IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. CIVIL APPLICATION NO. 94 OF 2020

(Arising from HC Misc. Civil Appl. No. 66 of 2019, Original Probate and Administration Cause No. 8 of 2013)

1.KELVIN ERAST MSUYA ..... 1ST APPLICANT

2.MAUREEN ERASTO MSUYA ..... 2ND APPLICANT

3.MBAZI STEVEN MRITA AS NEXT FRIEND OF CALVIN ERASTO MSUYA (MINOR) ..... 3RD APPLICANT

Versus

1. NDESHUKURWA ELISALIA MSUYA ..... 1ST RESPONDENT

2. MIRIAM STEVEN MSUYA ..... 2ND RESPONDENT

RULING

24th March, 2021 & 30th April, 2021

Masara, J.

In this Application, the three Applicants are petitioning the Court to join them in Miscellaneous Civil Application No. 66 of 2019 filed in this Court by the First Respondent against the Second Respondent. They have preferred the Application under Order I, Rule 10(2) and Section 95 of the Civil Procedure Code, Cap. 33 [R.E 2019]. The Application is supported by the joint Affidavit of Kelvin Erasto Msuya, Maureen Erasto Msuya and Mbazi Steven Mrita. The later is applying as the Next friend of Calvin Erasto Msuya, a Minor. The second Respondent, who is said to be in remand prison for a while did not oppose the application. The first Respondent opposed the Application by filing a counter affidavit attested by one Fadhili Thomas Nangawe, advocate for the first Respondent. The Application was heard through filing of written submissions.

Before dealing with the submissions, I deem it necessary to recount a brief background to the matter. The genesis of the application rests on Probate Cause No. 8 of 2013, where Miriam Steven Mrita, the second Respondent, was granted letters of Administration of the estate of the late Erasto Eliasaria Msuya. Miriam, being the late Erasto's widow, was appointed by this Court on the 5th December 2013 to be the administratrix of the state. She was ordered to file an Inventory within six months after her appointment, and to file true accounts within a year from the day of her appointment. Miriam did not file the inventory and the accounts as ordered. Following that failure, the Court acting *suo moto* closed the file. There followed a number of applications to revive the estate or to oppose the appointment of Miriam, none of them succeeded. Notably, Ms. Ndeshukurwa, the first Respondent, along with another person applied for revocation of Miriam's appointment in application No. 56 of 2018, whereby Mzuna, J struck out the application following a preliminary objection raised. That application was preceded by a ruling closing Probate Cause No. 8 of 2013 on the 11th September 2015 by Moshi, J. She stated as follows:

> *"The letters of administration were issued on 5/12/2013. Since then the administrator (sic) has not filed an inventory nor account of the estate. Also no other Application has been preferred. In the circumstances, I mark the cause closed. I so order."*

The record also reveals that there was Application No. 4 of 2016, where the court was moved to review the order made above, and the same Judge while dismissing the Application observed that "*the court did not commit any error in closing the probate cause.*"

Later on, the second Respondent was arrested on a charge of murder. She is still in remand prison. The first Respondent filed Application No. 66 of 2019 seeking to revoke the appointment of the second Respondent on a number of grounds, including failure to file an inventory and failure to distribute the proceeds of the estate to some heirs of the late Erasto. The Application was filed under a certificate of urgency in July 2019. It was met by a number of impediments including preliminary objections raised on behalf of the second Respondent and difficulties in securing the attendance in Court of the second Respondent. This Application was filed on 28th September, 2020.

Mr. Lengai Merinyo who appeared on behalf of the Applicant submitted in support of the Application contending that the Applicants ought to be joined in the Application as co-respondents so as to safeguard their interests in the estate of their late father. The interests include: that they are children of the deceased whose estate is being interrogated; that they have assumed ownership of the estate after the same was distributed to them; that the second Respondent is no longer the Administratrix of the estate of their late father as the Probate Cause was closed by this Court and that the first Respondent has no recognisable interest in the estate of their late father. The learned counsel urged the Court to consider including the Applicant in the Application as by excluding them their interests may be prejudiced. He referred to the decision of the Court of Appeal in ***Nuru Hussein Vs. Abdulghani Ismail Hussein*** [2000] TLR 221. On why he preferred the matter under the cited provisions, the learned counsel submitted that the Probate and Administration of Estates Act, Cap. 352 does not have a provision for joinder of parties.

The Applicants' submission was vehemently opposed by Mr. Ismael Nimrod Shallua, counsel for the second Respondent. He challenged both the legality of the application in terms of the applicable law and the substance of the Application. In his view, Order I Rule 10(2) only applies where the court is asked to remove the name of a party wrongly joined in a suit. On the substance of the application, the learned counsel was of the view that the Applicants have no room in application they want to be joined in as the application is merely aimed at revoking the powers given to the second Respondent, powers which she negligently abdicated. On a different tone, the learned counsel pointed an accusing finger to the counsel for the second Respondent, Mr. Shilinde Ngalula, contending that the application was preferred as a result of conspiracy instigated by the learned counsel to abuse the court process.

Mr. Merinyo, in a rejoinder submission sought to justify the reasons why he preferred the Application under Order I Rule 10(2) of the CPC. He also reiterated the prayers made in his submissions in chief. He discounted the allegations of abuse of the Court process.

I have dispassionately considered the affidavits both in support and against the application and the written submissions filed by the counsels for the parties. Two issues arise. One whether the Application is improper for wrong citation and whether the application has merits.

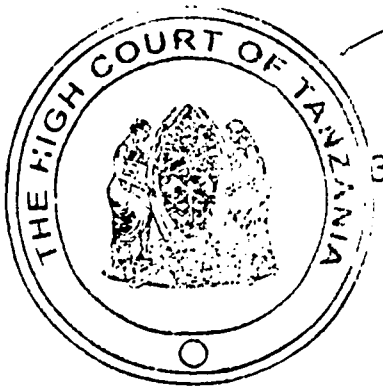
I agree with the position shared by both counsels that the Probate and Administration Act is silent on joinder of parties. While I do not condone reference to Order I Rule 10(2) on the grounds stated by the counsel for

the first Respondent, I have no doubts that Section 95 of the CPC can be relied upon to ground the application. I will leave it at that.

On the merits of the Application, I have encountered difficulties in comprehending the grounds relied upon by the Applicants. I believe that this is yet one attempt to frustrate timely determination of Misc. Civil Application No. 66 of 2019. As pointed out, the said application was filed under a certificate of urgency. It has been pending ever since due to a number of issues as stated. This application is, with due respect, one such attempt. The Applicants are not the only interested parties in the estate. At least that is not what they state in their affidavits. Further, if they have already been given a share of the estate, why would they be interested in an application to revoke the powers given to the Administrator. They do not say whether the inventory of the estate and the final accounts were made and filed before or after the cause was marked closed. It is my view, that the reasons advanced for them to be joined would best be grounds that could be used by the second Respondent in the application which they crave to join.

In the upshot, I am not convinced that there are compelling grounds necessitating this Court to join the Applicants as co-respondents. The Application is, as rightly contended by the counsel for the first Respondent, an attempt to avert the cause of justice by delaying determination of the application pending. I dismiss the Application accordingly. For the interest of justice, and considering the relationship of the parties, I direct that each party bears their own costs for this application.

Order accordingly.



Y. B. Masara

JUDGE

30th April, 2021