



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI PRINCIPAL REGISTRY

FAMILY AND PROBATE DIVISION

PROBATE CAUSE NUMBER 244 OF 2024

(Before Honourable Justice Kayira)

IN THE MATTER OF RULE 25 OF PROBATE (NON-CONTENTIOUS) RULES

AND

IN THE ESTATE OF RADSON KUSELIWA JUNIOR (DECEASED)

AND

IN THE MATTER FOR THE LIMITED GRANT LETTERS OF ADMINISTRATION BY PHILLIP WYSON

NAKHAONGA [AS JUDGMENT CREDITOR IN COMMERCIAL CAUSE NUMBER 238 OF 2019:

PHILLIP WYSON NAKHAONGA T/A PN CONTRACTORS VS. RADSON KUSELIWA JUNIOR]

CORAM: HONOURABLE JUSTICE JEAN ROSEMARY KAYIRA

Ms. Kazembe Court Clerk and Official Interpreter

ORDER ON APPLICATION FOR LETTERS OF ADMINISTRATION BY CREDITOR

Kayira J

The Applicant is a judgment creditor against the deceased estate ^{and} as he strives to recover the payment that was due following the construction works that they performed on the plot belonging to the deceased person from 2019. The Applicant seeks limited letters of administration under Rule 25 of the Probate (Non-contentious) Rules as read with Section 43 of the Deceased Estate (Wills, Inheritance and Protection) Act-DEWIPA. This Court hastens to that that it hereby assumes jurisdiction over the present matter by virtue of Section 20 of DEWIPA which states that 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.

REASONED ANALYSIS OF THE COURT

WHO CAN APPLY FOR LETTERS OF ADMINISTRATION?

In this case, the Court notes that the Applicant is a creditor for the deceased person Mr. Radson Kulisewa Junior. Section 43 of DEWIPA is very relevant in this regard. It states as follows:

- (1) Where the deceased has died intestate, letters of administration of his or her estate may be granted to any person who, under sections 17 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.
- (3) Where no person as mentioned in subsection (1) applies for letters of administration, letters of administration may be granted to a creditor of the deceased.

The law is clear that those who have to apply for letters of administration are first members of the immediate family. If members of the immediate family as provided for under Section 17 of DEWIPA, who are the spouse and children under Section 3 of DEWIPA, have not applied for letters of administration, then extended family can apply for the letters under Section 18 of DEWIPA. In the event that there is none in the extended family, then creditors to the deceased estate can apply for the letters. Since the Applicant is a creditor of the deceased person, it is only proper and right for this Court to be satisfied that he meets the legal requirements.

According to the application, the Applicant is deposing that he operates a company in the name of PN Contractors. The deceased person Mr. Radson Kulisewa Junior engaged the said company to construct four (4) town houses under Plot Number BW 449 in Sunnyside within the City of Blantyre. The two had a written contract which he had exhibited as an attachment to PWN2. The Applicant further deposes that the deceased person died in 2021 after receiving an invoice which was raised in 2019, for the works done which were quoted at a sum of K10, 733, 712.86t. This amount comprises the outstanding balance, interest on the said sum at the rate charged by commercial banks on the overdraft facility which was part of the contract, collection costs and costs of the action. His further deposition is that he knew the

father of the deceased person who used to reside in Nyambadwe with him. However, the father also died. This has left him with no any other relation to his knowledge. The Applicant then wrote to the office of the Administrator General to intervene in the matter by applying for letters of administration as a public trust mandated to protect deceased estate. However, the Administrator General refused on the ground that there is a person by the name of Frank Nkolokosa who is alleged to be a relation of the deceased person and who had by then issued instructions to his lawyers about the application for letters of administration- **PWN4 & PWN5**. In those WhatsApp conversations, the Administrator General declines to apply for letters of administration because a relative was identified and can easily take up the issue.

This Court has read the request which the Applicant made to the office of the Administrator General on 28th April, 2023 where he is requesting that office to apply for letters of administration pursuant to Section 39 (2) of DEWIPA and Section 7 of the Administrator General Act. It is clear that the Administrator General may also obtain Letters of Administration where no person has obtained a grant of probate or letters of administration. The reason for this request was in furtherance of the case that was before the High Court of Malawi Commercial Division under Case Number 238 of 2019. This Court has noted the informal response of the Administrator General through WhatsApp messages where the office declines to apply for the Letters of administration on the ground that the deceased person has a relative.

A though check at the Registry shows that as of today, this Registry does not have any application relating to the deceased estate of the late Radson Kulisewa junior. This confirms the submission that the immediate and extended family members have indeed not applied for Letters of Administration before the High Court Family and Probate Division. This means that the immediate and extended family of the deceased person have not applied for Letters of administration in relation to the deceased estate. The communication from the Administrator General to the Applicant occurred in April, 2023. This means that more than a year has elapsed without any action on the part of those who allege to be relations of the deceased person. Since there is an unjustified and unexplained failure to apply for letters of administration more than three years after the death of the person who engaged services of the Applicant, the Court finds that the Applicant as a creditor of the deceased person is properly applying before this Court for Letters of Administration.

Rule 25 of the Probate (Non-Contentious) Rules provide that

“Where any person dies leaving property in Malawi, the Court may appoint such person as the Court thinks fit to be a receiver of such property pending a grant of probate or letters of administration, if it appears on the application of any person—

- (a) claiming to be interested in such property;
- (b) having the custody or control thereof at the time of the death of the deceased; or
- (c) being at such time an attorney of the deceased, that there is danger that such property may be wasted."

In the above rule, the Court recognize the fact that some letters of administrator are granted to applicants to ensure that the value or the property is protected. Much as the Applicant is entitled under the law to obtain Letters of Administration against the judgment debtor, as a matter of ensuring transparency and accountability in the administration of the deceased estate, this Court finds it proper to appoint another person or entity other than the Applicant. This is to ensure that decisions are not obscured by the fact that the Applicant is directly interested in the deceased estate. By virtue of Section 39 (2) of DEWIPA and Section 7 of the Administrator General Act, this Court appoints the Administrator General and grants that office Letters of Administration to officially manage the present deceased estate. As this office is managing the estate, it is directed to perform due diligence. Some of the steps that need to be taken are premised on the following observations.

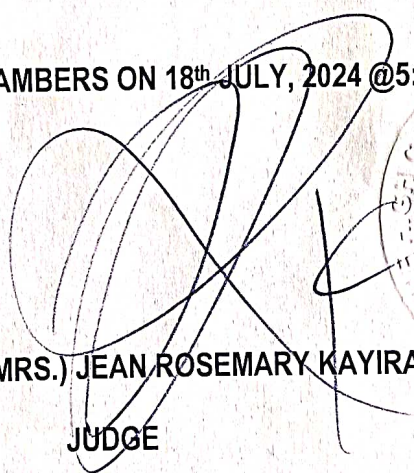
First and foremost, this Court notices that there is dispute which dispute was later resolved by the Applicant and the deceased person. The Applicant commenced work on the 3rd and 4th townhouses before completing the 1st and 2nd townhouses which was in total breach of their contract. Having resolved this dispute, the parties agreed that the payments will be done in instalments dependent on the financial position of the deceased person. The second observation is that there is a lot of discrepancy in terms of the amount the deceased person owed the Applicant. In the demand letter from Counsel S. Mumba, the Applicant is claiming a sum of K11, 733, 712.86t whilst in the summons the same Applicant is claiming a sum of K10, 733, 712.86t. Thirdly, there is no document confirming the physical progress of the works done by the Applicant which should correspond with the amount being claimed. Therefore, this Court makes the following orders;

1. The Administrator General must **formally** engage the Director of Buildings in the Ministry of Transport to verify and confirm the works done on site within 30 days from today; which is by **19th August, 2024**;
2. The Director of Buildings either by himself or his designated officer must Certify that the works done on the site are corresponding with the amount claimed within 21 days from 19th August, 2024 which is by **9th September, 2024**.

3. Thereafter, the Administrator General should formally engage a government Valuer through the Director of Buildings who should produce a valuation report within 7 days from 9th September, 2024 which is by **16th September, 2024.**
4. The Administrator General must conduct a public auction for the sale of the plot on Plot Number BW 449 situated at Sunnyside within the City of Blantyre within 21 days from 16th September, 2024 which is by **7th October, 2024.**
5. Once the property is sold, the Applicant is supposed to be paid his amount and in the event that there will be a balance, the same should be reported to the Court and must be deposited in an interest earning bank account within 14 days from **7th October, 2024.**
6. **The said amount will only be released once the Court makes a specific order as to is the possible beneficiary.**
7. This Court demands written reports on progress of these orders by 1st of September, 2024 and last report on **9th October, 2024.**

It is so ordered.

PRONOUNCED IN CHAMBERS ON 18th JULY, 2024 @5:00PM.



HONORABLE (MRS.) JEAN ROSEMARY KAYIRA
JUDGE

