported by an affidavit giving full particulars of the directions and reasons for the same. Looking at the application, it comes out that the prayers sought are, as stated, for investigation of the status and legality of inventories filed in court; and for an order that the proper inventory be filled. But before I dwell on the substance, it is worth noting that the key aspects of grant of letters of administration be stated. The powers to grant probate or letters of administration are governed by section 63 of Cap. 352. The law is clear that, upon grant, the grantee effectively takes charge of the estate and his responsibilities are clearly stated in the Court of Appeal's decision in Naftary Petro v. Mary Protas, CAT-Civil Appeal No. 103 of 2018, (unreported), in which the decision superior Court's decision in Sekunda Mbwanbo k Rose Ramadhani [2004] TLR 439 was quoted. In the latter's landmark decision, the powers or obligations of the administrator of the estate were elaborately expounded. It was held: "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. "[Emphasis is added] From the quoted excerpt and the provisions cited above, it is evident that the law is clear, that subsequent to the grant, the court does not cease to hold control over the appointment of the administrator and the obligations that go with the appointment. The court can, as and when moved, issue directions. These directions may be of a general or special nature with respect to the estate and administration thereof. This is in terms of section 65, read together with rule 105. Such directions include directions with respect to the filing of inventory under rule 106. In the instant matter, the inventory was filed in this Court on 16th September, 2021, and it is this one that has raised the consternation which has bred the instant proceedings. These proceedings are aimed at moving the Court to rectify what the applicants consider as falsity of the inventory. The view held by the respondent's counsel is that the applicants, especially the 1st applicant, has no interest in the estate of the late Emmanuel Rusizoka. The ground is that she is a busy body who draws no interest in the matter. 12 The applicants' contention is premised on the fact that the 1st applicant is an administratrix in waiting with respect to the late husband's estate. As rightly contended, the 1st applicant has applied for letters of administration of her late husband's estate. The application is yet to be adjudicated upon. As it is now, she has not assumed the office and has no control over the estate, despite the fact that she is the widow of the said deceased. She cannot be said to derive any interest in the estate in which she is neither an administratrix nor is she an heiress. If the basis for her intervention is the administration, then this is not only premature but also remotely related, if at all, as to give her the right to meddle in the affairs of the estate that the respondent is administering. If the basis is to recover whatever monies the late Charles Rusizoka allegedly spent on the Kantima house, then the remedy is to institute a suit and demand a refund from the estate. This will enable her to prove her claim. Until that is done, she is a person who derives no interest in the property. She, therefore, has no legitimacy of moving the court to grant orders sought. In actual fact, she has no authority to question the manner in which the estate was administered and accounted for. I am not oblivious to the

fact that the 2nd applicant is in the same bandwagon. However, the affidavit that supports the application has very 13 scanty averments which disclose the discontentment that the 2nd applicant has against the respondent's acts or omissions. Noting that she is one of the beneficiaries of the estate, I take the conviction that, while she may be having a recourse or any sense of discontentment on the manner in which the estate of her late father is being administered, including any allegation of falsity of the inventory, she should do so through a separate claim. In the upshot, it is my conviction, in view of the foregoing, that the application is misconceived and/or untenable. In consequence the same is hereby dismissed. No order as to costs. It is so ordered. DATED at MWANZA this 31st day of August, 2021. M.K. ISMAIL JUDGE 14 Date: 31/08/2021 Coram: Hon. C. M. Tengwa, DR Applicants: Mr. Kishosha, Advocate Respondent: Mr. Kiluo, Advocate B/C: P. Alphonse Court: Ruling delivered in the presence of Advocate of both sides. C. M. Tengwa DR At Mwanza 31st August, 2021 15

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Prepared on 13 October 2026 · Esheria