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IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
CIVIL CASE NUMBER 207 of 2019

BETWEEN

MATTHEWS PEMBA.....FIRST CLAIMANT

AND

SIGERE PEMBA KASISI.....SECOND CLAIMANT

AND

GLADYS PEMBA CHAGUNDA.....THIRD CLAIMANT

AND

BEATRICE MPHAKELA PEMBA.....FIRST DEFENDANT

AND

MEDSON DANIEL MPHAKELA.....SECOND DEFENDANT

AND

FAMILY AND PROBATE DIVISION
PROBATE CASE NUMBER 290 OF 2018
IN THE ESTATE OF LEVISON KAVALA PEMBA

BETWEEN

MATTHEWS PEMBA.....FIRST APPLICANT

AND

SIGERE PEMBA KASISI.....SECOND APPLICANT

AND

GLADYS PEMBA CHAGUNDA.....THIRD APPLICANT

AND

BEATRICE MPHAKELA PEMBA.....FIRST RESPONDENT

AND

MEDSON DANIEL MPHAKELA.....SECOND RESPONDENT

CORAM Hon Justice Jack N’riva Judge

Mr Kondwani Kunitengo for the claimants/applicants

Ms Asante Musa for the defendants/ respondent

Ms Nkangala Court Official

RULING

The dispute in this application is fairly straight forward.

There is a quarrel over some deceased estate between the applicants and the respondents. The estate is that of the late Lemson James Kavala Pemba.

The applicants are children and grandchildren of the deceased who claim that the deceased bequeathed some property to them. They claim the respondents, administrators of the estate, are tampering with the property hitherto bequeathed to them. They further argue that their appointment as administrators was improper and actuated by ulterior motive.

Let me state that there were two actions, this one and another one in which the respondents were claimants. This Court dismissed the latter action for want of prosecution. It is also worth pointing out that, in relation to the issue of letters of administration, the Court granted the respondents the letters in Probate Case Number 290 of 2018.

This application, agreed by all parties that it would settle the two disputes, is for the revocation of letters of administration.

The respondents obtained the letters of administration in April 2018. The applicants argue that the respondents are dealing with land and some other property that the deceased already bequeathed to them. The applicants argued that the respondent obtained the letters of administration for their own advantage to the detriment of the applicants who were given property by the deceased.

The application is supported by sworn statement made by the applicants and other witnesses.

In summary, the claimants are stating that the deceased bequeathed some properties to some of her grandchildren. These included pieces of land and in one case a goodwill in a driving school that the deceased owned. It is said that the driving school was at the edge of collapse so much so that the deceased gave it to one of his grandchildren at a time when the school did not have even single vehicle. The grandchild took over the business and revamped it.

In the case of the other grandchildren, the deceased, it is said, surrendered some pieces of land to his grandchildren for their use. There was also a witness who said he was living close to the deceased and offered evidence that the deceased acquired some piece of land and distributed it to his grandchildren.

One of the persons who provided a statement, Davidson Pemba, said the deceased bequeathed Pemba Driving School's goodwill to him. After revamping the business, after a very long period of time, the respondents are claiming proceeds from the said school.

Another deponent, Yohame Linyama, stated that the deceased bequeathed a piece of land to him as a grandchild.

Another deponent Gladys Chagunda, daughter to the deceased, stated that the deceased gave land to grandchildren namely Mbobe, Atameje, Thyolera and Yohane.

Another deponent Ephraim Salamba stated that she was a neighbour living very close to the deceased. He further said the deceased acquired the pieces of land around the area and distributed it to the grandchildren. Several other deponents also provided statements.

The first respondent gave a sworn statement denying the assertion by the applicants that the grandchildren had shares in the deceased estate. She further denied that she obtained the letters of administration for her own selfish motives. As for Salamba, the respondent questioned his competence to know private affairs of her late husband.

The second respondent did not make any presentation on the claims.

The question for determination is whether the applicants have made up a case for the revocation of letters of administration.

The applicants are children and grandchildren of the deceased.

The respondent is a wife of the deceased and the other respondent is a brother to the first respondent.

Under section 32 of the deceased Estates Wills, Inheritance and Protection Act, any beneficiary under a will or on intestate may apply to the court opposing the appointment of an executor or administrator of a will or an intestacy. Section 43 (1) of the Act provides that where a person has died intestate, letters of administration of his or her estate may be granted by any person who, under section 17 or 18 of the Act, would be entitled to the whole or any part of the estate.

Section 17 provides for persons who may be beneficiaries under intestacy. These are members of immediate family namely a surviving spouse or spouses and children of the intestate. Section 18 goes on to provide for beneficiaries under intestacy in absence of a spouse and children under section 17. These includes grandchildren in absence of whom brothers and sisters of the whole or half blood of the intestate qualify. In absence of those brothers and sisters, uncles, aunts, nephews and nieces are entitled in equal shares. In the absence of those, any relatives of the nearest consanguinity to the deceased would qualify. If none of those persons survives the deceased, the Government is entitled to the deceased estate.

The application in this matter is based on two fronts. One is that the applicants argue that they are not aware of the appointments of the two administrators as the administrators of the deceased estate. Secondly, they argue that under section 43 of the Deceased Estates (Wills, Inheritance and Protection) Act, only a person who is a beneficiary under intestate can be granted letters of

administration. They argue that the second respondent is not a beneficiary under sections 17 and 18 of the Act. They therefore argue that it was wrong for the second respondent to be granted letters of administration.

Having read the statements in support and in opposition of the application, my considered opinion is that the respondents wrongly obtained the letters of administration in this matter because one of the administrators was not a beneficiary of the estate. Yet there are several persons, the applicants in this matter, who are beneficiaries of the estate. This point alone settles the issue in dispute. It would be unnecessary to consider all the other issues. It suffices to state that the respondents improperly obtained the letters of administration.

The letters are hereby revoked with costs to the claimants. There would be need for the parties to consider obtaining proper letters of administration.

MADE the 22nd day of February, 2020

A handwritten signature in black ink, appearing to read 'J N'RIVA', written in a cursive style.

J N'RIVA
JUDGE