Duplicating

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 136 OF 1997

BETWEEN:

RESTA KATUPI .....1ST PLAINTIFF

S. J. NAMAGONYA.....2ND PLAINTIFF

-and-

GRACE TAWINA KATUPI.....1ST DEFENDANT

BRADLEY AMON CHIMERA
(The Administrator of the Estate
of KENNETH RESTA GEOFFREY KATUPI).....2ND DEFENDANT

CORAM: TWEA, J

Kalasa of Counsel for the Plaintiff
Mrs Jumbe Counsel for the Defendant
Chaika (Mrs) Recording Officer

RULING

This originating summons is brought by the applicants praying that the

defendants be removed as administrators of the estate of late Kenneth Resta Katupi, and that they be appointed administrators instead and further, that this court should make any other order that is fit and just.

The facts of the case are that one Kenneth Resta Katupi died interstate in Kenya. He was Malawian. He left both movable and immovable property. The defendants, obtained letters of administration for the deceased estate. The first defendant was the spouse of the deceased and the second defendant is her cousin.

Since the death his movable property in Kenya was freighted to Malawi. The property was freighted in the name of he 1st defendant. Notable of this property were BMW and Nissan Sunny motor vehicles. The first defendant also returned to Malawi.

The defendants obtained letters of administration on 30th May, 1997. The applicants contend that the first defendant who was a spouse by co-habitation with the deceased, did not contact them or the family of the deceased before obtaining the letters of administration.

The deceased died leaving two living parents, sisters and two children from his co-habitation with the first defendant. It is on record that since the dependant obtained the letters of administration, the first dependant paid K20,000 to each of the parents of the deceased. Further she promised, but never did pay, to pay K8,000 per month from rentals of one of the real property that the deceased owned. The evidence on record shows that there is no record as to how much the deceased estate was settled for and the first defendant as a beneficiary and administrators has not accounted for the money or property of the estate. Naturally, the applicants being the father and sister of the deceased are unhappy about this and pray that she and the other administrator be removed and replaced by themselves.

This case is typical of what happens with most of the persons who get the

grant of letters of administrators. The duty of the administrator is the settle the estate equitably for the benefit of all beneficiaries and creditors. When one gets the grant of letters of administration it does not mean that the whole estate accrues to him or her even when he or she is a beneficiary. It is his or her duty to call in the estate and pay out all creditors if possible, or set out a scheme to pay the creditors and the distribute the remainder of the estate according to the rules of distribution on interstacy. Where there are minor beneficiaries there must be a scheme for their interests, be it by depositing the interest in the bank or through other legitimate means of investment that do no pose any risk of disinheriting the minors. Failing which the administrator may face the consequences of wasting the estate.

In the present case the defendant did not appear nor swear an affidavit in opposition. It is on record however, that the defendant did not settle the estate. The total value of the estate therefore, is not known to the plaintiff. It is also not clear if all the creditors were paid, nor if there is any scheme for the minor children of the deceased. The exhibits attached to the affidavit of the applicant show that the first respondent claimed to have given a share of the estate to the 1st applicant and the mother of the deceased. It is not disclosed how this was calculated. She is on record as having taken one house as a matrimonial home and to have let out one for income. Be this as it may it is not discolosed how much income drawn from the rented house nor the income forfeited from the house used as a matrimonial home. Further, the personal status of the first defendant is not disclosed.

It is clear however, that she has been drawing from the estate, for her own benefit. How much has been withdrawn is not clear. I find that the respondents have not run the affairs of this estate satisfactorily and I would not say that they have had the interest of the estate at heart.

Coming back to the case, I find that the applicants have a good cause against the administrators. Be this as it may, I do not think that revoking

the letter of administration granted to the respondents and replacing them by the applicants would be the best thing for this deceased estate. Where there are several branches of the deceased estate family which may not agree on one administrator, the court should do its best to allow each branch to be represented in the administration of the deceased estate: See ***Lunguzi vs Lunguzi*** Civil Cause 1750 of 1998 (unreported), and ***Kapazira vs Kapazira*** Civil Cause 97 of 2000 (unreported). It is clear to me, that in the present case, the two sides cannot work together.

I therefore order that the respondents: Grace Tawina Katupi and Bradley Amon Chimera, render an account of the estate, including the scheme of care for the minor children to the Administrator General within 90 days. The first applicant and the Administrator General be joined as grantees in the administration of the deceased estate immediately. Should the respondents fail or neglect to render an account of the estate, including the scheme of care for the minor children, the new administrators be at liberty to apply that they be removed as grantees.

Costs of this application to be borne by the respondents personally.

Pronounced in Chambers this 6th day of April, 2001 at Blantyre.

E. B. Twea
JUDGE