

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PROBATE AND ADMINISTRATION CAUSE NO. 10 OF 2017

(Original Probate and Administration Cause No. 3 of 2005)

DECEASED GULAMALI SAJAN LADAK)

MURTAZA GULAMALI LADAK.....APPLICANT

VERSUS

ALLY GULAMALI LADAK.....RESPONDENT.

RULING

13/11/2018 & 23/11/2018

MZUNA, J.:

Murtaza G. Ladak has filed an application for revocation of letters of appointment of Gulamali S. Ladak, the respondent in this application for what he says due to misappropriation of the deceased's estate, filing wrong inventory and reluctance in distributing the deceased's estate, to mention but few.

The application was filed by chamber summons and there is an affidavit in support thereof.

Before hearing could proceed, the respondent filed a preliminary point of objection that:-

- 1. That, the application is incompetent for the court is improperly moved.*
- 2. That, the application is incompetent before this court as it is accompanied with defective affidavit in that there is defective verification as well as defective jurat of attestation.*

Parties appeared in person and unrepresented. Arguing in support of his written submission, the applicant said that there is wrong citation of the applicable law because the application was filed under section 49 of the Probate and Administration Ordinance and rule 29 (1) of the Rules while according to him there is Probate and Administration of estates Act, Cap 352 RE 2002 not as cited the Ordinance.

Second, that even assuming he meant the said Act, still the cited Section 49 has more than one subsection and paragraphs. So, merely citing section 49 it will be difficult for the court to understand which specific subsection and paragraphs that the applicant is referring to. In support thereof, he cited the case of **Richard Kajuna Muzo vs. Arusha Municipal Council**, Misc. Civil Revision No. 6 of 2005 (unreported).

That, since there is wrong citation and non citation of the applicable law, then the application is incompetent and it should be struck out.

As for the second point of preliminary objection, it is submitted that the affidavit accompanying the application is defective as it has a defective jurat of attestation. That there is an omission of some important information which was supposed to appear in the jurat of attestation. In particular, it does not show the identifying person to the Commissioner for Oath and therefore the affidavit is incurably defective as it does not show even the drawer (maker) and the person who has filed it in court and should therefore be struck out.

In a verbal response, the applicant, a layman so to speak, could not make any substantial argument apart from saying that this court should deal with the substantive case that the respondent should distribute the deceased's estate. As for the affidavit, he said that it is proper and has nothing illegal worth challenging it.

In his rejoinder submission, the respondent reiterated his submission in chief and said that the application should be struck out.

Reading from the submission, it is true that there was wrong citation of the applicable law. This ground alone is sufficient to dispose of the application.

Section 49 of the Probate and Administration of Estates Act, Cap 352 RE 2002 which was cited has sub sections 1 which has sub paragraphs (a) to (e) as well as sub section 2.


Merely citing section 49 without indication the sub section and or paragraph makes this application to be incompetent in view of what was held in the case of **China Henan International Co-Operation Group Vs Salvand K.A. Rwegasira**, Civil Reference No. 22 of 2005, CAT at Dar es Salaam (unreported). The court observed that:-

"We need not be delayed in this aspect. It is now settled that wrong citation of a provision of law or rule under which the application is made renders the application incompetent..."

For the above stated reasons, this application which is incompetent for wrong citation of the enabling provision, is accordingly struck out. This court cannot determine the matter as asked by the applicant as the court is not properly moved.

Application is struck out with no order as to costs.




M. G. MZUNA,
JUDGE. 23/11/2018