

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**PROBATE AND ADMINISTRATION CAUSE NO. 02 OF 2020**

**IN THE MATTER OF THE ESTATE OF THE LATE EMMANUEL  
MGYABUSO BARONGO**

**AND**

**IN THE MATTER OF THE APPLICATION FOR APPOINTMENT OF  
RECEIVER PENDING GRANT OF LETTERS OF ADMINISTRATION BY  
KOKU EMMANUEL AND DICK EMMANUEL**

**RULING**

*Last Order: 28.05.2020*

*Ruling date: 12.06.2020*

**A.Z.MGEYEKWA, J**

The Applicant herein, on the 16<sup>th</sup> March, 2020 filed a Probate and Administration Cause No.02 of 2020. The application was brought under the certificate of urgency, made under section 10 of the Probate and

Administration of Estates Cap.352 [R.E 2019] and Rule 24 (1), (2) of the Probate and Administration of Estates Rules GN. No, 369 of 1963.

The application was accompanied by an affidavit deposed by Koku Emmanuel, the applicant.

Given the nature of the controversy, I am compelled to preface the background of the matter in order to appreciate the facts leading to this application.

As alluded to the above, the essence of the matter before me is an application by the applicants for appointment of a receivership of the Estate of the late Emmanuel Mgyabuso Barongo.

The deceased left behind a widow and 10 children who are legal heirs of the deceased. The deceased Emmanuel Mgyabuso Barongo had two children with one Sophia Salvatory Mtoka namely; Koku Emmanuel who was born on 21<sup>st</sup> September, 1989, and Dickson Emmanuel Mgyabuso Barongo who was born on 17<sup>th</sup> October, 1990. The deceased, Emmanuel Mgyabuso Barongo had also other seven children with Juliana Barongo. The record *reveals that the late Emmanuel Mgyabuso Barongo and Sophia Salvatory*

Mtoka were divorced in 1999. The late Emmanuel Mgyabuso Barongo died intestate and the administration of the late Emmanuel Mgyabuso Barongo was formerly granted by this court to the late wife one Juliana Barongo who passed away thus administer the Estate who was appointed to the administrator of Estate of the late Emmanuel Mgyabuso Barongo. The names of beneficiaries are listed as follows; Koku Emmanuel, Dick Emmanuel, Victoria Barongo, Coleta Barongo, Salome Barongo, Kaiza Barongo, Benson Barongo, and Anstazia Barongo. The applicants after discovering that the Estate of their late father is not administered and misused by other children, decided to file the instant application before this court.

The applicants have prayed this court to appoint the applicants as receivers of the Estate of the late Emmanuel Mgyabuso Barongo to administer the following properties:-

1. Two houses on Plot numbers 240 and 241 Block "K" Liberty Street Mwanza City.
2. A house on plot number 7 Block "FF" Nyakato Area Mwanza City.
3. A house on squatter area number "H" 926 Nyakabungo Mwanza City.

4. Undeveloped land on plot number 8 Block "FF" Nyakato area Mwanza City.
5. Two flour – milling machines located at Liberty Street.
6. Two rice – milling machines Liberty Street.

Following the global outbreak of the Worldwide COVID- 19 pandemic (Corona virus), the hearing was conducted via audio teleconference and the applicant enjoyed the service of Mr. Kelvin Mutatina, learned counsel and the 6<sup>th</sup> and 8<sup>th</sup> respondents were remotely present.

The learned counsel for the applicant stated that the application is supported by an affidavit and prays this court to adopt the affidavit and form part of his submission. Paragraph 5 of the affidavit shows that after the passing of the late Emmanuel Mgoyabuso, Juliana Barongo was the administrator and now after her death, the estate is hanging without any administrator. He further submitted that the applicants pray this court to appoint a receiver as per paragraph 8 of the affidavit while they are waiting for an appointment of the administrator of the estate of the late Emmanuel Mgoyabuso who will replace the late Juliana Barongo.

In conclusion, the learned counsel for the applicants prays this court to grant their prayer.

In her reply, the first respondent submitted that she is the last born of the late Emmanuel Barongo. She argued that she has never known the applicants and the applicants have never participated in family matters. She further argued that the applicants have never shown up in their father's funeral nor attend her mother's funeral. She further argued that after her mother's death, her brother was appointed as an administrator. She went on to argue that the applicants are telling lies and are confusing the court.

In his brief reply, the 6<sup>th</sup> respondent stated that he is the administrator of Estate of the said property. He went on to state that after his mother's passing, he was appointed to administer the Estate of the late Emmanuel Mgoyabuso Barongo. The 6<sup>th</sup> respondent added that he has a document to prove it his argument.

The learned counsel for the applicant in his brief rejoinder stated that the matter of probate of the late Emmanuel Mgoyabuso Barongo was determined by this court in Misc. Application No.136 of 2002, the court termed the value

of the estate to be 100 million. Thus this court ordered the file be brought before the High Court and the matter of probate of the late Emmanuel Mgoyabuso Barongo proceeded at the High Court whereas the late Juliana Barongo, was appointed as an administrator of Estate of the late Emmanuel Barongo.

Mr. Kelvin continued to submit that the Primary Court has no jurisdiction to determine the said probate therefore the same is a nullity. He added that the 2<sup>nd</sup> respondent was supposed to file the same before the High Court. Mr. Kelvin went on to state that the instant application is valid in law and insisted that the applicants want all beneficiaries to benefit from the late Emmanuel Barongo Estate.

Having considered both the applicant's affidavit along with the submissions made by both the learned counsel for the applicant and the 6<sup>th</sup> and 8<sup>th</sup> respondents, I am confronted with one central issue for determination and that is none other than *whether or not the application is meritorious.*

The applicants and the respondents are half siblings, their late father Emmanuel Mgyabuso died intestate and left behind ten children. The applicants, Koku Emmanuel And Dick Emmanuel are applying for receivership of the late Emmanuel Mgyabuso Barongo the 6<sup>th</sup> respondent, Kaiza Barongo, and the 8<sup>th</sup> respondent, Atanazia Barongo in their submission have opposed the appointments of the applicants as receiverships. The 8<sup>th</sup> respondent submitted that she does not know the applicants and that the late estate of the Emmanuel Mgyabuso Barongo is already under the supervision of the administrator of the estate. Mr. Kaiza Barongo (6<sup>th</sup> respondent) claimed that after the death of their mother who was the administrator of the Estate of his late husband Emmanuel Mgyabuso Barongo, he was appointed as an administrator of Estate of the late Emmanuel Mgyabuso Barongo by the Primary Court in 2019.

After having gone through the submissions made by both parties and having perused the records of this court in Misc. Civil Application No. 186 of 2002. I have come to the following firm conclusions regarding the application at hand. That the matter of probate concerning the Estate of the late Emmanuel Mgyabuso Barongo was determined before the High Court in

Misc. Civil Application No. 186 of 2002 as pointed out by the learned counsel for the applicant that before the appointment of the late Julian Barongo to administer the Estate of the late Emmanuel Mgyabuso Barongo, the matter was instituted before the Urban Primary Court of Mwanza, it was transferred to the District Court and a Probate and Administration Cause No. 5/2000 was instituted but the same was disregarded for lack of jurisdiction thus it was transferred to the High Court. Similarly, in the instant application, the Primary Court has no pecuniary jurisdiction to appoint a receivership for the Estate of the late Emmanuel Mgyabuso Barongo. Therefore the administration of the estate which was granted to Kaiza Barongo by the Urban Primary Court of Mwanza which was issued on 17<sup>th</sup> April, 2019 is invalid because it was filed in a court which had no pecuniary jurisdiction to determine the said probate.

Consequently, there is no evidence on record that the Estate of the late Emmanuel Mgyabuso Barongo is under supervision in other words the same is left without being managed by anyone. The 8<sup>th</sup> respondent submitted that she does not recognize the applicants, this statement is untrue because in the court records the applicants were recognized as biological children of the



late Emmanuel Mgyabuso Barongo. Reading through the court records Hon. Masanche, J in his judgment in respect to Misc. Civil Application No. 186 of 2002 dated 15<sup>th</sup> February, 2005 recorded that the late Emmanuel Mgyabuso Barongo was married to one Sophia Barongo and they were blessed with three children. Moreover, it was noted that to the time of the death of Emmanuel Mgyabuso Barongo, he had ten children in total with two women; late Juliana had seven children and the applicants' Mother one Sophia had three children. Additionally, the applicants have filed this application and attached their birth certificate to prove that the late Emmanuel Mgyabuso Barongo was their father.

For the aforesaid findings and the interest of all beneficiaries, the supervision of Estate of the late Emmanuel Mgyabuso Barongo needs to be placed under the hands of people who will make sure that all the properties of the late Emmanuel Mgyabuso Barongo are in safe hands and managed well.

Therefore, for the aforesaid reason, I grant the application made by the applicants by appointing Ms. Koku Emmanuel and Mr. Kaiza Barongo as receivers pending grant of letters of administration. The appointed receivers

will be responsible to administer and manage the estate of the late Emmanuel Mgyabuso Barongo which includes; Two houses on Plot numbers 240 and 241 Block "K" Liberty Street Mwanza City, A house on plot number 7 Block "FF" Nyakato Area Mwanza City, A house on squatter area number "H" 926 Nyakabungo Mwanza City, Undeveloped land on plot number 8 Block "FF" Nyakato area Mwanza City, Two flour – milling machines located at Liberty Street and Two rice – milling machines Liberty Street pending the appointment of an administrator of the estate of the late Emmanuel Mgyabuso Barongo.

Order accordingly.

Dated at Mwanza this date 12<sup>th</sup> day of June, 2020.

  
A.Z.MGEYEKWA  
**JUDGE**  
12.06.2020

Ruling delivered on 12<sup>th</sup> day of June, 2020 via audio teleconference, Mr. Kelvin, learned counsel for the applicant and 6<sup>th</sup> and 8<sup>th</sup> respondents were remotely present.

  
A.Z.MGEYEKWA  
**JUDGE**  
12.06.2020

Right to appeal fully explained.