

**IN THE COURT OF APPEAL OF TANZANIA
AT TANGA**

CIVIL APPLICATION NO. 304/12 OF 2019

MWANAISHA KAPER

(Administratrix of the KAPER KATUMBA) APPLICANT

VERSUS

SALIM SULEIMAN HAMDURESPONDENT

**(Application from the decision of the High Court of Tanzania
at Tanga)**

(Aboud, J.)

dated the 09th day of June, 2017

in

Misc. Land Application No. 80 of 2016

.....

RULING

21st & 25th September, 2020

LEVIRA, JA.:

The applicant, MWANAISHA KAPER (Administratrix of the estate of KAPER KATUMBA) is seeking extension of time within which to file application for leave to appeal to the Court against the decision of the High Court (Aboud, J.) in Miscellaneous Land Application No. 80 of 2016.

At the hearing of the application, the applicant was represented by Mr. Daimu Halfani and Mr. Mashaka Ngole, both learned advocates. The respondent had the services of Mr. Obediodom Chanjarika, learned advocate. Before commencement of the hearing of the application on

merit, Mr. Halfani had a prayer to make. I granted leave as there was no objection from the counsel for the respondent.

Mr. Halfani started by tracing the background of this application by stating that, this application was filed in Court on 9th July, 2019 by the applicant who was the Administratrix of the estate of the late Kapera Mtumba. The application is supported by the applicant's affidavit. However, Mr. Halfani said, Mwanaisha Kapera was relieved of her duty of administratrix of the estate of Kapera Mtumba on 7th March, 2018 by the decision of Manundu Primary Court in Korogwe District in Probate Cause No. 2 of 2006 in which decision Hassan Kapera Mtumba was appointed as an administrator of the estate in question. Later, the applicant appealed to the District Court of Korogwe in Probate Appeal Case No. 1 of 2018. Her appeal was dismissed on 17th December, 2018. Aggrieved, she filed her second appeal in the High Court of Tanzania, at Tanga in [PC] Probate Appeal Case No. 3 of 2019. The decision of the High Court dismissing her appeal was delivered on 25th July, 2019.

Therefore, in his oral prayer under Rule 4(2)(a) and 48(3)(a) of Tanzania Court of Appeal Rules, 2009 (the Rules) before me, Mr. Halfani prayed to substitute the name of the applicant to read **Hassan Kapera Katumba** instead of Mwanaisha Kapera for him to continue to prosecute

the application on behalf of the estate of Kapera Mtumba. He also prayed for the affidavit of Mwanaisha Kapera (the applicant herein) to remain intact because the information contained therein is not personal, but was given for the same estate. According to Mr. Halfani, names in affidavits in Probate matters do not change when similar situation occurs, the Court acts upon them the way they are. He cited a decision of the Court in a matter where the present parties were involved; the case of **Hassan Kapera Mtumba (Administrator of the estate of the late Kapera Mtumba) v. Salim Suleiman Hamdu**, Civil Application No. 505/12 of 2017.

Mr. Halfani stated that, if his prayer will be granted it will speed up the case and enable the administrator to protect the rights and interest of the estate. Finally, he prayed for the prayer to be allowed. His prayer to make substitution of the applicant was not objected to by Mr. Chanjarika.

Having heard the counsel for the applicant, the immediate question that follows is whether his prayer is tenable. According to Mr. Halfani, the applicant was relieved of her duty as an administratrix of the estate of the late Kapera Mtumba on **7th March, 2018** by Manundu Primary Court in Probate Cause No. 2 of 2006. In the decision of the said Primary Court, **Hassan Kapera Mtumba** was appointed to be the administrator of the

estate in question. The current application was filed on **9th July, 2019** by the applicant although she was already relieved by Hassan Kapera Mtumba who took charge of the deceased estate. I have thoroughly gone through the Notice of Motion and supporting affidavit, but I could not find anywhere mentioning the administrator (Hassan Kapera Mtumba). In other words, the said administrator is not pleaded in the pleadings before me.

I take note that, the appointment of the administrator was unsuccessfully challenged by the applicant in the District Court of Korogwe and the High Court of Tanzania, Tanga Registry vide Probate Appeal Case No. 1 of 2018 and [PC] Probate Appeal Case No. 3 of 2019 respectively as submitted by Mr. Halfani. I take further note, that the date of the decision of the High Court was **25th July, 2019**. However, this fact alone does not give any valid explanation as to why the applicant did not even reveal the fact that, she was once appointed as an administratrix of the estate of the late Kapera Mtumba and relieved or even mentioning the name of Hassan Kapera Mtumba as the current administrator.

With respect, I wish to state that I had time to go through the decision cited by Mr. Halfani, but the circumstance in **Hassani Kapera**

Mtumba v. Salim Suleiman Hamdu (supra) are distinguishable from the current application. I will explain.

One, the application in the case of **Hassani Kapera Mtumba** was for stay of execution. The said application was placed before full Court and not before a single Justice as herein. **Two**, the part of the said decision of the Court relied upon by the counsel for the applicant does not indicate that, the applicant made an application before the Court to substitute the name of the applicant. To be precise, it reads:

"The Notice of Motion is supported by an affidavit of one Mwanaisha Kapera, the former Administratrix of the Estate of the Late Kapera Mtumba who was replaced by Hassan Kapera Mtumba on 7th March, 2018 through an application made by family members before Korogwe Primary Court vide Probate Cause No. 02 of 2006."

The above excerpt from the decision of the Court only mentioned that Mwanaisha Kapera was replaced by Hassan Kapera Mtumba on 7th March, 2018. But it does not indicate that the substitution was made in the cause of hearing of that application.

Even if that was done in the cause of hearing, still I do not think that it will be appropriate for me as a Single Justice hearing application

for extension of time, to go beyond what is placed before me and do amendments or change the name of the applicant as requested by Mr. Halfani. I also observe that, the names of parties appearing in the decision referred by the counsel for the applicant are different, the applicant herein was not a party; the citation reads: "***Hassani Kapera Mtumba (Administrator of the estate of the late Kapera Mtumba) v. Salum Suleman Hamdu, Civil Application No. 505/12 of 2017.***" Therefore, looking at the citation, it is impossible to tell whether and when the said applicant was substituted without any other material information to that effect.

As intimated above, the applicant was not satisfied with the appointment of Hassani Kapela Mtumba as an administrator of the estate under consideration. Besides, the affidavit of the applicant which the counsel is requesting to remain intact was sworn in her personal knowledge and not on behalf of the said Hassan Kapela Mtumba.

In the circumstances, I am of the considered opinion that, the prayer by the counsel for the applicant is untenable. I therefore refrain from granting leave to the counsel for the applicant to substitute the name of the applicant in this application for extension of time. If Mr. Halfani is still intending to substitute the applicant, he has to follow the proper

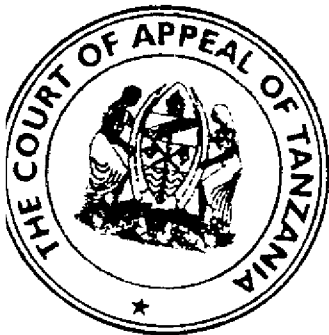
procedure under the law to do so. Having so stated, I adjourn hearing of this application to a date to be fixed by the Registrar.

Order accordingly.

DATED at **TANGA** this 25th day of September, 2020.

M.C. LEVIRA
JUSTICE OF APPEAL

The Ruling delivered this 25th September, 2020 in the presence of Mr. ObediDOM Chanjarika holding brief for Mr. Mashaka Ngole, counsel for the Applicant and Mr. ObediDOM Chanjarika counsel for the respondent is hereby certified as a true copy of the original.




G.H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL