

TANZANIA / JUDGMENT

theresia vicent rimoy and another vs mecktilda vicent rimoy and three others 2022 tzhc 15146 12 december 2022

COURT
TZHCDECIDED
12 December 2022

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

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF MOSHI AT MOSHI CIVIL CASE NO. 8 OF 2019 THERESIA VICENT RIMOY PLAINTIFF GLORY VICENT RIMOY 2nd PLAINTIFF VERSUS MECKTILDA VICENT RIMOY RESPONDENT SIEGFRIED VICENT RIMOY 2nd RESPONDENT PATRICK VICENT RIMOY 3rd RESPONDENT CRDB BANK PLC 4th RESPONDENT

RULING

18/11/2022 8i 12/12/2022 Mlacha, J. This is a ruling on a question of jurisdiction of the court which was raised by the court suo mottu[^] or which the plaintiffs, Theresia Vicent Remoy and Glory Vicent Rimoy and the defendants, Mecktilda Vicent Rimoy, Siegfried Vicent Rimoy, Patrick Vicent Rimoy and CRDB Bank PLC (hereinafter referred to first to fourth respectively) had a chance to address the court. It was in respect of Civil Case No. 8 of 2019. Mr. Issa Mavura addressed the court on behalf of the plaintiffs, Mr. Hassan Herith addressed the court on behalf of the first and third defendants, Mr. Francis Pius spoke on behalf of the fourth defendant while the second defendant addressed the court personally. After receiving the evidence from the plaintiffs and part of the evidence of the first defendant, the court had this to say: - "7 entertain serious doubts on the jurisdiction of the court in view of the evidence on record showing that there was a probate matter which was finaiiy determined by the court invoiving the parties" This led to some off record discussions which caused the case to be adjourned to 1/11/2022 which was the next day. On this day, the parties were asked to address the court on the following question 'Whether the court has jurisdiction to hear the case.' The parties made their submissions but for the better understanding of the submissions, a bit of the background may be useful. I have tried to revisit the pleadings and evidence and come out with the following summary. It was stated in the plaint that, on the 7th day of June 2017, the first, second and third defendants were appointed administrators of the estate of the late Vicent Patrick Rimoy in Probate cause No. 1 of 2016. That upon demise, the late Vicent Patrick Rimoy left the following immovable properties which were listed in the inventory of probate cause No. 1 of 2016. i) House on plot No. 42, Block 'E', Title number 25627, L.O. No. 105614, Njiro area, Arusha City. ii) Plot No. 40, Block 'E', Njiro Arusha City. Ill) Hotel building at plot No. 8 - 11-111, Moshi Municipality, iv) Plot No. 30, Block 'H', section III

Moshi Municipality, v) Plot No. 29-H -II, Moshi Municipality, vi) Plot No. 15, Farm 125, Kiboroloni Moshi Municipality, vii) Plot No. 38, Farm 125, Kiboroloni, Moshi Municipality, viii) House on plot No. 28, Block B Kiusa Street, Moshi Municipality, ix) House on plot No. 52, Shanty Town Moshi Municipality, x) School building at Moshi, Kiboroloni. xi) Plot No. 577, Block 'JJJ', Pasua area. Moshi Municipality, xii) Plot No. 79, Block B, Moshi Municipality, xiii) A house on unsurveyed land at Mbwaruki, Moshi Municipality, xiv) Shops at Unsurveyed land at Moshi Municipality. XV) Plot at Block H, Kimara Kinondoni Municipality, xvi) A house at Kilema Moshi. xvii) one acre farm at Pumwani Moshi. xviii) One acre farm at Mbwaruki. xix) Two and third acres farm at Kawawa road, xx) Five acres farm at Msaranga Moshi. xxi) Four acres farm at Mnono kwa mrefu, Moshi. xxiii) Four acres farm at Mnono kwa Mosha Moshi. xxv) Four acres farm at Mkonga, Moshi. xxvi) One acre farm at Kisomboko, Moshi. xxvii) One and three quarter acres farm at Kikavu, Moshi. xxviii) Twelve acres farm at Kisangesangeni, Moshi. xxix) Four acres farm at Msufini village, Kiomo village Moshi. The said estate was estimated at Tshs 1,707,000,000/=. The deceased also owned shares in Hotel Newcastle Limited and Patrice Associates Building Contractors Limited. He also operated Account number 01J1038387900 at CRDB Bank and Account number 017101004249 at NBC. It was further stated that the first, second and third defendants gave the first plaintiff a house at Mwabuki area, plot at Block 'H' Kimara Dar es salaam. four acres farm at Mkonga and one shop frame at Kiboroloni. They gave the second plaintiff a house on plot No. 28, Block 'B' Kiusa Moshi, two acres farm at Mkonga and one shop frame at Kiboroloni. They have not signed assent and bequeath land forms in respect of the plot at Block 'H' Kimara and plot No. 28, Block B Kiusa Moshi as a result the properties still has names of the late Vicent Patrick Rimoy. Further that the first, second and third defendants have not paid Land rents in respect of all landed properties left by the deceased, Vicent Patrick Rimoy in respect of plot No. 28 Block 'B' Kiusa, plot Jo. 79 - B-1 all total having Tshs 1,822,300/= as rent arrears. They have also failed to list CRDB Bank account Nos. 01J2038387900 and 01J2038591300 which were operated by the deceased Vicent Patrick Rimoy and farm No. 125 Kiboroloni owned jointly between the deceased. Vicent Patrick Rimoy and Philemon! Ndesamburo. The plaintiffs pray for judgment and decree against the defendants jointly and severally as follows:

- a) A declaration that the first, second and third defendants breached their duty of administration of the estate of the late Vicent Patrick Rimoy by failing to honestly and faithfully declare all properties owned by the late Vicent Patrick Rimoy to wit bank account number 01J2038387900 and 01J2038591300 maintained at CRDB Bank PLC and Bank Account number 40302506157 maintained at NMB Bank PLC and plot No. 41, Farm No. 125 Kiboroloni.
- b) An order that the estate of the late Vicent Patrick Rimo was not legally divided as the first defendant took properties purported to worth one Billion, one hundred and eleven million contrary of Law.

- c) An order that properties took by the first defendant be redivided to the plaintiffs as the first defendant was only entitled to 1/3 of the estate of the late Vicent Patrick Rimoy and the first plaintiff be given plot No. 42 Block 'E' Njiro Arusha and plot No. 40 Block 'E' Njiro be given to the second plaintiff.
- d) An order compelling the first, second and third defendants to sign assent and bequeath forms so that plot No. 28 Block 'B' at Kiusa Street Moshi be legally bequeathed to the second plaintiff. Attached to the plaint is a copy of the decision of this court made in Civil Case No. 1 of 2016 (formerly Probate and Administration cause No. 1 of 2014 and Probate and Administration case No. 2 of 2014. In this case, Fikirini, J (as she then was) appointed Mecktilda Vicent Rimoy, Siegfried Vicent Rimoy and Patrick Vicent Rimoy who are the first, second and third defendants in this case, to be the administrators of the estate of the late Vicent Patrick Rimoy. Next to the copy of the Judgment is a copy of the Inventory of the estate of the late Vicent Patrick Rimoy filed on 4/12/2017. The defendants filed their written statements of defence. The first and third defendants filed a joint written statement of defence and denied the claims. They put the plaintiff to strict proof. The second defendant filed his separate written statement of defence which deny the claims in totality. He admitted some aspects. The fourth defendant filed its written statement stating that each and every allegation of the plaint is neither admitted nor disputed save for account number 2038387900 which they said that it does not exist in the Bank. After all efforts to mediate the dispute had failed, the court recorded the following issues;
1. Whether, the estate subject of this suit was legally distributed.
 2. Whether the first, second and third defendants breached the duty of administration of the estate of the late Vicent Patrick Rimoy by failing to honestly and faithfully declare all properties owned by the late Vicent Patrick Rimoy.
 3. To what reliefs are the parties entitled to. The court recorded the evidence PW1 Theresia Vicent Rimoy, PW2 Glory Vicent Rimoy, PW3 Joseph Alphonse, PW4 Editha Felix Rimoy and DW1 Mecktilda Vicent Rimoy. PW1, PW2, PW3 and PW4 attacked DW1 and her children for taking more than the plaintiffs and the second defendant who are children of the deceased from another wife. She denied saying everything is in the inventory and accounts of estate which is in court. She was in defence of what she did which has the sanction of this court. Here is where I doubted the jurisdiction of the court and invited the parties to address the court on the issue of jurisdiction something which they did. It was the submission of Mr. Issa Mavura for the plaintiffs that the case originates from Probate and Administration Cause Nos. 1 and 2 of 2014 which gave rise to Civil Case No. 1 of 2016. In this case, counsel submitted, the first, second and third defendants were appointed joint administrators. They filed the inventory on 5/12/2017 showing properties of the deceased and their value. The first and second defendants filed accounts of estates of probate cause No. 1 of 2014 on 5/6/2018 showing the beneficiaries of the estate. The administration was closed thereafter. The plaintiffs were not satisfied by the distribution done in the estate of the deceased. Counsel submitted that there is no dispute that the probate matter was closed by this court following

the filing of the Inventory and accounts of estate which was not signed by the second defendant. He added that the plaintiffs were not involved in the distribution. They then decided to file a civil suit to get their right. He referred the court a decision of this court made in Miriam John Malya and 3 others Versus Mariam John Malya (Executrix of the estate of the late John Kacheli Mallya), Miscellaneous Civil Application No. 7 of 2021 (Opiyo,J) page 10 where it was said that once the inventory and statement of accounts are filed the court has to call the beneficiaries to inform them of the filing of inventory and accounts of estate and if not contested, the court shall then cause the beneficiaries sign and cause the administration closed. He said that the plaintiffs were not involved in the processes that is why they have decided to file the present case. Counsel proceeded to submit that there are assets of the deceased which were not listed in the inventory, for example, plot No. 41, farm 128 Kiboroloni Moshi. He went on to say that the plaintiffs were given plot no. 28 Block B, section 2, Moshi and plot No. 15, farm 125 Kiboroloni respectively, but the administrators did not sign transfer forms. Further, the deceased owned shares with CRDB Bank but there is no place in the Inventory or accounts containing the dividends. He made reference to Hadija Masudi (as legal representative of the late Halima Masudi v. Rashid Makusudi, Civil Appeal No. 26/1992 (CAT-Unreported) pages 5-6 and Ahmed Mahamed Al Lamar Bakari, Civil Appeal No. 71 of 2012 (CAT-unreported) page 19 as his authority. It was the submission of Mr. Hassan Herith that the cause of action of the plaintiffs case is found in paras 7-20 of the plaint. Reading through it. Counsel could find the following; 9

1. That, the first to third defendants did not list all the assets honestly for example plot No. 41, farm 25 Kiboroloni.
2. That, the assets of the deceased were not distributed according to the Law. And that, the first defendant took assets worth more than one billion.
3. That, the assets now in possession of the first defendant be re-divided. She should remain with 1/3 as her share.
4. That, the first defendant should be given plot No. 42 block E, Njiro Arusha.
5. That, the plaintiffs should be given plot No. 40 Block E, Njiro Arusha.
6. That, the first to third defendants must be compelled to sign documents to change ownership. They made reference to plot No. 28 Block B Kiusa street Moshi.
7. That, the first to third defendants did not pay land rent in respect of plot No. 28 Block B, Kiusa Street Moshi from 1998 - 2019 amounting to Tshs 1,822,300/=. Counsel submitted that looking at the facts carefully, there is no any fact which justify the existence of the civil case in court. He said that if the issue is dishonest as provided in section 49 (1) (e) of the Probate and 10 Administration of estates Act, it was supposed to be tabled in the probate case not the civil case. The remedy is revocation of the grant, he said. He went on to say that the plaintiffs did not say anywhere that the administrators should not be revoked. There was no application, he stressed. Counsel added that the plaintiff want the court to divide the estates

of the deceased but that is not the business of this court. He referred the court to Ibrahim Kusaga v. Emanuel Mwela [1986] TLR 26 where it was said that distribution is the job of the administrator. Counsel went on to submit that, the court cannot give 1/3 of the estate to the first defendant, give land to the plaintiffs or force the defendants to sign transfer forms in a civil case. That is the work of the probate court not this court, he submitted. He referred the court to rule 105 of the probate Rules which allows a party to file an application to seek the direction of the court. That could be the remedy, he said. Counsel concluded that this is a purely probate case not a civil case. He went on to say that the facts of the cases cited by counsel for the plaintiffs are different from facts of this case and thus distinguishable. He concluded that the court does not have jurisdiction to hear the case. 11 I Mr. Francis Pius told the court that the pertinent issue is whether a party may challenge administration of estates by way of a civil case. He referred the court to article 108 (2) of the Constitution and section 3 of Probate and Administration of estates Act and said that the court has power under section 3 of the Probate and Administration of estates Act to grant letters of administration and to alter or revoke the appointment. He went on to say that issues in the plaint cannot be dealt by a probate court because the administration is already closed. The only remedy in such a situation is to go to a civil suit, he said. He referred the court to an Indian case named In the matter of Goods of late Rai v. Vishnu Gupta, a decision of the High Court of Judicature at Allahabad, India page 3 and 4 as his authority. The second defendant had nothing to tell the court. I think that I should start with an in-depth discussion of the law for as was said by Nyalali C. J. (retired/deceased) in Hadija Masudi (as a legal representative of the late Halima Makusudi) (supra), this court like all courts can do justice only in accordance with the law and not otherwise. This being a matter involving a struggle for control and or distribution of assets of a person who is dead, the relevant law, when it comes to matters of procedure before this court, is the Probate and Administration of estates Act, 12 I Cap 352 R.E. 2002 and the Probate Rules GNS. 10 of 1963, 107 of 1963 and 369 of 1963. Section 52 of the Act allows application of the Civil Procedure code Act Cap 33 R.E. 2019 (the CPC) but subject to probate rules. That means that, the CPC applies where there is a gap in the Probate Rules. This court has jurisdiction in all matters of probate and administration in this country. It has no pecuniary limitation. The Probate and Administration of Estates Act and Probate Rules are applicable in the RM's and District courts when exercising their jurisdiction in small estates. A small estate was formerly an estate the gross value of which does not exceed Tshs. 10,000/= but has now been raised through the Written Law (Miscellaneous Amendment) (No.2) Act, 2016 passed by the parliament of 20th May 2016 to be an estate the gross value of which does not exceed Tshs. 100,000,000. The Act and the Rules are not applicable in primary courts which enjoy their unlimited jurisdiction where the law applicable is Customary or Islamic law. They have their separate set of procedural laws and rules. We start with section 19(1) (c) of the Magistrates Courts Act, Cap 11 R.E. 2019 which takes us to the 5th schedule of the Act which is the main law. Other procedural laws include The Primary Court (Administration of estates) Rules GN 49 of 1971, The Primary Court (Civil 13 procedure in Primary Courts) Rules GN 310 of 1964 and GN 119 of 1983 and the Local Customary Law Declaration Order GN 279 of 1963, the second schedule-Sheria za

Urithi. I will now move to examine the practice and procedure of probate and administration of estates in this court. Like the practice In the primary court, things start at the clan/family level. This Is a meeting of close relatives of the deceased who may include fathers, mothers, brothers, sisters, uncles. aunts, the wife and the children of the deceased. Relatives of the wife of the deceased may also be invited. Its origin is In the Customary Law Declaration Order 1963, see rule 6 of the second schedule, Sheria za Urithi. It is also a creature of precedents of this court and the Court of Appeal. See Ibrahim Kusaga (supra) and Hadija Saidi Matika v. Awesa Saidi Matika, PC civil I Appeal No. 2 of 2016 (High Court Mtwara) among others. Its main aim is to filter issues and come out with a fit person who subject to the decision of the court can be the administrator of the estate in cases of intestacy. It can also help to identify the will and reduce conflicts in court. The proposed administrator must be one of the heirs (wife, son, father or mother) or a close relative of the deceased. They will then sign on the minutes which will also be attached in the petition together with the death certificate. 14 J If for any reason one fails to get the support of the clan/family so as to get the minutes In his favour, he can still come to court though a caveat and get the same remedy. And where the family fails to sit due to conflicts or any other reason, an interested person can seek a certification from the lowest local government officer (the street executive secretary/village executive secretary) showing that the family have failed to sit or include him or her in the meeting due to conflicts. Certification can be done by way of a letter. He or she may also swear an affidavit to accompany the letters. That, in my view, can stand In place of the minutes and serve the same purpose for the minute is not a legal requirement but a rule of practice developed by the court to filter issues and facilitate the process. Situations may arise where the clan/family have sat and proposed someone who despite the fact that he is in possession of the minutes and the death certificate but does not want to file the probate or administration. This Is common to brothers/sisters in law (Mashemeji/Wifi) where they are in disagreement on some issues with the wife of the deceased. In such a situation, the person may apply for probate or administration using a letter from the local government certifying the existence of the dispute. The letter can stand In place of the minutes and serve the same purpose. He may also 15 I swear an affidavit to accompany the letter. In place of the death certificate rule 63 (3) has a solution. It allows the filing of an affidavit from a person who saw the body of the deceased being buried or cremated (who can also be himself) or an affidavit of the doctor who pronounced the person to be dead in lieu of the death certificate. I will now move to examine what should be done once the matter is in court. I will have a specific focus to part VII of the Act and part VI of the Rules, though I cannot avoid to touch other areas. We have a probate where there is a will and an administration where there is an intestacy. In both cases, the procedure is the same though the requirements and approach may be different. Probate and administration proceedings are initiated by filing a petition. Section 55 (1) of the Act shows what must be contained In a petition for probate, a) the date and place of the will testator's death; b) must be accompanied by the will of the deceased and a statement that it is the last will of the deceased; c) must state the amount and nature of the assets which are likely to come to the petitioners hands; d) the names and address of the executors and a statement that the

petitioner is one of them; e) must say whether there is any other proceedings in respect of the estate in any 16 other court or not. Subsection (3) requires a translation of the will Into English where it is written in any other language other than English. This does not sound well in view of the coming into force of The Written laws (Miscellaneous Amendment) Act 2021 and The Interpretation of laws (Use of the English Language In Court) (Circumstances and Conditions) Rules, 2022 GN 66 of 2022. Section 4 of the Act has amended section 84 by deleting subsection (1) and substituting a new subsection which requires all laws to be written In Kiswahili. GN 66 of 2022 gives the circumstances in which English language may be used In court creating an anomaly. This calls for an amendment of section 55 (3) of the Probate and Administration of Estates Act to read that where the will is written in any other language than Kiswahili, It must be translated Into Kiswahili. A petition for letters of administration falls under section 56 of the Act. Subsection (1) requires it to state the following, a) the date and place of the deceased's death; b) the family or other relatives of the deceased and their respective residences; c) the right in which the petitioner claims; d) the amount and the nature of assets which are likely to come to the petitioner's hands; e) that diligent search have been done and but no will was found and 17

- f) whether there is any other proceedings in any other court in respect of the estate. Section 57 has a requirement for verification of the petition. The law directs the petition to be signed by the petitioner and his advocate, if any and be verified by the petitioner. If it Is a petition for probate, it must also be verified by at least one of the witnesses. The court has power to waive the attestation of witnesses If they cannot be available without undue delay and expense. Rule 33 (1) requires the following documents to be attached to the petition for probate: -
- a) The will or codicils of the deceased.
 - b) Subject to rule 63, a death certificate.
 - c) An affidavit as to the deceased's domicile at the time of death.
 - d) The executor's oath. Rule 39 requires the following documents to be attached in a petition for letters of administration
 - a) Subject to rule 63, a certificate of death.
 - b) An affidavit as to the deceased's domicile.
 - c) An administrator's oath. 18
 - d) Subject to rule 66, an administration bond. I
 - e) A certificate as to the financial positions of the sureties. I
 - f) Subject to rule 71 and 72, consent of heirs.

- 9) In case of an application of a sole administrator, an affidavit as required by rule 32. Rule 66 (1) requires the administration bond to be given in double the amount of the gross value of the property except where the court decide otherwise. Rule 71 states that where an application for letters of administration is made, the petition must, save where the court order otherwise, be supported by a written consent of the heirs. Rule 72 deal with situations where the consent could not be available. It is provided that. where a person whose consent is required refuses or if where such consent cannot be obtained without undue delay or expense, the petitioner can file an affidavit giving the name and address of the person who refused and reasons why the consent could not be available. The court on receipt of the affidavit, may make an order dispensing with the consent or requiring a citation to be served to the person. The court can also make an order under rule 67 dispensing with the bond or sureties. I i 19 Situation may arise where something is needed to be done in protection of the estate or in favour of the heirs or other people who depended on the deceased which cannot wait the final determination of the probate or administration. In such a situation, the petitioner may make an application I to the court by way of chamber summons supported by affidavit seeking the grant of probate or administration pendente Ute. The court can grant an order under section 38 and rule 50 pending the grant of the probate or letters of administration which is limited to the collection and preservation of the I I property of the deceased and giving discharges for debts or such other acts other than distribution of the estate. Discharge of debts may include payment of salaries if the deceased was an employer and other debts which are clear and which cannot wait. Such other acts may include payment of school fees and food to the deceased family. In this regard the executor or administrator may be allowed to draw a limited amount of money from the bank as may be specified in the order or sell a specified asset for the purpose. It Is power given to a person named with limitations and he is subject to the control of the court. It can be withdrawn any time if abused. Next is citation. It is regulated by rule 73 and 75. After the deputy registrar has admitted the petition and be satisfied that it is properly before the court, 20 with all the attachments in place, he shall place it before the judge who will enter an order for a general citation in newspapers and the government gazette. This order is usually done ex parte. The file will then return to the deputy registrar who will act under rule 75 and issue the citation. He will require a copy of it to be exhibited in some conspicuous part of the court building and give the petitioner two copies for publication, one in the newspaper and the other in the government gazette. The petitioner will publish and bring copies of the publications to the deputy registrar, who once satisfied that it was done, will release the file again to the judge through his clerk. Rule 76 prevents the court to take any steps in the case until after expiration of 14 days from the date of the last publication of the citations. That in my view means that, we must check the date of the two publications to see the latest. Whichever is the last in publication will give us the starting point. We count the 14 days from there. Following the publications some people may come to object the appointment or anything else. They will proceed by lodging a caveat under section 58 and rule 82. A caveat will have the effect of arresting the proceedings for no step is supposed to be taken after a caveat has been lodged. See Theofrida Mhagama v. Njengafibili Mponjoli Mwaikugile (as the legal 21

representative Jackson Ruben mwaikinda) Civil No. 160 of 2020 (CAT- unreported) and Revenanth Eliawori Meena v. Albert Eliawori Meena and another Civil Revision No.1 of 2017 (CAT-unreported). The petitioner will then apply for the Issue of a citation under section 59(2) of the Act In form 63, to the caveator calling him to state whether he supports the probate or administration and if he does not, enter an appearance. Where the petitioner has failed to make an application for citation to the caveator within 30 days the deputy registrar must serve him with a notice requiring him to do so within 21 days. If he takes no step after the expiration of 21 days, the petition shall be deemed to have been withdrawn. Rule 82 (2D) gives the petitioner room to apply to restore the petition if he has good cause. If an application is received, the deputy registrar will Issue a citation In form 64 calling upon the caveator to state within 30 days whether he supports the grant of probate or letters of administration to the petitioner or not and if he does not, requiring him to enter an appearance. The appearance of the caveator will be in form 65 and will be accompanied by an affidavit stating the right and interest of the caveator and the grounds of the objection. A copy of the appearance and 22 I the affidavit will be served to the petitioner. See Revenanth Eliawori Meena (supra) page 17. Rule 82 (6) provides that, where a caveator has entered an appearance, the proceedings will be numbered as a suit the registrar shall appoint a date upon which the suit shall be listed before the judge for such orders as to pleadings and hearing date. Section 59 (3) provides that where a caveator enters an appearance, the court shall proceed as per section 52 (b). Section 52 (b) provides that in any case in which there is contention (that is where there is a caveat), the proceedings shall take, as nearly, as may be, the form of a suit, in which the petitioner shall be the plaintiff and any person who opposes shall be the defendant. See Monica Nyamakale Jigamba v. Mugeta Bwire Bhakome (as administrator of the estate of Musiba Reni Jigamba) Civil Application No. 119/01 of 2019 (CAT unreported) and Saraweki Isarael Salema and 4 others v, Neema Gabriel Majaliwa Civil Revision No.3 of 2019 (H/C Dodoma, Mansoor J). See also Chantaal Tito Mziray and another v. Ritha John Makala and another. Civil Appeal No. 50 of 2019 (CAT-unreported) page 18 Where it was said as follows:- "... the law requires that after the petitioner and caveator have complied with the provisions of the law stated above, in terms of 23 I section 52 (b) PEA, the proceedings subsequent to the caveat for any application for any grant will turn to be contentious and each side is required to adduce evidence to substantiate his claim. "(Emphasis added) Section 52 (b) does not say that the petitioner will file a civil Case. All what the Law says is that, the proceedings shall take 'as nearly as may be', the 'form of suit'. It speaks of the form of a civil suit, not a civil suit. In the like manner, rule 82 (6) does not say that the case turns to be a civil suit. All it says is that, the 'proceedings shall be numbered as a suit'. Reading through. I don't think that the legislature intended the probate or administration case to be engaged into pleadings of a civil suit. I do not see any indication that the law intended the petitioner to go to the civil registry and present a plaint. Neither do I think that the caveator was required to file a written statement of defence or petitioner to file the reply. See Monica Nyamakare Jigamba (supra) page 14 where it was as follows:- "... where a petition has been opposed, the probate or administration proceedings change, as nearly as can be, into an ordinary civil suit where the petitioner becomes the plaintiff and

the caveator becomes the defendant and parties are required to file special pleadings. The main purpose of that procedure is to facilitate the investigation of caveator's objection and its effect is to enable the entire proceedings, but not just a part of it, to be dealt with in totality as in a suit and to be concluded as one whole." (Emphasis added) Reading through this decision and the law, I do not think that there is a need to go through the pretrial conferences and mediation. I think that the words 'as nearly as may be', the form of suit and 'numbered as a suit' take us to the filing of special pleadings which in my view are the affidavits of the parties and their annexures. To reach that end, the court will have two options. One, to take a fresh cover which will bear a civil case number with the petitioner as its plaintiff and the caveator as its defendant as was done by Fikiri J (as she then was) in Civil Case No. 1 of 2016. Under this option, the probate case will remain inside the civil case. Two, make an entry on the record of the probate or administration case showing that the parties have acquired their new status of plaintiff and defendant and proceed in the same file as was done by A.A. Bahati J In the Matter of Application for Letters of Administration by Kalinginji Ramadhani Kalingonji, Probate and Administration Cause No. 1 of 2020 (High Court Tabora-unreported) page 4. In whatever case, the judge must make an order to the petitioner to file a counter affidavit and based on facts contained in the two affidavits, draw the issues and require the parties to adduce evidence to support their respective positions. That is my interpretation of the law, though I cannot hesitate to say that this is an area for the rules committee to work on to clear the clouds for I am aware of some of my colleagues who based on the words 'numbered as a suit' they direct the filing of a fresh civil suit. Opiyo J seem to have the view In Miriam John Malya and 3 others (supra) page 8 where she said 'thereafter the matter becomes contentious and the main suit will stay and the caveat will proceed as an ordinary civil suit.' Having said so, I cannot hesitate to say that, in all cases of contention, the court should do the following; a) enter a word on record showing that the matter has turned to be contentious in view of the filing of the caveat, appearance and affidavit; b) require the petitioner to file a counter affidavit;

- c) inform the parties that they have acquired new names of plaintiff and defendant, d) frame issues and proceed to receive evidence using the practice and procedure of the court under the CPC and e) give a judgment. But where there is no contention, the petitioner need not bring evidence other than what is in his petition, affidavits and their annexures. He will only have to make submissions to support his case. The court will then make its decision based on facts contained in the petition, affidavits and annexures. If it will be satisfied that the petitioner has proved his case, it will grant the probate or administration as the case may be. Thereafter, the file will then move to the deputy registrar who will prepare and sign the probate or letters of administration. This is the beginning of a second journey which is the longest. What then are the powers executors or administrators? This takes us to section 99 of the Act. Section 99 reads:- "99 - The executor or administrator of a deceased person is his legal representative for all purposes and all the property of the deceased person vests in him as such. Provided that nothing in this section contained shall operate so as to vest in an executor or administrator (a) any property of a deceased person which

would otherwise pass by survivorship to some other person. 1 I

- b) any property vested in a corporation soie as such "Emphasis added. The law has vested all the assets of the deceased on the hands of the executor or administrator in all aspects save where there Is a right of survivorship or corporation sole. Examples of right of survivorship Is where the deceased had owned land jointly with another person where if one dies, 27 I the land falls to the surviving person. In all other instances he has full control of the assets independent of the heirs and all other people. The properties fell into his hand for him to deal with them in the best way he can. See Mohamed Hassan v. Mayasa Mzee and Mwanahawa Mzee (1994) TLR 225 and Azizi Daudi v. Amini Ahmed Ally and another, Civil Appeal No.30 of 1990. This is also in line with section 101 of the Act which gives the executor or administrator the right to dispose of property. He has power to dispose of movable property, as he may think fit. He can also sale, mortgage or lease immovable property. He is not however expected to benefit anything from the estate of the deceased personally (see section 103). Having done his job in the best way he can, the executor or administrator must comply with section 107 of the Act. The law requires the executor or administrator to file an Inventory with six (6) months containing a full and true estimate of all the property in possession and all credits and debts. He shall also file a statement of ofaccounts within one / ear from the date of grant showing the assets which have come to his hands and the manner in which they have been applied or disposed of. To remind the executor or administrator, the judge will usually set a date for mention six months ahead. The executor or administrator will then be informed that he must file his 28 inventory on or before the date. If he comes earlier, the deputy registrar will cause the file to come before the judge for necessary orders. That will also apply for the accounts of estates. This means that the longer the case can stay in court is one year. If, however, there are reasons to believe that more time is needed, for filing the inventory or accounts of estate, the executor or administrator can come to court to seek extension of time and the court in its discretion, can extend or refuse. It is worth noting that the executor or administrator gets his power and time to administer the estate from the court. He is not meant to operate endlessly as is sometimes taken to be. His appointment will cease to have effect at the end of six months If he fails to file the inventory or at the end of one year if he fails to file the accounts of estate. See Beatrice Briton Kamanga and another v. Ziada William Kamanga, Civil Revision No.13 of 2020 (High Court Dar es Salaam - unreported). His job is not expected to be a life time job. It has a time frame which must be abided to. It has the beginning and i the end. The appointment becomes of no legal effect at the expiration of the time provided if no extension is given by the court. All what will be done by the executor or administrator outside the time frame will remain illegal, null 29 and void. It is therefore important to check the time frame to avoid being embarrassed in the end. Section 107 (5) is key in the matter before the court and I will reproduce it in full as under:- "(5) Any beneficiary under a will, a person entitled to a share under an intestacy or unsatisfied creditor shall be entitled to Inspect the Inventory and accounts of an executor or administrator"(Emphasis added). In a simple language, this means that, heirs and creditors have a right to Inspect the Inventory

or accounts of estate once filed. It is their right and It has a big purpose behind. The court has to make sure that they are accorded this right. This was also the observation of the Court of Appeal in Joseph Shumbusho v. Mary Grace Tigerwa and two others. Civil Appeal No. 183 of 2016 (CAT unreported) page 25. See also the decisions of this court this court In Miriam John Malya and 3 others (Supra) page 10 and Walter Frank Mongi and 2 others v. Frank Mrekio Mongi, Miscellaneous Civil Application number 566 of 2021 (Kakolaki J) page 9. The court underscored the right of inspection and file objection in Walter Frank Mongi (supra) where it said thus:- 30 II, 'When the inventory and accounts are filed, beneficiaries will retain the right to inspect them and file their objections over the same, if any.' In practice, the deputy registrar will place the file to the judge for necessary I orders after receiving the inventory and statement of accounts. The judge will then enter an order on the record calling the heirs, creditors and all Interested parties to come and inspect the inventory and accounts of estate. They will then come and given access to the record or given copies of it. The I best way is to give copies to them for perusal. The court may read and explain the contents thereof to them if they don't have enough knowledge or legal representation. The aim of this exercise is to cause them understand the contents of the inventory and accounts of estates and see If there Is any grievances against them. The exercise will make them understand In details \ what was collected, debts paid and the mode of distribution. Any person who \ has grievances against the inventory and or the accounts of estate will be at liberty to lodge a caveat to halt the process for much as the executor or administrator is not expected to be interfered but he has a duty to act fairly in collection of estates, paying debts and distributing the balance to the heirs. If there is an objection, the court will get an opportunity to hear the parties and, if need be, to make a direction to the executor or administrator to 31 correct the mischief, if any. The administrator is bound to comply with the direction of the court. Failure to comply with the direction is a ground of revocation. If the court will receive no objection from the heirs, creditors and other Interested parties reflected In the record, who have had opportunity to inspect the inventory and accounts of estate or who have heard them being read to them, the court will proceed to make an order closing the probate or administration. This order will put everything to an end rendering the court functus officio. It is appealable. It can also be a subject of revision by the Court of Appeal because the court has a duty to see that all is done according to the law before making the final order which has the effect of converting the inventory and accounts of estate to its own decision. What then Is the course for a person who has an Issue on a probate or administration which has been marked closed by an order of the court? Counsel for the plaintiff says that the remedy is to file a civil suit. Counsel for the fourth defendant agreed with him. Counsel for the first and third defendants had the contrary views. The second defendant had nothing to say. I took time to revisit the Law to show the practice and procedure of 32 probate and administration of estates in this court in order to assist us to get an answer to this question. Reading though the law, one can find that before a probate or administration cause reach the final end, there is a procedure which must be followed. Every executor or administrator has to file the inventory within six months and accounts of estates within one year. The Law gives a right to the heirs. creditors and all other people who

are interested in the probate or administration to inspect the inventory and accounts of estate once filed. The court has a duty to make sure that they are accorded an opportunity to inspect them and register their objections, if any. The court can only make an order to close the probate or administration after giving the heirs and creditors an opportunity to know the contents of the inventory or accounts of estate. It will do so only where there is no objection or after hearing it and finding it to be baseless. If any of the parties has an objection he has to lodge a caveat to the court to stop the process. The court has power to stop the process after receiving a caveat. It will soon have to sit to hear the parties by oral submissions after an exchange of affidavits stating the grounds of objection and the opposing views. It will then, if need be, give a direction to the executor or administrator in regard to the estate of the deceased under section 65 of the act as it may deem fit. The executor or administrator is bound to comply with the directives of the court. And any aggrieved person has a right of appeal or revision. But where there is no objection, the duty of the court is to make an order closing the probate or administration thereby becoming functus officio. It cannot take any further steps. This is what I have tried to demonstrate above. Now if it happens that the case has come to an end without going through the procedures and any of the heirs or creditors is aggrieved by an act of the executor or administrator, for which the court has been blessed by its order of closing the matter, the remedy in my view, is not to seek to revoke the administrator or file a civil case to annul what has been blessed by the court, but to file a revision or an appeal to the Court of Appeal to challenge the order of this court which had closed the matter prematurely or without compliance to the law. I agree with counsel for the first and third defendants that, the court has no jurisdiction to hear the case. I have a number of reasons. I will point out four. One, after receiving the inventory and accounts of estate and making an order to close the administration, the court was rendered functus officio. It cannot reopen the matter again save for a situation of a review which is not the case here. Two, the civil suit seeks to set aside the inventory and accounts of estate which has the blessing of this court. It seeks to make a new inventory and a new account of estate. It seeks for orders of a new distribution of the assets. Those orders cannot be obtained from this court in a civil suit. Three, allowing people to file a civil suit to set aside what has been given by the court in probate and administration brings turbulence in the society for justice will not be certain. Four, the road to civil suits will open the floodgates and bring endless litigations. This will be against public policy which demands that litigations must come to an end. What about what was done by the Court of Appeal in *Ahmed Mohamed Al Laamar* (supra) a decision which foiled its earlier decision in *Hadija Masudi* (supra)? Counsel for the plaintiff is basing his arguments in these decisions. Counsel for the fourth defendant supports him. I had time to read these decisions carefully. Having gone through the cases, with respect to the views of the counsel for the plaintiff, I think that he missed the point. The facts of the cases demonstrate a different picture. They have unique facts which do not fit to the facts of the present case or any other similar case. In *Ahmad Mahamed Allaamar* (supra) for instance, the deceased died in 1968 leaving a will in favour of his two daughters, Fatuma Bakari and Asha Bakari. It also 35 I appointed Mr. Ahmad Mahamed Al Laamar to be the executor and

trustee because the beneficiaries of the will were minors. There was a provision that he was to handle the estate to the daughters once the youngest had reached 25 years old. She reached 25 years in 1985. The record shows that the probate was closed in 1987. The two daughters developed a feeling 20 years later that Mr. Ahmed had misappropriated the estate. They sought to be appointed the administrators which they succeeded. On appeal, the Court of Appeal accepted the principle that once a probate matter had been closed it cannot be opened but said that, on the facts before the court, the daughters had two options; one, if they genuinely believed that Mr. Ahmad had acted in excess of his mandate or wasted the estate and or subjected it to damage or occasioned any loss to it through negligence, they were free to sue him. Two, if they are also convinced that he either fraudulently converted some properties forming part of the estate, and/or that he deliberately exhibited a false inventory or account, they were free to institute criminal proceedings against him in accordance with the provisions of the governing Law. The Court of Appeal did not direct a Civil Case to be opened to do what could not be done by the probate court. It directed them to file a case against the administrator in his personal capacity for abuse of his powers, wastage or 36 J damage of the estate. This is a normal cause for an executor or administrator can be sued if performs his duties negligently or contrary to the law as explained above. The plaintiff in this case are not suing the administrators for their misconduct. The fourth defendant is not an administrator. They have sued the defendants to try to create a new Inventory and a new account of estate which will be in their favour. They move the court to set aside its earlier order. That cannot be done by this same court. Neither can it be done by the court in a civil suit. It is in the exclusive mandate of the probate and administrative court and its appellate forum. That said, the suit is dismissed for want of jurisdiction with costs. It is ordered so. / L.L.M. Mlacha Judge 12/12/2022 Court: The Ruling is delivered online. I am in the High Court Kigoma. Right of Appeal Explained. L.M. Mlacha -1 Judge 1 12/12/2022 37

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/293948/source_file/theresia-vicent-rimoy-and-another-vs-mecktilda-vicent-rimoy-and-three-others-2022-tzhc-15146-12-december-2022.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/theresia-vicent-rimoy-v-mecktilda-vicent-rimoy-Jurisdiction-tzhc-2022--6a3ea52b3b1caa9129824c9f

Prepared on 13 October 2026 · Esheria