



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
FAMILY AND PROBATE DIVISION  
PROBATE CAUSE NO. 123 OF 2021  
(Before Honourable Justice Mambulasa)

IN THE MATTER OF SECTIONS 20 AND 55 OF THE DECEASED  
ESTATES (WILLS, INHERITANCE AND PROTECTION) ACT, CAP.  
10:02 OF THE LAWS OF MALAWI

-AND-

IN THE MATTER OF THE ESTATE OF MOSES DICKSON MASANJE  
(DECEASED)

-AND-

IN THE MATTER OF AN APPLICATION TO REVOKE THE GRANT OF  
LETTERS OF ADMINISTRATION TO ENIFA ZEMBETSANI MASANJE  
AND GIDEON MASANJE

MRS AGNESS BAULENI MASANJE.....1<sup>ST</sup> APPLICANT

-AND-

WYSON MASANJE.....2<sup>ND</sup> APPLICANT

-VS-

**ENIFA ZEMBETSANI MASANJE.....1<sup>ST</sup> RESPONDENT**

**-AND-**

**GIDEON MASANJE.....2<sup>ND</sup> RESPONDENT**

**CORAM: HON. JUSTICE MANDALA MAMBULASA**

Mr. Everson Benard Sitolo, Advocate for the Applicants

1<sup>st</sup> Respondent, Acting in Person

2<sup>nd</sup> Respondent, Acting in Person

Ms. Christina Kazembe, Court Clerk/Official Interpreter

Mrs. Annie Libukama, Court Marshal

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**ORDER**

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**MAMBULASA, J**

**Introduction**

[1] The Applicants brought this application to revoke Letters of Administration that were granted to the Respondents in respect of the deceased estate of Moses Dickson Masanje. The said Letters of Administration were granted to them on 5<sup>th</sup> May, 2021 under Probate Cause No. 123 of 2021. The deceased hailed from Nkolokosa Village, Traditional Authority Nchilamwera in Thyolo District. He died intestate on 3<sup>rd</sup> February, 2021 at Malamulo Mission Hospital in the same district. The application was taken out under section 20 as read with section 55 of the Deceased Estates (Wills,

Inheritance and Protection) Act.<sup>1</sup> The application was filed by Advocate, Mr. Sitolo of Messrs Ebenezer Law Firm.

[2] The Applicants state that the Respondents fraudulently secured the signature of one, Wyson Masanje, the 2<sup>nd</sup> Applicant, under the pretext that the document he was signing was an acknowledgement document that his brother, the deceased herein, had passed on. However, it later transpired that the document he had signed was an administration bond appointing the Respondents as proposed or intended administrators of the estate of the deceased.

[3] The Applicants state that there has been lack of accountability and transparency on the part of the administrators of the deceased estate of Moses Dickson Masanje in the manner in which they have so far administered the said estate as they had not furnished the beneficiaries an account on how the estate has been administered and managed to-date.

[4] The Applicants state that the deceased had acquired a number of assets, real and personal as follows:

- 2 Truck Horses (Front-Liners);
- 1 4 Ton Lorry;
- 1 1 Ton Pick-Up;
- 1 Family Car (Station Wagon);
- 1 Motorcycle;
- 2 Bicycles;

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<sup>1</sup> Cap. 10:02 of the Laws of Malawi.

- 6 Maize Mills;
- 7 Houses for rent;
- 4 Tea Gardens;
- 5 Ordinary Gardens
- 27 Herds of Cattle
- Goats
- 3 Chicken Kraals
- Turkeys
- 1 Generator
- 1 Treadle Pump

[5] The application was supported by a Sworn Statement made by the 2<sup>nd</sup> Applicant.

[6] The 1<sup>st</sup> Respondent filed a Sworn Statement in Opposition to the application to revoke the said Letters of Administration. She stated that the 2<sup>nd</sup> Applicant is a senior primary school teacher, PT3 at Bandanga Full Primary School in Thyolo since 2009, to-date, and that in almost all steps in processing the Letters of Administration were done with his full support. The 1<sup>st</sup> Respondent avers that the 2<sup>nd</sup> Applicant signed the Administration Bond twice freely after reading and understanding the contents thereof and that in any event, the issue was not new to him.

[7] The 1<sup>st</sup> Respondent further states that the 2<sup>nd</sup> Applicant first signed the Administration Bond in her presence and it later turned out that the same was not properly signed. The Administration Bond had to be redone. When

it was redone, the 2<sup>nd</sup> Applicant freely signed it for the second time in the presence of the 2<sup>nd</sup> Respondent, who is a son to the 1<sup>st</sup> Respondent.

- [8] The 1<sup>st</sup> Respondent avers that following the grant of the Letters of Administration, she gave every beneficiary his or her share based on the Administrator General's determination of percentages of the share each beneficiary was entitled to benefit. Specifically, the 1<sup>st</sup> Applicant was given the sum of MK1,050,000.00 (One Million Fifty Thousand Malawi Kwacha) only. There is an exhibit of a National Bank of Malawi statement to that effect. The 1<sup>st</sup> Respondent also gave her children their shares based on the Administrator General's determination. She concludes by stating that the 2<sup>nd</sup> Respondent and her, being administrators of the deceased estate in this matter have been accountable and transparent in administering the estate from the beginning until now and that the application herein should be dismissed with costs.

#### **Issue for Determination**

- [9] The only issue for determination before this Court is whether or not the Letters of Administration that were granted to the Respondents in this matter on 5<sup>th</sup> May, 2021 should be revoked as prayed for by the Applicants.

#### **The Law**

- [10] Section 20 (1) of the Deceased Estates (Wills, Inheritance and Protection) Act provides as follows:

Subject to this section, the High Court shall have jurisdiction in all matters relating to the probate and the administration of estates of deceased persons, with power to grant probates of wills and letters of administration to the estates of deceased persons and to alter or **revoke** such grants.

[11] Section 55 (1) of the Deceased Estates (Wills, Inheritance and Protection) Act is couched in the following terms:

(1) The grant of probate and letters of administration may be **revoked** or annulled for any of the following reasons-

- (a) that the proceedings to obtain the 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;
- (c) that 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;
- (d) that the grant has become useless and inoperative;
- (e) that the person to whom the grant was made has without reasonable cause omitted to furnish an account of his or her administration after having been lawfully called upon to do so or has prepared an account which is untrue in a material respect.

(2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the court may suspend or remove an executor or administrator and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate.

[12] In *Trifonia Maureen Kawala -vs- Administrators of the Estate of The Late Wilfred Ketsani Kawala and The Commissioner for Lands and Valuation*<sup>2</sup> Justice Mzikamanda, as he then was, stated as follows:

However, letters of administration can be revoked or altered in the manner provided for in Part XI of the Act. Specifically, section 54 of the Wills and Inheritance Act provides for annulment or revocation of probate and letters of administration where the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case or that 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 among other reasons.

[13] In *In the Estate of Dyson Peresi Ngalawasa (Deceased)*<sup>3</sup> letters of administration were granted to Mrs. Ngalawasa who in applying for letters of administration gave false information to the Court. The letters of administration were revoked and the Administrator General was appointed instead. Justice Tambala, as he then was, found that Mrs. Ngalawasa had shown by her attitude that she was incapable of acting fairly and impartially in the distribution of the deceased estate.

[14] In *Diana Tembo Alumando -vs- Alumando Sadimba*<sup>4</sup> M.A. Tembo J stated as follows:

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<sup>2</sup> Probate Cause No. 08 of 2009 (High Court of Malawi) (Lilongwe District Registry) (Unreported).

<sup>3</sup> [1991] 14 MLR 379 (HC).

<sup>4</sup> Probate Cause No. 5420 of 2017 (High Court of Malawi) (Principal Registry) (Unreported).

Pursuant to section 55(1)(b) of the Deceased Estates (Wills, Inheritance and Protection) Act, the plaintiff and the defendant are also removed as administrators for their lack of candor manifested in their false statement as to the true value of the estate and concealment of that material fact of the true value of the estate herein.

### **Analysis and Application of the Law to the Facts**

- [15] In their Estate Duty Affidavit, the Respondents indicated that the gross value of the estate at the time of the deceased's death was MK10,572,462.78. This sum comprised funds that the deceased had left in his bank account held with NBS Bank. The bank statement was attached to the Estate Duty Affidavit.
- [16] In the Administration Bond, which was executed by both Respondents as intended administrators and the Applicants as sureties, they jointly and severally were bound to the Registrar of the High Court of Malawi in the sum of MK10,572,462.78.
- [17] During the hearing, the 1<sup>st</sup> Applicant confirmed to the Court that she received her share of the sum of MK10,572,462.78. The Applicants did not dispute or controvert the 1<sup>st</sup> Respondent's evidence that she also distributed to her children their shares of the sum of MK10,572,462.78. As matters stand, the sum of MK10,572,462.78 was distributed to all the beneficiaries of the deceased estate. These are: Enifa Zembetsani Masanje (Wife), Gedion Masanje (Son), Moses Dickson Masanje (Son), Edna Masanje (Daughter) and Agness Bauleni Masanje (Mother to the deceased).
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[18] Wyson Masanje (Brother) and Agness Masanje (Sister) were correctly removed on the list of beneficiaries by either the office of the Administrator General or indeed the Court at the time of the grant of letters of administration. They were not dependents of the deceased herein as the term 'dependent' is understood and defined under the Deceased Estates (Wills, Inheritance and Protection) Act.<sup>5</sup>

[19] The law is very clear that this Court has powers under sections 20 (1) and 55 (1) of the Deceased Estates (Wills, Inheritance and Protection) Act to revoke or annul probates of wills and letters of administration. This Court also has similar powers given to it by section 10 of the Administrator General Act,<sup>6</sup> even though it is not in issue in this case. This power only relates to an estate that was correctly declared by the personal representatives of the deceased, valued and assessed by the Estate Duty Commissioners. In this particular case, the Letters of Administration that were obtained by the Respondents were in respect of the sum of MK10,572,462.78 which were funds that were held at NBS Bank by the deceased and no more.

[20] Clearly, the Respondents in this matter, misrepresented the true gross value of the deceased estate. That gross value did not include the total value of the assets mentioned by the Applicants in paragraph 4 herein and any other property forming part of the deceased estate that is unknown to the Applicants, more especially the 1<sup>st</sup> Applicant, as she is the one who has direct interest in the deceased estate as one of the beneficiaries. It must quickly be mentioned, however, that some of the items listed in paragraph 4

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<sup>5</sup> See Section 3 of the Deceased Estates (Wills, Inheritance and Protection) Act.

<sup>6</sup> Cap. 10:01 of the Laws of Malawi.

hereof appear to this Court to be household belongings. Household belongings are the articles and effects of every description used in, and for the purpose, of maintaining and enjoying a home and family life.<sup>7</sup> They include furniture, beddings, crockery, cooking utensils, gardening and farming equipment, electrical appliances (for instance, television, radio, washing machines, cookers, refrigerators, air conditioners and others) that now characterise modern homes. This Court agrees with *L. C. Bande, PhD* when he argues and observes that, “[i]t should be specifically noted that the definition [of household belongings] includes a family vehicle, as opposed to a vehicle used for business purposes”.<sup>8</sup> Household belongings are no doubt part of the deceased estate. However, the 1<sup>st</sup> Respondent is at law entitled to retain all household belongings.<sup>9</sup> According to the Estate Duty Affidavit completed by the Respondents and the Administration Bond, the deceased’s estate only related to funds that were held at NBS Bank by the deceased. Going by the sentiments expressed by M.A. Tembo J in the *Diana Tembo Alumando -vs- Alumando Sadimba* matter, where there is a false statement as to the true value of an estate, which is a material fact, that would ordinarily be a reason enough to revoke letters of administration. The other old case authorities are also to the same effect. These are still very important and useful because the provisions they were interpreting under the repealed

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<sup>7</sup> See Section 3 of the Deceased Estates (Wills, Inheritance and Protection) Act.

<sup>8</sup> Bande, L.C., *The Law of Inheritance & Administration of Deceased Estates in Malawi* (Stellenbosch: Sun Press, 2021) at 254.

<sup>9</sup> See Section 17 (1) (b) of the Deceased Estates (Wills, Inheritance and Protection) Act. See also n4 above, Judgment of 13<sup>th</sup> March, 2018.

Wills and Inheritance Act have been retained in the Deceased Estates (Wills, Inheritance and Protection) Act and so, they apply, with equal force.<sup>10</sup>

[21] However, the question is, would the Letters of Administration obtained in this matter by the Respondents enable them to administer some of the assets referred to in paragraph 4 above that are not household belongings and any other property forming part of the deceased estate herein? In the firm view of this Court, the answer would be in the negative. Legally speaking, those Letters of Administration were for the part of the estate that has already been administered and for which there appear to be no outstanding issues. Those Letters of Administration would not enable the Respondents to administer some of the said assets that are not household belongings and any other property forming part of the deceased estate unknown to the 1<sup>st</sup> Applicant as they do not apply to that part of the estate, which was never declared by them, valued and assessed by the Estate Duty Commissioner. For the avoidance of any doubt, if any steps or measures were taken by the Respondents to administer some of the assets listed in paragraph 4 herein that are not household belongings and any other property forming part of the deceased estate on account of those Letters of Administration, those steps and measures are void *ab initio*, illegal and of no consequence.

[22] In view of the foregoing, this Court finds that some of the assets mentioned in paragraph 4 herein that are not household belongings and any other property that the Applicants may not be aware of, but forming part of the estate herein are an unadministered part of the estate of Moses Dickson

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<sup>10</sup> Cf Section 54 (1) of the repealed Wills and Inheritance Act and 55 (1) of the Deceased Estates (Wills, Inheritance and Protection) Act.

Masanje. The Court orders and directs the beneficiaries of the estate as reflected in paragraph 17 hereof to work together in ascertaining the assets listed in paragraph 4 hereof and any other property forming part of the deceased estate of Moses Dickson Masanje and bring that part again before the Estate Duty Commissioner for assessment for proper duty to be paid thereon and thereafter, apply for fresh Letters of Administration to be used to administer that part of the estate. Alternatively, if there is bad blood between the 1<sup>st</sup> Applicant and the Respondents herein such that they cannot work together, then, they can approach the office of the Administrator General to assist them in ascertaining the remainder of the estate and thereafter apply for fresh Letters of Administration to administer the same.

[23] The application for revocation of letters of administration is therefore declined as in this Court's considered view, it would not serve any useful purpose. The Letters of Administration granted to the Respondents on 5<sup>th</sup> May, 2021 did not cover the assets listed in paragraph 4 above and any other property unknown to the 1<sup>st</sup> Applicant but forming part of the deceased estate herein. The Court makes no order as to costs.

[24] Made in Chambers this 13<sup>th</sup> day of September, 2022 at Blantyre in the Republic of Malawi.

  
**M. D. MAMBULASA**  
**JUDGE**