

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: LILA, J.A., MWANDAMBO, J.A, And FIKIRINI, J.A.)**

**CIVIL APPEAL NO. 320 OF 2021**

**ANDREW C. MFUKO (*Suing in Person*).....APPELLANT**

**VERSUS**

**GEORGE C. MFUKO**

**(*An Administrator of the Estate of the late Clement N. Mfuko*).....RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania (Dar es Salaam District Registry) at Dar es Salaam)**

**(Miyambina, J.)**

**dated the 17<sup>th</sup> December, 2020**

**in**

**Land Case No. 11 of 2017**

.....

**JUDGMENT OF THE COURT**

25<sup>th</sup> October & 24<sup>th</sup> November, 2022.

**FIKIRINI, J.A.:**

The appellant, Andrew C. Mfuko (*suing in person and as an Administrator of the Estate of the late Anna C. Mfuko*), aggrieved by the High Court (Dar es Salaam District Registry) decision in Land Case No. 11 of 2017, has appealed to this Court, raising four grounds of appeal.

Before the High Court, the appellant, his two siblings and two other persons sued the respondent, George C. Mfuko the administrator of the estate of the late Clement N. Mfuko, in Probate and Administration Cause No. 35 of 2015, for including properties not subject to administration by the appointed administrator comprising a house on Plot No. 42, Block 7 in Magomeni, Dar es Salaam (the suit property).

After hearing the parties, the court found the presented evidence insufficient to conclude that the late Clement N. Mfuko bequeathed or sold to the appellant and his brother William C. Mfuko the suit property. Thus, in its decision dated 17<sup>th</sup> December, 2020, the court retained the suit property as part of the deceased's estate. As intimated earlier, dissatisfied, the appellant lodged this appeal to this Court containing four grounds. But we shall not reproduce or consider them for reasons which will be apparent soon in this judgment.

At the hearing of the appeal, Mr. Alfred Shanyangi, learned advocate, appeared for the appellant while Mr. Juma Nassoro, also learned advocate appeared for the respondent. Before the hearing commenced, the Court raised two issues *suo motu*: **one**, on the

propriety of the Judge's order dated 16<sup>th</sup> August, 2016 in Probate and Administration Cause No. 35 of 2015 and **two**, if, after making that order, it could still be correct to sue the respondent as an administrator of the estate of the late Clement N. Mfuko, in Land Case No. 11 of 2017.

Responding to the raised issues, Mr. Shanyagi conceded that under rules 106 and 107 of the Probate and Administration of Estate Act (the Act), the administrator ought to file an inventory together with the statement of account. He however, contended that the closure of the proceedings under inventory rather than after the filing of the statement of account was erroneous. He equally conceded that it was inappropriate for the appellant to sue the respondent as after the judge's closure order of the proceedings, the administrator became *functus officio* as he no longer had mandate over the administration of the estate of the late Clement N. Mfuko.

In addition, he argued that the suit was improperly filed as a land matter, whereas the complaint ensued from the probate and administration cause. He thus implored us to invoke the powers bestowed on us under section 4 (2) of the Appellate Jurisdiction Act (the

AJA) and nullify the proceedings up to the stage where the Judge marked the Probate and Administration cause closed, and then make an order remitting the record to the High Court to proceed with the matter according to law.

Mr. Nassoro had a different view. According to him, the Judge correctly declared the matter closed after the filing of the inventory and statement of account as reflected on page 15 of the record of appeal showing the administration of the deceased estate and distribution of the property.

When we probed him if it was correct to close the proceedings based on the inventory, Mr. Nassoro contended that there was no harm done and the Court should bank on substance rather than form. We further queried Mr. Nassoro on whether it was proper after the closure of the proceedings for the administrator to keep on collecting income from various properties under administration as before. He responded by stating that after noticing the anomaly, the administrator should have asked the court to vacate its order or seek review to allow the

proceedings to reopen to give room for interested parties to take the necessary action rather than filing Land Case No. 11 of 2017.

Mr. Shanyangi had nothing to add in rejoinder.

On our part, having heard the advocates' submissions to the questions we posed, there is no dispute that the order of the High Court in Probate Cause closed the matter with the result that the respondent ceased to be an administrator. Having vacated office as an administrator, he could not sue or be sued in that capacity. Apparently, both learned advocates agree that it was wrong for the appellant to have sued the respondent in his capacity as an administrator. That means the suit was instituted against a person who had no capacity to act as an administrator regardless of the fact that the order closing the Probate Cause may have been erroneous.

As both learned advocates are in agreement on the invalidity of the proceedings in Land Case No. 11 of 2017, we exercise our powers of revision pursuant to section 4 (2) of the Appellate Jurisdiction Act and nullify them and quash the resultant judgment and decree. Since, there

could not be a valid appeal before us against the decision in Land Case No. 11 of 2017, we thus strike out the appeal.

As the order we have made results from an issue raised by the Court *suo motu*, we make no order as to costs.

**DATED at DAR ES SALAAM** this 23<sup>rd</sup> day of November, 2022.


S. A. LILA  
**JUSTICE OF APPEAL**

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

P. S. FIKIRINI  
**JUSTICE OF APPEAL**

The Judgment delivered this 24<sup>th</sup> day of November, 2022 in the presence of Ms. Fauzia Kajoki learned counsel for the Appellant and holding brief for Ms. Amina Mkungu learned counsel for the Respondent, is hereby certified as a true copy of the original.



  
J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**