



JUDICARY
IN THE HIGH COURT OF MALAWI
FAMILY AND PROBATE DIVISION
PROBATE CAUSE NO. 97 OF 2020

BETWEEN

MABLE JOSAYA.....APPLICANT

AND

WILLY JOSAYA.....1ST RESPONDENT

CEDRICK JOSAYA.....2nd RESPONDENT

CORAM : MWALE, J

: Nyirenda, of counsel for the Applicant

: Kausi, of counsel for the Respondents.

: Kalumbi, Court Reporter

: Mpandaguta, Court Interpreter.

Mwale, J

**RULING ON APPLICATION FOR REVOKATION OF LETTERS OF
ADMINISTRATION**

1. This ruling is made pursuant to an Application for the Revocation of Letters of Administration made under section 55 of the Deceased Estate (Wills,

- Inheritance and Protection) Act. It is supported by the requisite Sworn Statement, deposed to by the applicant and Skeleton Arguments.
2. The applicant is the widow of Dean/Dini Josaya, who died intestate on 27th July 2020, leaving behind substantial real and personal property. There were two issue to her marriage with the deceased who are currently aged 6 years and 2 years (I take this opportunity to remind counsel that the term “issue” when used to refer the lineal descendants of a person does not take the suffix “s” in the plural form).
 3. It is the applicant’s case that upon the death of the deceased, the family held a meeting where it was agreed that the defendants would apply for letters of administration to administer the estate of the deceased in as far as monies in bank accounts and a payment received from the Labour Office were concerned. To the contrary, the defendants are now managing the entire estate to her exclusion and without her knowledge as the spouse of the deceased. It is on this basis that she moves the Court to revoke the Letters of Administration issued to the respondents. The Letters of Administration in question have not be presented to the Court in evidence.
 4. The respondents are the stepchildren of the applicant. They are sons of the deceased. They oppose the application for revocation. It is their case that the applicant has deliberately omitted certain facts in her application.
 5. The respondents do not take issue with the fact that the claimant was married to their deceased father in 2019 after they had been in a relationship since 2015. She was his third wife and by that time, the deceased had acquired most if not all his assets.
 6. With regard to the properties involved, the deceased gave away one house, in Area 25, to his daughter Priscilla in 2010 and she has been living in that house since then. With regard to a house in Area 6, the deceased gave it to his son Willy when he got married and has been living in it since then. The same applies to a house in Area 47 which he gave to his daughter upon marriage in 2016. There is an uncompleted house in Area 18 which was given to another son who has since been involved in completing it.

7. The respondents attempted to assist the claimant by completing two houses that the deceased was building in Area 46 so that she could move out of rented accommodation. The claimant however wanted the money to finish the houses and would demolish finished works since she did not get the money to do it herself. The respondents are adamant to give the claimant money because she is the habit of misusing such as evidenced by the way she handled the sum of MK28 million which was distributed to her and the children.
8. Despite the marriage, it is the respondent's evidence that the claimant never resided in any of the deceased's houses. The deceased's place of abode was in Area 47 sector 1 but yet he kept the claimant in rented accommodation. She was never allowed to even visit the main house.
9. It is further on record that prior to the marriage, the deceased announced to the family that he had executed a prenuptial agreement with the claimant a copy which was exhibited and produced before the Court. The claimants have also produced a photograph of a social media post said to be made by the claimant asserting that she had deceived the deceased with a fake signature.
10. The respondent's therefore claim that the reason the respondents applied for full letters of administration is that the claimant could not have been appointed an administrator when the prenuptial agreement excluded her from the deceased's property. They therefore seek an order dismissing the application with costs.
11. Section 55 of the Deceased Estates (Wills, Inheritance and Protection) Act provides that:
 - “(1) The grant of letters of administration or probate may be revoked or annulled for any of the following reasons –*
 - (a) that the proceedings to obtain 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;*

or 18, would be entitled to the whole or any part of such deceased's estate.

(2) Where more than one person applies for letters of administration, it shall be in the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests."

The claimant is a person entitled to under section 17 to benefit. The reason for her exclusion is a prenuptial agreement.

13. The question for this Court is whether the prenuptial agreement can be used in inheritance matters as a lawful reason to exclude a person is a beneficiary at law. The relevant provisions being sections 17 and 43 of the Deceased Estates (Wills, Inheritance and Protection) Act have been reproduced above. There is no doubt that the claimant as a spouse is a lawful beneficiary who is entitled to apply for letters of administration for the estate of her husband.
14. Prenuptial agreements are still a relatively new concept and in some jurisdictions such as the United Kingdom, they are not yet legally binding and are only upheld by court order on a case-by-case basis. Amongst the considerations that the courts in the United Kingdom will have recourse to in matrimonial causes is whether they have been drawn up properly, fairly and without discrimination to children. As a jurisdiction we are yet to establish whether prenuptial agreements are automatically legally binding as many jurisdictions have, through express legislative pronouncement. Parties therefore enter into such agreements at their own peril as their ultimate effect will depend upon the court's interpretation on a case-by-case basis in disputed property distribution claims.
15. The matter at hand does not involve property distribution upon dissolution, but inheritance upon death. Whilst prenuptial agreements are a weak vessel at property distribution upon dissolution, they are even weaker at death. It should also be remembered that prenuptial agreements are not wills. They do not speak

from the death of any party and would not override the express provisions of a will. Conversely therefore, a prenuptial agreement cannot override the statutory requirements of intestacy.

16. The deceased was careful enough to protect his property on the eventuality of divorce and obtained legal counsel to execute a prenuptial agreement. His legal counsel should have gone on to advise him of the legal effect of a prenuptial agreement upon death and advised him to make made proper arrangements in the form of a will. Allowing the prenuptial agreement to determine what happens to the property of the deceased after his death is tantamount to elevating the prenuptial agreement to a testamentary document which it was not. The differences abound. This agreement, was made in anticipation of marriage, not in anticipation of death. It is signed by both parties and not by a testator. It does not appoint an executor/trix and provides no direction on manner of distribution of the estate after death.
17. The only way in which the prenuptial agreement can have some limited effect is in the manner of distribution. Section 17 (d) of the Deceased Estates (Wills, Inheritance and Protection) Act provides that

“(d) as between the surviving spouse or spouses and the children of the intestate their shares shall be determined in accordance with all the special circumstances including-

(i) any wishes expressed by the intestate in the presence of reliable witnesses;”

Distribution of a deceased estate must therefore follow the principles of distribution in section 17 (1) of the Deceased Estates (Wills, Inheritance and Protection) Act.

18. As it stands therefore, if the Letters of Administration were obtained to the exclusion of the claimant on the basis of a prenuptial agreement, then section 55 (c) of the Deceased Estates (Wills, Inheritance and Protection) Act applies,

“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.” The untrue allegation being that a prenuptial agreement takes precedence over the law on intestacy. The claimant is a lawful beneficiary of the estate and can apply for letters of administration. If there is any evidence of the deceased person’s wishes to limit her benefit, this is an issue of distribution, it is not a bar to being a beneficiary. I therefore hereby revoke the letters of administration so that all persons entitled have an opportunity to apply.

19. The previous administrators shall produce an account of the estate in the time they managed it to the Court within 45 days of the order herein.

I so order.

MADE in chambers, in Lilongwe this 27th day of **January 2023**



Fiona Atupele Mwale

JUDGE