

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC CIVIL APPLICATION NO. 360 OF 2019**

*(Arising from Probate and Administration Cause No. 25 of 2015)*

**IN THE MATTER OF THE ESTATE OF THE LATE MASHAURI  
AMANIEL MALLEO SAIYE**

***BETWEEN***

**DANFORD MASHAURI AMANIEL MALLEO .....APPLICANT**

***AND***

**GODWIN AMANIEL MALLEO.....1<sup>ST</sup> RESPONDENT**

**DORAH AMANIEL MALLEO.....2<sup>ND</sup> RESPONDENT**

**RULING**

**Date of last Order:** 16/12/2020

**Date of Ruling:** 22/12/2020

**MLYAMBINA, J.**

By way of Chamber Summons made *under Section 49 (1) (a) (b) (d) of the Probate and Administration of estates Act Cap 352 (R.E. 2002) and Rule 29 (1) of the Probate Rules*, the Applicant moved this Court to issue an order for revocation of the grant of letters of administration granted to Godwin Amanuel Malleo (Administrator) 1<sup>st</sup> Respondent and Dorah Amanuel Malleo (Administratrix)- 2<sup>nd</sup> Respondent in *Probate and Administration*

*cause No. 23 of 2014* High Court of Tanzania at Dar es Salaam Registry dated 25<sup>th</sup> February, 2015, over the estate and properties of the late Amanuel Mashauri Malleo.

The major reason for the application as can be gathered from the supporting Affidavit of Danford Mashauri Amanuel Malleo and submission of Counsel Venance Victor for the Applicant is that; the Procedure to grant *Administration cause No. 23 of 2014* to the Respondents herein while there is a will was defective because the Respondents knew the existence of the will of which the Applicant is the executor and he has taken steps.

The Applicant was of contention that the procedure followed was not in compliance with *Part V (c) of Cap 352*. As such, in terms of *Section 49(1) (a)*, of the Probate and Administration of Estates Act the proceedings were defective in substance, hence needs to be nullified.

On the part of the Respondents in their joint Counter Affidavit and reply submission by Counsel Joseph Rutabingwa were of *inter alia* contention that the alleged will is a forged document as proved through the forensic report annexed to the Counter Affidavit.

It was the Respondent's contention that by not challenging the joint Counter Affidavit, the Applicant is taken to accept the facts that the will was defective and that waters down the essence of seeking revocation of the letters granted to the Respondents.

In rejoinder, Counsel Venance submitted inter alia that there is no law which compels the Applicant to file reply to Counter Affidavit.

While I do agree with Counsel Venance that there is no law which compel the Applicant to file a reply to Counter Affidavit, it must not be forgotten that an Affidavit is a substitute of oral evidence. A Counter Affidavit which raises serious issues, in particular for the sake of this case, forgery issues, dictates of practice and prudence for the Applicant to file a reply to the Counter Affidavit. Silence to it amounts to implied admission.

It is the further findings of the Court that there is no law which prohibits one to raise a criminal allegation in Civil matters. The law, however, demands a proof which is above of what is required in ordinary Civil Cases. In the case of **Omari Yusufu v. Rahma Ahmed Abdulkadr** (1987) TLR 169 it was held:

*...when the question whether someone has committed a crime is raised in Civil proceedings that allegation need be established on a higher degree of probability than that which is required in ordinary Civil cases.*

In the instant application, the Respondents established existence of forgery of the deceased's will through the forensic report bought by way of Counter Affidavit. Such evidence cannot be challenged by way of submissions from the Bar. It can be challenged by way of reply to Counter Affidavit, and in particular by way of another forensic report.

In the end, I hereby dismiss this application with costs for lack of merits.



**Y. J. MLYAMBINA**

**JUDGE**

**22/12/2020**

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Ruling delivered and dated 22<sup>th</sup> December, 2020 in the absence of the Applicant and in the presence of Counsel Joseph Rutabingwa for the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent. Right of Appeal explained.



**Y. J. MLYAMBINA**

**JUDGE**

**22/12/2020**

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