

TANZANIA / JUDGMENT

PROBATE SAVERA EVARIST KAROBAGWA 222 Edit

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20 June 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF MANYARA AT BABATI PROBATE AND ADMINISTRATION CAUSE NO 2 OF 2023 IN THE MATTER OF THE ESTATE OF THE LATE SIMON GIHERI MANDO AND IN THE MATTER OF APPLICATION FOR LETTERS OF ADMINISTRATION OF THE DECEASED ESTATE BY SAVERA EVARIST KAROBAGWA

RULING

18th June & 20th June, 2024 KAMUZORA, J After the administratrix filed the inventory and final account, the heirs were given chance to inspect them as required by the law section 107 (5) of the Probate and Administration of Estates Act, Cap 352 R.E 2002 (herein after to be referred as the Act). After inspection, some of the heirs; Rosemary Simon Mando, Joyce Simon Mando and Rose Simon Mando who were represented by Mr. Kizito Thomas agreed with the inventory and final account but came up with several concerns which they wanted to be resolved before the inventory and final account could be adopted in court. The counsel for the parties addressed this court on the concerns raised and this court had to assess if the raised concerns affect Page 1 of 7 the inventory and final account to the extent of not adopting them in record. The first concern was that they believe that there are other properties of the deceased which were not listed by the administratrix but they were unable to trace them for they have limited time to do so. They however agreed to continue making follow up and if other properties are discovered, they will apply for their administration. The second concern was that the deceased used to own two bank accounts at NMB and CRDB. That, this court ordered for the bank statement to be present before the court but the same were not presented. They believe that there was money in the bank accounts. The third concern was that they were allocated the property which was also allocated to their grandmother and for that reason, they think that there is double allocation. They pray that the property be distributed to just one person, their grandmother as it will bring the confusion. The fourth concern was that a house with three rooms which is part of the property at item 4 was not listed. The fifth concern was with regard to 14 cows and furniture listed at item 10 which they alleged that they are not properties of the deceased rather the property of their grandmother. The sixth concern was that they want to know the exact location of the avocado farm distributed to them. The seventh concern was on burial costs of TZS. 6 million. They alleged

that Page 2 of 7 the administratrix used only TZS. 3 million which she received from her employer but other costs were covered by family which is only TZS. 2 million. The eighth concern was that their father was assisting them together with their aunt Lumbi Akonay as he gave her one business frame at Katesh for pharmacy business free of charge. That, since she was not bound to pay rent, the claim for rent from their aunt should be removed. They insisted that if those concerns are worked on, they will be ready to accept the distribution and the probate matter be closed. In response Mr. Mniko submitted that the administratrix amended the inventory and supplied a copy to the beneficiaries. On the claim for other properties not listed, the counsel for the administratrix agreed for the parties to continue making follow of the same and if discovered, they have right to apply for their administration. On the issue regarding the bank statement, he submitted the bank statement for NMB account was submitted but the administratrix claim not to be aware of any other bank account of the deceased. The bank statement submitted is for Account No 51502400785 with NIL balance. They however agreed for the claiming parties to submit details of existence of any other bank account of the deceased. On the house allocated to the mother of the deceased, he submitted that the same was discussed and parties agreed that the same will be Page 3 of 7 used by the mother and upon her demise, it will revert to the children listed in the final account. On the house located at Katesh, he submitted that the houses are within one plot and parties discussed about it in which the administratrix agreed to give them the avocado farm and maintain the house at Katesh. On the issue regarding the cows and furniture, he submitted that the inventory and final account shows that they are distributed to the mother of the deceased who did not complain before this court. On the concern regarding the location of the avocado farm, he submitted that the same is correctly shown in the inventory. On the pharmacy business, he submitted that the same was not used by a beneficiary in this probate matter. On the burial costs, he insisted that the said amount was used as the administratrix was the one who paid the money for burial and built the grave. Mr. Mniko insisted that the administratrix complied with all procedures and prayed for the inventory and final account be adopted and this probate matter be closed. I have considered the arguments from counsel for both parties. There is no doubt that Mr. Kizito's clients are challenging the inventory and final account for not meeting their wish in the distribution of estate of the deceased. Legally, it is the duty of the administrator to ensure fair distribution of the estate. What is regarded is fair differ from one person to another thus, it not easy to determine the extent of satisfaction Page 4 of 7 acceptable when it comes to the distribution of the estate of deceased. I will therefore respond to the concerns raised by the heirs who are represented by Mr. Kizito Thomas, learned Advocate and see if they go to the legality of the inventory and final account filed before this court. On the concern regarding existence of other properties of the deceased and money in bank account, this court finds that the same is unjustified. Apart from mere words, nothing tangible was brought to justify their claim on existence of properties of the deceased or money in any bank account. The administratrix claimed to know only one bank account at NMB and the same was presented before this court indicating NILL balance. Parties have agreed that, if any property or money is discovered after the probate matter is closed, it can still be administered and the law is clear on that aspect. I therefore find that the claim for existence of other properties and money in the circumstance of this case, is not a reason not to accept the inventory and final

account. On the concern that the property allocated to their grandmother (the deceased's mother) should not be allocated to other heirs and the allegation that cows and furniture is not part of the estate, this court finds that the deceased's mother was a proper party to address those issues. Since nothing came from her, their competency in claiming for another person is questionable. Fortunately, the cows and furniture are listed as Page 5 of 7 properties distributed to the deceased's mother in which, I see no harm. The claim that there was double allocation by the administratrix, intends to challenge the distribution for not being fair which in my view, could be addressed against the administratrix in a separate civil suit. On the concern that a house with three rooms which is part of the property at item 4 was not listed, it is responded to and the counsel for the administratrix stated clearly that the same is part of the house listed at item 4. Since the house at item 4 is distributed, I do not see if it affects the inventory or final account. The location of avocado farm was well described in the inventory and the burial costs were well explained to. The law under Section 106 of the Act provides that; "It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose." The administratrix in this matter indicated funeral cost at TZS. 6 million and this court has no reason to doubt such amount unless evidence to the contrary is presented, which is not the case in this matter. The mere allegation that the burial costs were TZS. 2 million cannot make the inventory or final account invalid. On the argument that the house rent for aunt Lumbi Akonay be cancelled, this court cannot interfere with that issue. There is nothing Page 6 of 7 presented to prove that the business frame was not part of the estate of the deceased or if the same was given to her free of charge thus, this court cannot make any order to that matter. In short, all concerns raised cannot make this court not to accept the inventory and final account filed in this matter. The inventory and final account filed by the administratrix have met all legal requirements under section 107 of the Act and Rules 106 and 107 of the Probate Rules. Whoever is not satisfied with the distribution and is claiming for more properties is at liberty to pursue the claim by way of a civil suit. The inventory and final accounts are therefore accepted and adopted in court's proceedings. Subsequently, the probate matter is hereby marked as CLOSED. DATED at MANYARA this 20th Day of June, 2024 Page 7 of 7

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Prepared on 14 October 2026 · Esheria