

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PROBATE CAUSE NUMBER 394 OF 2020

BETWEEN:

TUPOCHERE MUOCHA (As beneficiary of the Estate of FRANCIS MBILIZI-Deceased)

1st CLAIMANT

TITHA MBILIZI (As beneficiary of the Estate of FRANCIS MBILIZI-Deceased)

2nd CLAIMANT

DR. YAMIKANI CHIMWAZA (As beneficiary of the Estate of FRANCIS MBILIZI-Deceased)

3rd CLAIMANT

AND

ROZA MBILIZI

DEFENDANT

CORAM: JUSTICE M.A. TEMBO,

Mwangomba, Counsel for the Claimants
Msosa, Counsel for the Defendant
Mankhambera, Official Court Interpreter

ORDER

1. This is this Court's order on the claimants' application for an order appointing an interim administrator pending litigation in these proceedings, to specifically have oversight over a fishing business which is part of the deceased estate herein. By these proceedings the claimants are challenging the validity of a will of the deceased which was produced by the defendant who is the surviving spouse of the deceased.

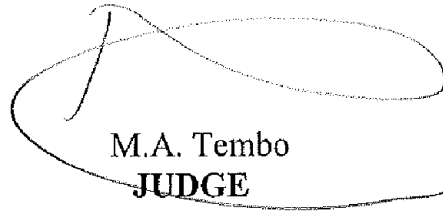
2. The application is taken out pursuant to section 46 and 78 (1) of the Deceased Estates (Wills and Inheritance Protection) Act. The application is contested by the defendant.
3. By the application, the claimants indicate that the fishing business is seasonal and was set to reopen in March, 2021. And that it is a daily sales type of business and sales are done in cash. Further, that the proceeds are deposited in the deceased's bank account.
4. The claimants indicate that although the business manager run the business very well, they believe that it is prudent that someone provide oversight to ensure that the business is run efficiently and for the benefit of the estate. They indicated that the interim administrator will have to supervise the Manager and provide funds for the manager to process the payroll, procure spare parts and carry out maintenance of the fishing boat. Further, that the interim administrator must ensure accountability for revenue as well as meet running expenses.
5. The claimants indicated that they do not want to access cash from the estate until conclusion of this litigation. And they therefore propose independent people to be appointed as interim administrators, namely, their late father's cousins. Alternatively, they proposed that this Court appoint any other capable person who shall provide monthly reports to this Court which they can access.
6. The claimants referred to section 46 of the Deceased Estates (Wills and Inheritance Protection) Act which provides for the appointment of an administrator pending determination of proceedings touching on the validity of a will which administrator shall have all the rights and powers of a general administrator other than the right of distributing the estate.
7. They submitted, correctly, that the management of a business for any part of a deceased estate necessitates the appointment of an administrator *pendent lite*. And that parties may agree who should be appointed. Further, that if the parties do not agree the court may choose who should be so appointed. See Williams and Mortimer, Executors, Administration and Probates (London) at 296 and 299. They added that an administrator so appointed is an officer of the court under the direction of which he represents the deceased. See *In the Goods Graves* (1828) 1 Hagg. Ecc. 313.
8. The defendant indicated that she has a share in the fishing business and that it would therefore be wrong for her to be excluded from the management of the

same entirely. She asserted that she co-owned the said business with her late husband herein. And that whatever the case she is entitled to manage her share of the said business. She contended that given her vast experience in managing the fishing business she should be appointed interim administrator of the same as opposed to the independent people mentioned by the claimants who are remotely related to the immediate family of the deceased and who have no proven experience in managing the fishing business.

9. She also indicated that if the will herein is proved to be invalid then the deceased estate will be intestate in which case the immediate family members have priority in appointment as administrators of the estate where there are multiple applicants, in terms of section 43 of the Deceased Estates (Wills, Inheritance and Protection) Act.
10. This Court has considered as compelling, the arguments of the defendant. She may indeed have a share in the fishing business as co-owner. If that is the case, it would not be legally sound to exclude her entirely from the management of the fishing business at this point. In any event, as a surviving spouse, the defendant has priority in appointment as administrator to the deceased estate ahead of any other person. See section 43 of the Deceased Estates (Wills, Inheritance and Protection) Act.
11. The foregoing scenario makes it imperative that whoever is appointed as an interim administrator then the defendant will have to be there too.
12. Having considered all the circumstances of this matter, this Court appoints the defendant and Ms. Khama Mita to be joint interim administrators of the fishing business pending conclusion of the litigation in this matter. Ms. Mita has been appointed having been put forward by the claimants who do not want to access any money before the litigation herein is concluded.
13. The decisions of the interim administrators shall be taken jointly and be signified by their signatures or by correspondence either on paper or electronically signifying their agreement on any decision taken in the running of the business herein. Should they fail to make a decision jointly on any matter the same shall be referred to this Court. The administrators are encouraged to cooperate to minimize legal wrangles which generate legal costs that usually may diminish the shares of the beneficiaries since at times legal costs may be ordered to be borne by the deceased estate.

14. Considering all the circumstances of this case it is ordered that costs on this application shall be in the cause.

Made in chambers at Blantyre this 20th April, 2021.



M.A. Tembo
JUDGE