



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 843 OF 1990

IN THE ESTATE OF DYSON PERESI NGALAWESA (DECEASED)  
APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION

CORAM: TAMBALA, J.  
Kombezi of Counsel for the Applicant  
Msiska of Counsel for the Respondent  
Kholowa, Court Clerk

RULING

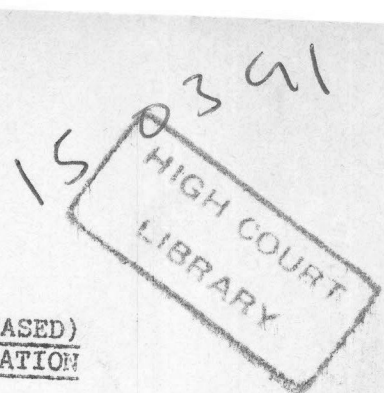
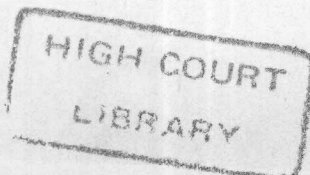
On 31st July, 1990 Mr. Dyson Ngalawesa died intestate at Mangochi District Hospital. He is survived by two widows namely Mrs. Lucy Ngalawesa, 1st widow and Mrs. Margaret Ngalawesa, 2nd widow. The 1st widow had eight children with the deceased while the second widow had three children. The eleven children survived the deceased. The other heirs of the deceased include Mr. Weston Kachamba, step-brother of the deceased, and a sister of the deceased.

The estimated gross value of the deceased's estate at the time of his death was K291,000.00. This includes cash in the bank amounting to K80,000.00. The deceased was running an apparently successful fish business before he died. At one stage in the course of running the business he acquired a loan of K70,000.00 from Indefund; the money was invested in the business. There is also an outstanding loan of K6000.00 from Ministry of Agriculture and Natural Resources. The loan was also incurred in connection with the same fish business.

On 13th September, 1990 Mr. Weston Kachamba, deceased's step-brother, and Mrs. Margaret Ngalawesa, 2nd widow of the deceased, applied through their counsel to this Court for the grant of letters of administration relating to the deceased's estate. The Court granted the application on 26th September, 1990. On the same day Messrs Lilley Wills and Company, acting on behalf of Harton Ngalawesa, the deceased's son from the 1st wife and other heirs of the deceased, filed before this Court a caveat objecting the granting of letters of administration to Margaret Ngalawesa and Weston Kachamba.

In support of granting letters of administration to Weston Kachamba and Margaret Ngalawesa, Mr. Makhalira argued that these persons are entitled to be granted letters of administration in terms of section 42-(1) of the Wills and Inheritance Act. Mr. Msiska, acting for the caveator, expressed doubt that letters of administration in this matter could be granted to Weston Kachamba. I entertain no such doubt myself. I am of the clear view that letters of administration could be granted to Weston Kachamba as well as Margaret Ngalawesa in connection with the deceased's estate.

In an affidavit sworn on 15th November, 1990 Mrs. Margaret Ngalawesa depones that she used to run the fish business with the



deceased before he died. Mr. Makhalira then argued that since the fish business represents the main income generating activity it would be necessary to grant letters of administration to a person who would competently run the fish business and produce income for the benefit of all the heirs of the deceased.

In an affidavit sworn by Harton Ngalawesa on 5th February, 1991, Harton Ngalawesa states that it is untrue that the deceased used to run the fish business with Margaret Ngalawesa. He deposes that this lady was simply staying with the deceased as a house wife and that as a matter of fact it was himself and the deceased who were running the fish business at Mangochi. I believed Harton's statement. I thought that it contained the truth. I am prepared to find that Margaret Ngalawesa lived with the deceased as a house wife only and took no part in the deceased's fish business. I find that after completing school, Harton Ngalawesa used to assist the deceased in running the fish business. I am satisfied that Margaret Ngalawesa has no experience at all in running the fish business.

I would agree with Mr. Msiska that the person who should be granted letters of administration must be a person who would act fairly and impartially in dealing with the estate and distributing it for the common benefit of the lawful beneficiaries. It would be clearly wrong to grant letters of administration to a person who shows a distinct bias in favour of some heirs and against the others.

It is very clear from the affidavits sworn by Margaret Ngalawesa on 15th November, 1990, and 6th February, 1991, that she is determined to acquire the fish business and run it as her own business and use the income produced by the business for her own benefit and that of her own children to the total exclusion of the rest of the beneficiaries. She claims that the 1st wife and her children were given a grocery business by the deceased and they squandered it; she then contends that these persons have no legitimate claim on the fish business. Margaret Ngalawesa has shown, by her attitude, that she is incapable of acting fairly and impartially in the distribution of the deceased's estate; she wants to have letters of administration granted to herself so that she would distribute the estate to herself to the exclusion of the other beneficiaries. Clearly, letters of administration are not granted for that purpose. Margaret Ngalawesa does not, by her selfish attitude, qualify to be granted letters of administration in this matter.

The caveator requests this Court to grant letters of administration to the Administrator General. Margaret Ngalawesa objects to the granting of letters of administration to the Administrator General. She contends that the Administrator General is on the side of Harton Ngalawesa. In her affidavit dated 6th February, 1991 she describes an event which occurred on 23rd August, 1990. She states that on that day officers from the office of the Administrator General travelled in a government vehicle together with Harton Ngalawesa, they came to her house and demanded that she should surrender the deceased's Commercial Bank pass book to Harton Ngalawesa; she refused. She claims that the conduct of officers from the office of the Administrator General shows that the Administrator General is biased in favour of Harton Ngalawesa.



In his affidavit sworn on 8th February, 1991, Mr. Chibesakunda states that Harton Ngalawesa requested the Administrator General to administer the deceased's estate, he went to the house of Margaret Ngalawesa and demanded from her to hand to him the Commercial Bank pass book. He states that that was done in order to protect the property in the deceased's estate. He agrees that Margaret Ngalawesa refused to surrender the pass book and he ordered the bank's account to be frozen.

I disagree that the conduct of Mr. Chibesakunda shows he is in favour of Harton Ngalawesa. I am satisfied that it is the practice of the Administrator General, upon being requested to administer the deceased's estate, to take steps to protect the property. I am further satisfied that Mr. Chibesakunda here was simply trying to protect the funds of the deceased in the bank and I have no doubt that he acted competently, fairly and in good faith.

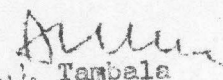
It must also be noted that the Administrator General's office is a public office comprising a number of public officers. The fact that one or two officers have acted improperly or dishonestly cannot lead to the conclusion that the whole office is incompetent and corrupt. The reputation of the office of the Administrator General as a competent and fair administrator of deceased persons estates in the whole country has so far been commendable. I find no merit in Margaret Ngalawesa's objection to the granting of letters of administration to the Administrator General.

Margaret Ngalawesa suggests that letters of administration in this matter should be granted to Financial Management Department of National Bank. It has not been shown to me how competent and fair is this institution in the administration of deceased persons estates generally. Again I am not sure that that organisation is willing and prepared to undertake the administration of the deceased's estate in the present matter. There is also the question of costs of the administration to be considered. It has not been brought to my attention that, if appointed, this bank's institution would charge fair and reasonable fees for its services.

I am therefore in favour of appointing the Administrator General to administer the deceased's estate in this matter. The order granting letters of administration to Margaret Ngalawesa and Weston Kachamba is set aside. I order that letters of administration in this matter be granted to the Administrator General.

Costs in this matter be granted to the caveator.

MADE in Chambers this 15th day of March, 1991 at Blantyre.

  
D. L. Tambala  
JUDGE