

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. CIVIL APPLICATION NO. 66 OF 2019

(Originating from the High Court of the United Republic of Tanzania, District Registry of Arusha at Arusha in Probate and Administration Cause No. 8 of 2013)

In the matter of the Estates of the late

ERASTO ELISARIA MSUYA

AND

In the matter of Application for revocation for grant of letters of Administration given to MIRIAM STEVEN MRITA on 5th November, 2013

through the Probate Cause No. 8 of 2013 by

NDESHUKURWA ELISARIA MSUYA.....APPLICANT

VERSUS

MIRIAM STEVEN MRITA..... RESPONDENT

RULING

14/09/2021 & 27/10/2021

D. C. KAMUZORA, J

The Applicant Ndeshekurwa Elisaria Msuya is the biological mother of the deceased Erasto Elisaria Msuya who passed away on 07/08/2013. She

approached the courts door in a need to take over the administration of the estate of her late son and prayed the respondent's appointment to be revoked on account that the respondent has failed to discharge the administration duties. This application was brought under the provision of section 49(1) (d)(e) of the Probate and Administration of Estates Act, Cap 352 R.E 2002, and Rule 29 of the Probate Rules. The chamber application was supported by affidavit of Ndeshukurwa Elisalia Msuya, the Applicant.

The estate of the late Erasto Elisaria Msuya has a long and challenging history with a total number of 9 case files instituted as causes and applications including 2 Probate Causes and 7 Miscellaneous Civil Applications. A number of 6 different Judges were involved in the matter arising from the Estate of the deceased Erasto Elisaria Msuya including; **Hon. Moshi J**, who attended one probate cause and two applications; Probate and Administration Cause No. 8 of 2013, Miscellaneous Civil Application No.217 of 2015 and Civil Review No.4 of 2016. **Hon. Masengi J**, attended one application which is Misc. Civil Application No. 64 of 2016, **Hon. Dr. Opiyo J**, attended two matters; Probate and Administration Cause No.3 of 2016 and Miscellaneous Civil Application No.35 of 2017. **Hon. Mzuna J**, attended one application which is Miscellaneous. Civil

Application No. 35 of 2017. **Hon. Masara J**, attended Miscellaneous Civil Application No. 94 of 2020 and the present Miscellaneous Civil Application No. 66 of 2019 that was later re-assigned to me, **Kamuzora J**.

The brief facts of this matter albeit is that, the deceased left behind his wife with three children; Kelvin Erasto Msuya, Maurine Erasto Msuya and Calvin Erasto Msuya, another child not born by the wife by the name of Gloria Erasto Msuya, his two parents and siblings. Ndeshukurwa Erasto Msuya is the mother of the deceased Erasto Elisaria Msuya and the Respondent Miriam Steven Mrita is the wife of the deceased. The respondent applied before this court and was appointed the administratrix of the estate of her late husband Erasto Elisaria Msuya. An order appointing her was issued on 05/12/2013 in Probate and Administration Cause No. 8 of 2013. She was unable to file the inventory for purpose of terminating the probate matter and this court suo motu on 11/09/2015 closed the probate cause.

The respondent then filed Miscellaneous Civil Application No.217 of 2015 but it was struck out. The respondent again tried another bite and instituted another Miscellaneous Civil Application No. 64 of 2016. This time the respondent's prayer was for an order to extend time within which to

file an application for review of the court's order dated 11/09/2015 which closed down the probate matter. The application for extension of time to file review was granted and the respondent was allowed to file the review application within 14 days. Then, Civil Review No.4 of 2016 was instituted by the respondent challenging the order of this court that closed Probate and Administration Cause No. 8 of 2013. The respondent requested this court to vacate its previous order and allow the respondent to exhibit the inventory and accounts in respect of Probate and Administration Cause No. 8 of 2013 but the application for review was dismissed by this court on 4th November 2016.

After the dismissal of the application for review, another application for letters of Administration was instituted as Probate and Administration Cause No. 3 of 2016 by Elisaria Elia Msuya (deceased's father) and Dr. Esther Elisaria (deceased's sister). They prayed to be appointed as joint administrators of the estate of the deceased. The preliminary point of law was raised that Miriam Steven Mrita was still legally appointed administratrix of the estate of the deceased thus, the application was struck out for being prematurely filed. By the time Probate and Administration Cause No. 3 of 2016 was instituted and decision made on 11/08/2017, the respondent was

already under the custody. It was submitted and not disputed that, the respondent was arrested on 05/08/2016 and detained at Segerea prison for the offence of murder and that case is still pending to date as Criminal Session No. 103/2018.

After the Probate and Administration Cause No. 3 of 2016 was struck out by this court, another application was filed to this Court as Misc. Civil Application No. 56/2018 by Elisaria Msuya (deceased's father) and Ndeshakurwa Msuya, (deceased's mother). They applied for revocation of the Administratrix for the reason of failure to comply with legal requirement of filing the inventory and accounts of the estate. The Application was struck out at preliminary stages for incompetency for failure to properly move the court. After that application was struck out, the present application, Misc. Civil Application No. 66/2019 was filed in court by Ndeshakurwa Elisaria Msuya (deceased's mother) against the Respondent (deceased's wife). This application is again for the revocation of the respondent who was appointed to administer the deceased's estate in Probate and Administration Cause No 8 of 2013. Two reasons were put forward in the applicant's affidavit that, **one**, the appointed administrator is unable to fulfill the duties under administration for being in prison, **two**,

that, the respondent has failed to exhibit the inventory and account as so required by the law.

When the matter was called for hearing, Mr. Ismail Shalua and Mr. Fadhili Nangawe appeared for the applicant while the Respondent was represented by Mr. Shilinde Ngalula and the respondent attended the hearing via Video Conference connected to Segerea Prison.

In his submission in support of the application, the counsel for the Applicant prayed to adopt the chamber summons and the affidavit by the applicant to form part of their submissions. The applicant's counsel submitted that, their application is basically based on the revocation of the letters of Administration issued to the respondent. He explained that, after the respondent was appointed administratrix of the deceased's estate, she has not filed the inventory and true statement of account and that is contrary to section 107 (1) of the Probate and Administration of Estates Act. That, for that whole period when she was appointed as Administratrix of the estate, the respondent is behind bars (in prison). That, among the reason that forced the applicant to prefer this application is that, there was a complaint of lack of respondent's support raised by one of the deceased's children by the name of Gloria Erasto Msuya. That Gloria is among the

beneficiaries of deceased's estate and she was studying in Canada since 2014 but she was unable to continue with her studies for the respondent's failure to pay tuition fees and upkeep allowances. For that matter, the applicant thinks that the respondent has failed to execute administration duties contrary to section 49 (1) of the Probate and Administration of Estates Act Cap 352 RE 2019, specifically section 49 (1) (d) and (e).

The counsel for the applicant submitted further that, the court is empowered to revoke the administrator's appointment if any of the conditions specified under the law are not met i.e.,

1. The grant has been useless and inoperative. That, the appointed administrator is unable to fulfill the duties under administration for being in prison thus the appointment is useless as she cannot undertake administration duties.
2. Failure to file inventory within 6 months. That, based on subsection 1(e), the respondent has failed to exhibit the inventory and account as so required by the law.

The counsel for the applicant was of the view that, if this court is satisfied that the requirements were not met by the respondent, it may

revoke the appointment of the respondent and appointment another administrator who will be fit and it may be the Applicant if the court is pleased and satisfied. The counsel for the applicant supported his argument with the decision of this court in **Joseph Mniko & Others, Probate & Administration cause No. 48/1996 Pg. 6** where the court made a decision on the failure to file inventory as it can result into the disqualification of the person appointed as administrator of the estate. The counsel for the applicant reiterated the prayer that the respondent be revoked for being not qualified to be the Administrator of the deceased's estate.

The counsel for the applicant does not agree with the facts deponed by the counsel for the respondent under paragraph 5 of the counter affidavit which suggest that the Applicant who is the deceased's mother is not the beneficiary of the deceased's estate who has died as a Christian and that, the Administration of the estate was to be guided by the Indian succession Act of 1865. The counsel for the applicant submitted that, section 88(2) of the Probate and Administration of Estates Act Cap 352 RE 2019, did not expressly/specifically state the law to be the Indian Succession Act but since the Indian Succession Act is applicable in

Tanzania, that is why in practice people fall within the Indian succession Act. The counsel Mr. Shalua insisted that, the application before this court is for revocation of letters of Administration thus the paragraph which deals with the applicability of the Indian succession Act is inapplicable under the circumstances. He urged this court to direct itself to determine if the respondent is still fit to stand as administrator while she has failed to execute her duties of administration. He referred the case of **Sekunda Mbambo Vs. Rose Ramadhani TLR 2004, Pg. 439, 444 & 445** to where an administrator was mentioned to be a widow/widower, parents or child of the deceased or any close relative and if such people are not available or if they are found unfit in one way or another, the court has power to appoint any other fit person or authority to discharge this duty. Mr. Shalua insisted that, even the parent who is the applicant in this application is a fit person to be appointed to administer the deceased's estates. He thus prayed for this court to appoint a fit person to administer the deceased estate since even the Applicant propose that a fit person be appointed by the court after revocation of the respondent.

In reply, the counsel for the respondent Mr. Shilinde Ngalula started by narrating the historical background of the matter which I do not intend

to reproduce. In relation to the present application Mr. Shilinde Ngalula prayed this court to adopt the counter affidavit of the respondent and all annexures as part of the records opposing the application. He pointed out that, the affidavit and the submission by the counsel for the applicant suggest three reasons for revocation of the respondent which are;

- i) That, there is a deceased's child by the name of Gloria Erasto Msuya who is complaining on failure to get support in her studies in Canada.
- ii) That, the respondent be revoked because she has failed to account for the inventory and distribution of the deceased's Estate as required by section 107 of the Probate and Administration of Estates Act, Cap 352 RE 2019.
- iii) That, the administration is useless because administratrix Miriam Steven cannot execute her duties as Administrator of the estate as required because she is in prison.

Submitting in challenging the application Mr. Shilinde argued that, the applicant is not the beneficiary of the estate of the deceased Erasto Msuya by virtual of being a mother to the deceased. That, the law does not give her automatic right to inherit the deceased's estate because the

deceased was a Christian and he died and was buried following Christian rites (Lutheran). That, since the right to inherit is recognized by the law depending on the origin of a person and his belief, the deceased Erasto Msuya who was a Christian, professed Christian and according to the law, distribution of the estate of deceased who is a Christian is governed by the Indian succession Act of 1865 which is applicable in Tanzania by virtue of the Judicature and Application of laws Act (JALA) Cap No. 358 R.E 2002. The counsel for the respondent explained that, according to that law, part 5 section 3 states that, upon death of a man, all properties resolve to the wife. That, 1/3 of the properties is the right of the widow and 2/3 of remaining estate is divided to linear descendants. Since the deceased left children, 2/3 is to be divided to his children.

Regarding the provision of section 88(2) of the Probate and Administration of Estates Act Cap 352 R.E 2019 cited by the counsel for the Applicant, Mr. Shilinde submitted that, the counsel misdirected himself by stating that the section is not specific on what law is applicable to the estate of deceased who is a Christian. He explained that, this section acknowledges different laws which prescribe procedure for distribution of the deceased estate including; the Indian succession Act which deals with

probate matters for Christians, the customary law for estate administered under customary rites, Islamic law for Muslim and Hindu Law for people prophesying Hindu. The counsel was of the view that, the applicant is not the beneficiary of the estate of Erasto Elisaria Msuya for the reasons listed in the applicant's affidavit at paragraph 4,5,6 and 7.

On the submission that the respondent should be revoked because of the complaint brought by Gloria Msuya, the counsel for the respondent submitted that, Gloria is the beneficiary of the estate of Erasto Elisaria Msuya but it is not true that she was not supported for her tuition fees and other costs in Canada. He explained **first** that, the respondent being her mother who was taking care of her after the deceased's death, she sent Gloria together with her siblings to study abroad something not done by her father before when he was still alive. That, while on study, the respondent through family company SG Northern Adventures Limited have been paying fees and all needs for her studies in Canada. To support this argument, he referred the documents attached to the respondent's counter affidavit proving communication and payments done by SG Northern Adventures Ltd to Gloria Erasto Msuya which is marked MM4 Collectively. The counsel insisted that, the complaint from Gloria which is attached by

applicant under paragraph 6 and marked EENEM3 was not explained to by the counsel for the applicant but it shows that it is a print out of a letter alleged to be written by Gloria Msuya. That, this exhibit is not satisfactory to prove the complaint because the originality of this letter is unknown and no original letter was brought to this court. That, if Gloria Msuya had a genuine complaint, the same could be sent to the applicant or to court by way of affidavit. That, Gloria Erasto Msuya has already returned from Canada and if she has any complaint, she could have filed the same in court. The counsel urged this court not to consider that complaint in this application.

Second that, it is true that the respondent was unable to file the inventory and accounts for the deceased estate but this was not intentional as it was associated with challenges in collection of the deceased properties and payment of debts. That, when she came to court, she was late but applied to be allowed to file the inventory and accounts out of time but her application was dismissed in Civil Application No. 217 of 2015. That, after the dismissal of that application, the respondent filed another application praying for extension of time to file application for Review of the order which closed the Probate cause. That, the move was through

Application No. 64/2016 which was granted by the court. That, the respondent then filed Application for Review No. 04 of 2016 but it was struck out for lack of jurisdiction.

Mr. Shilinde further submitted that, the challenge in this matter started on the original Probate Cause No. 8 of 2013 to where the case file was closed by court without following legal procedures. That, the law requires that, where there is delay filing the inventory, the administrator has to be heard before the probate matter is closed. That, the requirements are well started under the Probate Rules. The counsel insisted that, since the application was brought referring Probate Case No. 8 of 2013 which was closed, this court has no legal basis to hear and determine this application because doing so will result in this same court to open the case file that was closed by the court. Mr. Shilinde was of the view that, this court is functus official for its decision is already made and even Hon. Moshi J. failed to review her decision on account that she was functus official to deal with the matter that was already closed. He referred the case of **Bibi Kisoko Mohamed Vs. Minister of Land and urban Development TLR (1983) Page 250. Saada Rashid Vs. Abdallah**

Rashid PC Civil Appeal No. 12/2020 (unreported) Pg. 6 and the decision by Hon. Moshi J, attached to the counter affidavit.

The counsel added that, although the respondent failed to file the inventory, and despite this court being wrong under the law in its order closing the file, that decision is legally binding and proves that the probate matter was concluded and closed and for that, the office of the administrator was not there from the date of closure of file. That, from the date of that order, the respondent had completed administration duties and was no longer the administrator and the probate matter that was already closed.

~~On that ground, Mr. Shilinde reiterated that this application has no~~ legal basis and if there is any complaint on the closure of the probate matter the same was to be referred to the Court of Appeal. That, this court cannot revoke the person who is not administrator of the estate of the deceased. He therefore, prayed for this court to dismiss this application.

On the 3rd reason that the respondent is remanded in prison/in custody and that through paragraph 5 of the affidavits the respondent delegated her powers of administration to another person, the counsel for

the respondent submitted that, such argument baseless. The counsel explained that, the respondent has never issued Power of Attorney to Mbazi Steven Mrita. That, the attached document marked EENEMZ is a letter from the respondent to her employees and does not show that she issued Power of Attorney for the administration of estate to Mbazi Steven Mrita. That, the Power of Attorney if issued, the same could have been brought to court. He insisted that, the Power of Attorney was not necessary as the office of administration was already closed.

In conclusion, Mr. Shilinde prayed for this court while making its decision to consider the following; that, the respondent has already distributed the estate of the deceased Erasto Elisaria Msuya to the lawful heirs and what remained was the filing of inventory and accounts to close the probate cause. That, the applicant Ndeshakurwa Elisaria, the deceased's father Elisalia Msuya and all deceased's siblings Esta Elisalia, Aneth Msuya, Happy Alex Mdachi, Antuja Simon Msuya, Bahati Godfrey Shujaa and Joyce Simon Msuya received distribution of the deceased estate in terms of cash amount Tshs. 893,702, 820.05. That, the applicant Ndeshakurwa Msuya received Tsh. 225, 925,513 as her share. The proof for payment was attached as annexures MM5 to the application and the

counsel prayed for this court to consider the same as proving that the distribution of the deceased's estate was completed.

Regarding the administration, the counsel for the respondent submitted that, if this court finds it necessary to revoke the appointment if it still exists, then after the revocation a fit person be appointed to administer the deceased's estate. The counsel was of the view that, the deceased has left children and three of them have already attained age of majority and they can administer the estate of their deceased father. That, they are well educated and can manage the administration of the estate and they are all beneficiaries to the estate of the deceased.

~~The applicant's rejoinder was made Mr. Fadhili Nangawe who~~ submitted that, the argument that the probate cause was closed is baseless. That, such argument was brought as an objection in this same application and it was heard and determined by Hon. Masara J in his ruling made on 05/06/2020. That, all authorities cited by the counsel for the respondent in his submission were cited during objection but still the objection was dismissed thus such argument was decided upon by this court.

The counsel reiterated that, the application for revocation was brought for two reasons and the 3rd reason was drawn by the counsel for the respondent on his own as such reason was discussed on the second reason in the applicant's submission. The counsel explained that, by being behind the bars, the respondent could not continue with her duties to administer the estate. He insisted that, the applicant qualify to bring this application and the law acknowledges that fact. That, the Indian succession Act cited by the counsel for the respondent acknowledge lineal meaning relatives, brother, uncles, grandmother or mother thus, the submission that the applicant is not a beneficiary is baseless. Referring the case of Sekunda Mbwambo the counsel for the applicant insisted that, the law is clear that not only beneficiary can bring application of this nature.

Regarding the interpretation of section 88 of the Probate and Administration of Estates Act, the counsel for the applicant submitted that, they were right in interpreting that provision. That, the law does not enforce the applicability of the Indian succession Act.

Regarding failure to file inventory, the counsel for the applicant submitted that, the argument by the respondent's counsel that non-filing of inventory was not intentional is a weak argument. That, the respondent

was appointed on 2013 but the application for extension of time to file inventory was filed on 2016, almost three years after being appointed. That, there is no explanation as to why the inventory was not filed for the whole period before 2016. That, the argument by the counsel for the respondent is an afterthought because Probate Cause No. 8/2013 was closed on 11/09/2015 and the respondent filed an application in court on 2016 after the order closing the file was issued.

On the submission that there were challenges in collecting the deceased's estate and payment of debts, the counsel for the applicant submitted that, such submission is baseless as it was not even disclosed in the respondent's counter affidavit. He insisted that, the counsel for the respondent in his submission has not objected the application, he therefore prayed for this application to be granted. On the issue as to who is to be appointed, the counsel for the applicant prayed for the law to be considered.

I do not intend to address the issue relating to who has the right to inherit and who is not because, that is not the gist of this application. The present application is centered on revocation of the grant issued to the respondent. Thus, whether the applicant is the beneficiary or not is not the

matter to be discussed in this matter as there is no complaint of the exclusion of the beneficiaries brought before this court. I will therefore deliberate on the issue related to the relief sought in this application.

I have considered the records in this application, the affidavit in support of the application, the counter affidavit opposing the application and the length submissions by the counsel for the parties. There is no doubt that the gist of this application is tressed back in Probate and Administration Cause No 8 of 2013. There is no dispute that, the said Probate matter was marked closed by the order of this court dated 11/09/2015. It is not the first time the issue on the validity of letters of administration issued to the respondent is raised and deliberated upon by this court. After the order closing the file and dismissal of the respondent's review application intending to vacate such order a fresh Probate and Administration Cause No. 3 of 2016 was instituted by the deceased's father (Elisaria Elia Msuya) and deceased's sister (Dr. Esther Elisaria). Mr. Shilinde Ngalula, the counsel for the respondent in this application also represented the same respondent (Miriam Steven Mrita) in the above Probate matter. He raised the objection that, in view of existing legally appointed administrator of the deceased's estate whose powers of administration was

not revoked by any court in Tanzania, the petition for new letters of administration for the same deceased was misconceived and pre-maturely made. This court sustained the objection and observed that, Probate Cause No. 3 of 2016 was prematurely filed as it was filed while there was existing legally appointed administrator of the deceased's estate. In that cause it was made clear that, this court acted suo motu in closing Probate Cause No. 8 of 2013 and that order simply connotes that the respective file was locked down and no new records can be carried out or added therein at the level of this court. This court went further by stating that, the court was not moved to revoke the appointment of Miriam in terms of section 49 of the Probate and Administration of Estates Act. That, the closing of the file did not revoke the letters of administration issued to the former administrator and the court could not appoint another administrator while the former was still subsisting.

This same issue was raised by the counsel for the respondent Mr. Shilinde Ngalula in this application by way of preliminary objection that, this application is bad in law for being brought under non-existing probate cause No.8 of 2013. This court overruled the objection and considered important for this application to be determined on merit.

It is unfortunate that, in course of submitting against the application Mr. Shilinde came up again with the same issue that the application was wrongly preferred under non-existing Probate Cause No. 8 of 2013 as the same was marked closed. He was of the view that, from the date the probate cause was closed, the office of administration was no longer there and the respondent was discharged of the administration duties. That, it was wrong to apply for revocation of the respondent who is no longer the administrator of the deceased's estate.

I do not intend to discuss much about the previous finding on the issue relating to the closure of the file in Probate Cause No 8 of 2013. That issue was well deliberated upon by this court which came to a conclusion that by closing the case file, the court did not revoke the appointed administrator of the deceased estate. In addition, the order closing the file did not either revoke the letters of administration or discharge the administrator after she had executed her administration duties. There is no dispute that the inventory and final account was not filed in court by the respondent until now. While closing the file in Probate Cause No 8 of 2013, the court did not give any order revoking or discharging the administrator from the administration duties.

Taking an example of a civil suit, when the judgment is made on merit by the court, it can only be overturned by the order of the superior court or, vacated by the same court where it was passed ex-parte. After the judgment it follows the execution process. Similarly, in Probate matters, the order appointing the administrator stands as a judgment of the court and the same remain valid unless overturned by the court of competent jurisdiction. The administration duties are consequential to appointment just like execution process. Thus, closing the file for failure to undertake the execution process in probate matter which is filing the inventory and final account did not in any way revoke the respondent's appointment. The respondent is still legally appointed administrator of the estate of the deceased Erasto Elisaria Msuya as prior held by this court.

This was also the position by Mr. Shilinde in Probate Cause No.3 of 2016 but to my surprise in this matter, he changed to a different position and insisted that the respondent was no longer the administrator since the date the case file in Probate cause was closed. Nevertheless, the position of this court is the same that, the respondent Miriam Steven Mrita is still a legally appointed administrator of the estate of the deceased Erasto Elisaria Msuya as the letters of administration issued to her are still valid. She is until now

not been revoked as per the requirement of section 49 of the Act or discharged the administration duties of filing inventory and final accounts of the deceased estate. Therefore, respondent being the valid administrator of the estate of the deceased, the present application for revocation against her was properly preferred.

Now the question is whether the reasons put forward in this application suffice the revocation of the respondent from administration of the deceased estate. Revocation of the grants and removal of executors is governed by the provision of section 49 of the Probate and Administration of Estates Act Cap. 352 RE 2002.

~~49. (1) "The grant of probate and letters of administration may be revoked or annulled for any of the following reasons—~~

~~(a) that the proceedings to obtain the grant were defective in substance;~~

~~(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;~~

~~(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;~~

(d) that the grant has become useless and inoperative;

(e) that the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XI or has exhibited under that Part an inventory or account which is untrue in a material respect.

(2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the High Court may suspend or remove an executor or administrator (other than the Administrator-General or the Public Trustee) and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate.

The applicant in her affidavit pleaded two reasons related to paragraph (d) and (e) above in the following words;

1. That, the grant has been useless and inoperative as the appointed administrator is unable to fulfill the duties under administration for being in prison and cannot undertake administration duties.
2. That, the respondent has failed to exhibit the inventory and accounts within six months as so required by the law.

I will start with the reason that the respondent has failed to exhibit the inventory and accounts within six months. The counsel for the applicant claimed that, the respondent failed to exhibit the inventory and final account on time as required by section 107 of Probate and Administration of Estates Act Cap 352 RE 2002. That, the respondent's conduct resulted into a complaint from one of the beneficiaries by the name of Gloria Erasto Msuya who was in studies and depended on the estate for college support. Section 107(1) of the Act read;

*107. (1) "An executor or administrator shall, **within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint or require, exhibit in that court** an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and in the manner in which they have been applied or disposed of."*

There is no record showing that the administrator filed an inventory and final accounts within the time provided. The remedy for an

administrator who have failed to discharge his duties is to be revoked as provided in the case of **Daudi Mahende Kichonge V Joseph Mniko and Others. Probate and Administration cause No 48 of 1996** (HC DSM Unreported). The respondents' advocate admitted to the fact that the respondent was unable to file the inventory and final accounts on time. He however came up with the argument that, such failure was not intentional as it was associated with challenges in collection of the decease's estate and payment of debt. He also added that, the respondent tried in several occasions to find a chance to file the inventory and final accounts but in vain.

I do not agree with the argument by the counsel for the respondent that failure to file inventory and account on time was associated with challenges in collection of the decease's estate and payment of debt. That reason was not mentioned in the counter affidavit opposing the application. Under paragraph 7 of the counter affidavit, it was stated that, the respondent was prevented to file the inventory and account by operation of the decision/order of the High Court of Tanzania at Arusha dated 15th September, 2015 which closed Probate Cause No. 8 of 2013 without giving the administratix/respondent a right to be heard. In that regard, claiming

at this stage that the respondent was facing challenge in collection of the estate and payment of debt is an afterthought and unacceptable. In my view, the respondent contravened the requirement of the law for failure to exhibit the inventory and accounts within six months. The administratrix had a legal duty to exhibit an inventory and complete statement of all the assets and liabilities of the deceased's estate within six months of her appointment. This duty is in accordance to section 108 of the Probate and Administration of Estates Act Cap 352 RE 2002.

*108. (1) "The executor or administrator shall, with reasonable diligence, **collect** the property of the deceased and the debts that were due to him, **pay** the debts of the deceased and the debts and costs of administration, and **distribute** the estate to the persons or for the purposes entitled to the same or to trustees for such persons or for the purposes entitled to the same or to trustees for such persons or purposes or in accordance with the provisions of this Act, as the case may be."*

Thus, with the above provision, the administrator is required within six months of appointment or within such further time as the liabilities court may allow, to submit to the court a true and complete statement, all the assets and liabilities of the deceased persons' estate and, at such intervals thereafter as the court may fix, submit to the court a periodical

account of the estate showing therein all the moneys received, payments made, and properties or other assets sold or otherwise transferred by him/her and the distribution of the remained properties to the rightful heirs/beneficiaries.

The respondent did not file an inventory within six months from the date of her appointment as required by law. The respondent was appointed on 05th December 2013 thus she was duty bound to file the inventory on or before 05 June, 2014. She defaulted and the file was closed on 15th September, 2015 after one year and nine months had passed. The respondent started to take action by 2016 when almost two years has passed. This surface to say that she violated the law and no reasons were given to justify such a delay. The contention by the counsel for the respondent that the respondent executed her duties and distributed money to the beneficiaries is unjustifiable. That distribution may be truly done but if exhibited through inventory and account to be filed in court in Form 80 and 81 as per the requirement under Rule 106 and 107 of the Probate Rules, there is a breach by the administrator. The law imposes three mandatory duties upon the administrator as per section 108 (1) of the Act; to collect properties of the deceased and debts, to pay debts and

distribute the estate. The execution of those duties is reflected by filing inventory in Form 80 and account in form 81. This court while discussing duties and functions of an administrator in probate matter originating from Primary Court in the case of **Hadija Saidi Matika and Awesa Saidi Matika, PC Civil Appeal No. 2 of 2016** [H/C Mtwara Unreported] had this to say regarding the function and duties of the administrator -

*"One **collecting the assets of the deceased** This include both fixed and movables. It also involves going to the bank and collecting what might be there. He can also sue people who may refuse the requests. Two, **to identify the heirs**. It is now generally accepted that the heirs under customary law are the spouse or spouses of the deceased and his or her children. Uncles, aunts, sisters and brothers are not heirs. In the absence of a WILL, they should not be given anything save at the free will of the heirs. Three, to **identifying and pay the debts of the deceased**. Four, to **distribute the assets to the heir**; and Five, to **file inventory and statements of accounts (forms V and VI)**."*

These duties are not much far from what is provided for under section 108 of the Probate and Administration of Estates Act and the Probate Rules under Rule 106 and 107. There is no evidence that the appellant discharged all the above functions and duties of an administrator.

It was contended by the counsel for the respondent that the respondent has already distributed the deceased estate and he mentioned the money that was distributed by the respondent. I still insist that the distribution of the said money was supposed to be exhibited in court by filing Form 80 and 81. It was also submitted that the deceased left other properties apart from money but nowhere it is indicated how those properties were distributed. In addition to the above, it is a good practice that once the administrator lodges a statement of final account, the court has to make it known to the heirs, debtors and creditors and ask them to file objections, if they so wish. See the decision in the case of **Nuru Salum and Husna Ali Msudi Juma, PC Probate Appeal No.10 of 2019** (Rumanyika J,) and **Hadija Saidi Matika and Awesa Saidi Matika** (supra). It was held that,

"In practice, in a good system of administration of justice, once they are filled, the court must cause the same to be known to heirs, debtors and creditors and ask them to file objections against them, if they so wish. If there is an objection, the court will be at liberty to return them to the administrator for rectification as was said by this court in or proceed to hear the parties and make a ruling on the matter."

In the present matter nothing was done to show that the inventory and account were filed and the beneficiaries were called upon to inspect the same and be satisfied on the mode of collection and distribution. I therefore insist that, the duty to file Form 80 and Form 81 within six months is mandatory. The administrator has no choice but to comply. As well held in **Beatrice Brighton Kamanga & Amanda Brighton Kamanga v. Ziada William Kamanga Civ. Rev. No. 13/2020 (unreported) H/C Dar es salaam** there is no endless administration or a life administrator in our laws. Section 107 of the Act gives the mandate to the court to revoke the grant of probate where the administrator does not submit to the court a true and complete statement in Form 80 within six months, containing all the assets and liabilities of the deceased person's estate and does not submit a periodical account of the estate in Form 81 showing therein all the moneys received (if any), payments made(if any) and properties or other assets sold or otherwise dealt by him/her within such period as directed by the court and the distribution there to.

It is clear from the record that the late Erasto Msuya left behind a number of properties as depicted in the family minutes attached to Probate and Administration Cause No. 8 of 2013. One would have expected those

assets to feature in Form 80 as a statement of all the assets and liabilities of the deceased persons' estate and how she distributed them. The reason of failure to file inventory and account is therefore proved by the applicant.

On the reason that the grant has been useless and inoperative as the appointed administrator is unable to fulfill the duties under administration for being in prison and cannot undertake administration duties, there is no dispute that the respondent is held in prison for the offence of murder. There is no argument brought by the counsel for the respondent to counter the fact that by being in prison, the respondent cannot effectively execute the administration duties. I thus agree with the counsel for the applicant that the administrator is unable to fulfill the duties under administration for being in prison and this surface her revocation so that other people can be appointed to administer the deceased's estate.

From the above arguments I find that, the respondent no longer qualifies to administer the deceased's estate for her failure or delay to exhibit an inventory and account for all assets and liabilities and the fact that she is still in prison for the offence of murder to which no one knows when the same will be determined. The deceased's estate needs to be administered and interests of the beneficiaries be protected. I therefore

revoke the respondent's grant. The respondent is directed to surrender the revoked grant pursuant to the provision of section 51 of the Probate and Administration of Estates Act, Cap. 352 R.E 2002.

The Applicant's advocate requested me to appoint the applicant as administrator of the deceased's estate. The records shows that the applicant is sick suffering from heart decease and need special treatment as per paragraph 7 of the applicant's affidavit supporting the application. It is my considered view that, much as there is a claim that the applicant is sick, it is doubttable if she will effectively perform the administration responsibilities. Apart from the respondent and the applicant, both counsel for the parties suggested the appointment of a fit person to administer the

estate. It was made clear by the counsel for the respondent that three children of the deceased have attained the age of majority and can take over administration duties. Although there is no application made by either of the deceased's children in need to be appointed to administer the deceased's estate, they are still beneficiaries to the estate. There was a time three children; Kelvin Erasto Msuya, Maurine Erasto Msuya and Calvin Erasto Msuya under next friend Mbazi Steven Mrita, applied to be joined in this application vide Miscellaneous Civil Application No. 94 of 2020. In the

affidavit supporting the chamber application they attached their birth certificates showing that Kelvin was born on 16th March 1997, Maurine was born on 14th June, 2002 and Calvin was born on 15th March 2006. With such records Kelvin and Maurine have attained the age of majority as Kelvin is 24 years of age while Maurine is 19 years of age by now. There is other undisputed fact that Gloria Erasto Msuya has also attained the age of majority although her age was not specifically mentioned. It was also submitted that Gloria was studying in Canada pursuing degree. It was also submitted by the counsel for the respondent and not countered by the counsel for the applicant that Gloria has already returned back to Tanzania. With the available records, it is my considered view that the deceased's children can properly handle their father's estate by virtual of their age and the fact that they are well educated. Kelvin being the eldest son of the deceased with 24 years old holds enough qualification of being appointed the administrator of the estate of the deceased. But considering the fact that Gloria was born by a different mother and there was a complaint regarding her welfare I find that, for interest of justice she be part of the administration of the deceased's estate.

Consequently, I appoint Kelvin Erasto Msuya and Gloria Erasto Msuya to administer the deceased's estate. They will be required to cooperate and file the inventory/a true account of the deceased's estate within three months from today and a statement of final account in the next three months. I further direct them to cooperate and bring the administration of the estate of their late father to rest or else they will be removed from the administration and a neutral person appointed. Given the nature of the application, I will make no order as to costs. It is ordered accordingly.

DATED at **ARUSHA**, this 27th Day of October, 2021




D.C. KAMUZORA

JUDGE