

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PROBATE & ADMINISTRATION CAUSE NO. 06 OF 2021

**IN THE MATTER OF THE ESTATE OF THE LATE MARIAM ISSA MJEMA
MARTHA ISSA MJEMA**

and

IN THE MATTER OF PETITION FOR GRANT OF LETTERS OF

ADMIN. BY NASIBU ISSA MJEMA..... PETITIONER

RULING

22nd & 30th July, 2021

RUMANYIKA, J.:

With respect to the estate of the late Mariam Issa Mjema @ Martha Issa Mjema (the deceased), at the instance of Hashim Issa Mjema, Idd Issa Mjema and Abituni Issa Mjema (brothers and sister of the deceased), the petition for grant of letters of administration was brought by Mr. Mashaka Fadhili Tuguta learned counsel who was, pursuant to court order of 28/06/2021, a public general citation through Mwananchi local newspaper of 1st July, 2021 made and now 14 days far beyond 21 days, and no caveat was filed (Rule 74 of the probate Rules GN. No. 10 of 1993 (the rules refers), by way of audio teleconference I heard the learned counsel through mobile number 0767828497. The application is supported

by affidavit of Nassibu Issa Mjema whose contents as said, the petitioner herein adopted much as the late lady Christian by religion she died intestate on 08/03/2021 survived by the above stated three (3) brothers and a sister as heirs and the estate was estimated at the value of not less than shs. 500.0m.

The issue is whether the petitioner is qualified and able to be granted letters of administration. The answer is, with greatest respect no for four (4) main reasons:-

One; the deceased lady may have had died childless yes, but the general principle required that only daughters and sons inherited not brothers and sisters unless to the satisfaction of probate court chances of there being survivor children, parents or such other genuine heirs were all exhausted and ruled out.

Two; whereas, value of the entire estate it was, in paragraph 4 of the supporting affidavit estimated at shs. 500,000,000/=, on that one both certificate as to the surety's financial position and the administrator's bond with sureties both appended to the petition were silent what a coincidence! I think in all fairness the provisions of Rules 69 of the Rules were intended

to protect both the heirs and the estates from no trustworthy petitioners if had cash was deposited so much the better and safer in my considered view.

Three; What I gather from Agendum/Item no. 3 of the proceedings of the family/clan meeting was that the petitioner may have had got majority votes therefore from that end proposed administrator of the estate yes, but like it turned out to be here, without, first of all the court getting to know who were the minority voters, and, where possible the reasons why they declined, the probate court cannot simply run the risks and speculate much as also none of the majority who voted in the petitioner appended their signatures on the copy of the proceedings also annexed more so where the respective secretary's name was not stated and it was a mere Photostat copy. I think, unless in that regard minutes of the family/clan meeting had left no such stone unturned, endless probate cause proceedings were there to stay.

Four; Mariam Issa Mjema @ Martha Issa Mjema was the deceased yes, but it was not, in the application established whether that she was one and the same person. No deed pol had been filed by her or something. If anything, it defeated both logic and law which required that any adult

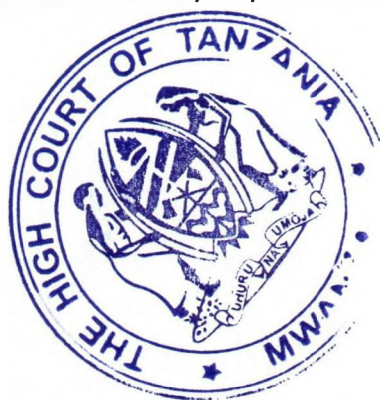
person of sound mind had mandate to change his name not, on his behalf by relatives or any other representatives especially where that person was dead.


With all the above stated short comings, the petition is dismissed. It is so ordered.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
29/07/2021

The ruling delivered under my hand and seal of the court in chambers this 30/07/2021 in the absence of the parties.




S.M. RUMANYIKA
JUDGE
30/07/2021