

TANZANIA / JUDGMENT

OC bARTY 4tmp ALDO HANS POPE

COURT
TANZLIIDECIDED
28 February 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE SUB-REGISTRY (ONE STOP JUDICIAL CENTRE) ATTEMEKE PROBATE AND ADMINISTRATION CAUSE NO. 177 OF 2022
In the Matter of the Estate of the Late ZACHARIA HANS POPPE and In the Matter of the Application for a Grant of Letters of Administration By ALDO HANS POPPE, ANGEL ZACHARIA POPPE AND ABEL ZACHARIA POPPE

RULING

28th February, 2024 BARTHY, J.: This court is seized with the prayer from the administrator and administratrix of the estate of late Zacharia Hans Poppe, seeking my recusal from presiding over the conduct of this matter. The prayer is premised on allegations that, in the view of the application that is pending, this court cannot fairly and impartially determine the pending matter. The reasons advanced in support of this application can be summarized as follows:

1. The first administrator is alleged to have squandered the deceased's estate while the deceased's children lack essential supplies such as food, clothing, school necessities, and other basic needs.
2. The first administrator and his advocates have allegedly misled this court by providing a false inventory of the deceased's estate, with shares being transferred for his personal benefit and that of his associates even before the inventory was prepared. Despite being informed of these allegations, the court has not taken any legal action.
3. Although the court was informed that the deceased's children were deprived of their basic needs, it failed to inquire into the matter or take any action against the first administrator.
4. These complaints have been raised for a long time, yet the court has failed to take any action against the alleged misconduct, thereby damaging its reputation in the eyes of the public. Having carefully considered the grounds advanced; I am compelled to firmly reject the prayer for recusal for the following reasons: Upon the filing of Probate and Administration of Estate Cause No. 177 of 2022, in which Aldo Hans Poppe, Abel Zacharia Poppe, and Angel Zacharia Poppe were appointed as administrators and administratrix of the deceased's estate, the matter has faced persistent disputes and multiple applications that have hindered its progress before this court. The records clearly indicate that controversy regarding which assets form part of the deceased's estate has been ongoing. Consequently, this court ordered

the administrators and administratrix involved in this prayer together with Aldo Hans Poppe to file an amended inventory for approval. However, to date, the amended inventory has not been filed, nor has the hearing to determine which properties form part of the deceased's estate been conducted. The purpose of this process is to eliminate any contested properties that are proven not to be part of the estate. ■» At this stage, no assets have been approved by this court as forming part of the deceased's estate. Consequently, the court cannot yet order the filing of the estate accounts for distribution to the heirs after settling all necessary debts. Despite this, the court is now being asked to proceed prematurely, disregarding the required legal procedures as stipulated under Section 107 of the Probate and Administration of Estates Act, Cap 352 R.E. 2019. This court, however, must adhere to the proper legal framework to ensure a just and lawful administration of the estate. Turning to the prayer for recusal from the conduct of this matter, the reasons advanced do not meet the legal threshold for recusal. The independence and impartiality of judicial officers are governed by the Code of Conduct and Ethics for Judicial Officers, 2020. Recusal is warranted only when there is a real likelihood of bias or an appearance thereof, personal interest in the matter, or any other legally recognized ground justifying a judicial officer stepping aside. The grounds raised do not fall within any of these parameters. Mere dissatisfaction or disagreement with judicial directions or rulings does not form a valid basis for recusal. It is an established principle that courts must not permit litigants or their advocates to dictate the composition of the bench based on unfounded apprehensions. I wish to emphasize to the parties in this matter, particularly the administrators and administratrix of the deceased's estate, that the probate court has no mandate over the maintenance of children. The jurisdiction of a probate court is strictly limited to the administration and distribution of the deceased's estate. The responsibility for carrying out this duty rests solely with the administrator, administratrix, executor, or executrix, as prescribed by law. The court's role is not to intervene actively but rather to provide directives only when necessary to ensure the proper execution of these duties in accordance with the law. As he/ she become personal representative of the deceased with all the powers to sue, be sued and recover all the deceased debts. This is provided under section 100 of the Probate and Administration of Estate Act, Cap 352 R.E. 2019. See also *Joseph Shumbusho vs Mary Grace Tigerwa & others* (Civil Appeal No. 183 of 2016) [2020] TZCA 1803 (6 October 2020). Matters concerning the maintenance of children are governed by a distinct legal framework, whether in juvenile court or matrimonial proceedings, and therefore fall outside the jurisdiction of this court. Any attempt to introduce extraneous issues into these proceedings is legally untenable and constitutes an abuse of the court process. This court will not permit a diversion from its statutory mandate under the guise of seeking recusal. Accountability of an administrator is clearly established in law. A key duty of the probate court is to ensure that the estate of a deceased person is administered in accordance with the law. It is well settled under Sections 138 and 139 of the Probate and Administration of Estates Act, Cap 352 R.E. 2019, that an administrator who misapplies the estate or subjects it to loss or damage is personally liable to make good such loss or damage. Similarly, where an executor or administrator negligently fails to recover any part of the deceased's estate, they are legally bound to account for the

same. This is a matter strictly governed by statutory provisions and cannot be arbitrarily raised in court proceedings without following due process. This cannot be done by the court suo motu, or by mere words from the bar but only by following the laid procedure. Notably, the grounds advanced in this application for recusal are the same as those raised in Miscellaneous Civil Application No. 93675 of 2024, in which Abel Zacharia Poppe and Angel Zacharia Poppe sought to revoke Aldo Hans Poppe's administration based on identical reasons previously presented before the said application and Probate and Administration of Estate No. 177 of 2022. The claims for recusal from the conduct of this case as put forth by the administrator and admiriistratrix amount to forum shopping, particularly given the multiple previous applications that have already been determined to finality without any party challenging those decisions, yet they are being raised again in a different form. This conduct is legally impermissible and undermines the integrity of judicial proceedings. ----- The courts have consistently condemned forum shopping, as reaffirmed in *East African Development Bank v. Blue Line Enterprises Ltd*, Civil Appeal No. 101 of 2009, *The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikazwe and four others*, Civil Appeal No. 210 of 2020, *Hamis Said Mkuki v. Fatuma Ally*, Civil Appeal No. 147 of 2017, and *Harrison Mandali and Others v. The Registered Trustees of the Archdiocese of Dar es Salaam*, Civil Application No. 482/17 of

2017. In these cases, the courts firmly discouraged the misuse of judicial procedures through forum shopping, reinforcing the principle that such conduct is not tolerated in our legal system. I also align with the Court of Appeal's reasoning in *Sosthenes Bruno and Another vs. Flora Shauri*, Civil Appeal No. 249 of 2020, where it was held that such actions constitute an abuse of the court process. In that case, the appellants attempted to pursue multiple avenues simultaneously, a practice commonly referred to as forum shopping. This unethical strategy is strongly discouraged and deemed unacceptable in this jurisdiction. This court will not permit any party to use recusal prayer as a strategy to delay, frustrate, or divert attention from the core issues requiring adjudication. The law provides clear avenues for addressing grievances, including appeals and review mechanisms. Allowing baseless recusal applications undermines the integrity of the judicial process and sets a dangerous precedent where litigants may attempt to manipulate the course of justice through unwarranted recusals. Justice is served when the law is upheld without fear or favor. Let this ruling serve as a reminder that courts must not yield to procedural maneuvering designed to obstruct the due administration of justice. Any party aggrieved by judicial determinations has recourse through appropriate legal channels not through unwarranted recusal motions. For the foregoing reasons, I find no merit in the application for recusal. The prayer is accordingly dismissed. The proceedings shall continue as scheduled, and the parties are directed to focus on the substantive issues relevant to the probate administration. It is so ordered.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/328444/source_file/0a31e6eb35bb94c0/OC_bARTY_4tmp_ALDO_HANS_POPE.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/recusalofjudge-tanzlii-2024>

Prepared on 14 October 2026 · Esheria