

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

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 257 OF 2019**

*(From the decision of the Resident Magistrate Court of Kivukoni/Kinondoni at Kinondoni in Workers Compensation No. 2 of 2018, Hon. H.M. Hudi RM dated 25/11/2019 and certified on 10/12/2019)*

**MANAGING DIRECTOR,**

**MWANAMBOKA HAULIERS LTD.....APPELLANT**

**VERSUS**

**JUMA ABUBAKAR NAMPEMBE.....RESPONDENT**

**CONSENT JUDGEMENT**

**Date of last order:** 29/04/2020

**Date of Judgement:** 15/07/2020

**MLYAMBINA, J.**

The respondent herein one Juma Abubakar Nampembe was the applicant in the Resident Magistrate Court of Kinondoni vide the Workers Compensation Case No. 2/2018. After a hearing, judgement was entered in favor of him and judgement against the appellant herein one Mwanamboka Hauliers Ltd was entered for the payment of Tshs. 70,000,000/= as compensation.

The appellant was aggrieved by the decision of the Resident Magistrate Court of Kinondoni. Hence this appeal on nine grounds, namely:

- i) That, the Honorable Trial Magistrate erred in law and fact entertaining the matter which was time barred.
- ii) That, the Honorable Trial Magistrate erred both in law and in fact by entertaining the matter which had no jurisdiction to entertain it.
- iii) That, the Honorable Trial Magistrate erred both in law and fact by proceeding with the matter which was brought under non-existing law or dead law.
- iv) That, the Honorable Trial Magistrate erred both in law and in fact by failing to evaluate properly the evidence tendered and thereby abstained from deciding upon framed issues based on the strength of evidence put before it.
- v) That, the Honorable Trial Magistrate erred both in law and fact by deciding that the applicant suffered losses without any support of authentic and credible evidence.
- vi) That, the Honorable Trial Magistrate erred both in law and fact by denying the respondent the right to be heard.
- vii) That, the Honorable Trial Magistrate erred both in law and fact by entertaining the applicant who had no locus to sue. The applicant was neither the beneficiary nor the administrator of the estate of the deceased.

- viii) That, the Honorable Trial Magistrate erred both in law and fact by flouting the procedure of admitting the exhibits.
- ix) That, the Honorable Trial Magistrate erred both in law and fact flouting the formula on how to calculate compensation under the *Workers Compensation Act, Cap 263. [R.E. 2002]*.

In the course of the proceedings, the appellant and the respondent in person, negotiated and filed a consent agreement with the following agreed terms:

- 1) That the parties agreed that the case, Civil Appeal no. 257 of 2019 before this court be withdrawn and be marked that the parties have settled the matter.
- 2) That, by this deed, the respondent be compensated 1,200,000/= One Million Two Hundred Thousand by the appellant on the date of signing the deed.
- 3) The respondent shall not have any further claim whatsoever to the appellant on the said case and the same shall apply to the appellant of whom he shall not have any claim against any party to this deed.
- 4) That, each party shall bear his own costs.
- 5) That, the terms of this settlement deed is hereby entered and be recorded as the judgement and decree of the court.

On 29<sup>th</sup> April, 2020, when the matter came for recording settlement deed, Counsel George Muhanga for the appellant informed the court that the parties have negotiated, settled and filed consent agreement. Counsel Mhanga, therefore, prayed the matter be marked settled as per the terms in the consent agreement.

In reply, Counsel Haider Mwinyimvua told the court that he was not aware of this development. That, he got the copy of consent agreement while at the court.

Counsel Mwinyimvua went on to tell the court that he was engaged by the respondent and his family. He therefore, invited this court to see that the consent agreement did not take into consideration of the reality due to the nature of this case. He also invited this court to see the consent agreement on that weight because the proceedings go to the beneficiaries. In view of Counsel Mwinyimvua, the Probate Administrator did not consider the interests of the beneficiaries.

The respondent, on his part, told the court that if the consent agreement will not be recorded, he will decline to be the probate administrator so that they find another administrator.

Further, the respondent stated that he decided to settle this matter because it has taken long time. He also admitted that he never involved the beneficiaries when entering the consent agreement.

The respondent, therefore, called upon this court to record the consent agreement as consent judgement.

I have considerably weighed the arguments of Counsel Mwinyimvua and of his employer (the respondent). Though I agree with Counsel Winyimvua that the respondent is required to consider the interests of the beneficiaries when entering into any legal transaction, it should also not be forgotten that the law gives legal powers to the Probate Administrator to do what he thinks proper. That is why the Probate Administrator do not need consent of all the heirs prior discharging his powers, even of selling a house. In the case of **Mohamed Hassani v. Mayasa Mzee and Mwanahawa Mzee** 1994 TLR 225 the Court of Appeal of Tanzania made the following important remarks. While making reference to its own earlier decision in the case of **Aziz Daudi Aziz v. Amin Ahmed Ally and Another**.

*We cannot find in the evidence before the High Court that there was anything wrong with the sale of the house. Once an administrator of the estate was appointed then the house*

*of the deceased owner of the property is changed in all documents and that of the administrator is substituted and it is let to his discretion to administer the estate in the best way he can...*

It is the view of this court that, legally speaking, once the administrator is appointed, the counsel to the case is engaged by the Probate Administrator and not the beneficiaries. There are four reasons to back up such position. **One**, in terms of *Section 100 of the Probate and Administration of Estates Act, Cap 352 [R.E. 2019]*, it is the executor or administrator of the estate who is vested with powers in respect of causes of action and debts. He has the same power to sue in respect all causes of action that survive the deceased. Deriving from such powers, it is the executor or administrator who can engage or not engage a counsel to the case.

**Two**, under the provision of *Section 100 of the Probate and Administration of the Estates Act (supra)* it is the executor or administrator who can exercise the same powers for the recovery of debts due to the deceased at the time of his death as the deceased has when living. It is from such powers; the executor or administrator can engage a counsel for legal representation.

**Three,** there is nowhere under the provisions of Section 100 (*supra*) even under the whole of Cap 352 that places power to the beneficiaries to engage a lawyer while there is a legal appointed Probate Administrator.

**Four,** if the beneficiaries are left to engage a counsel, it will be usurping powers of the Probate Administrator. Leave out the afore observation, Counsel Mwinyimvua is the employee of the respondent. The settlement deed was negotiated and signed by his employer. The later has appeared and requested this court to register the consent agreement as consent judgement. Should this court listen the employee or the employer? The later deserves positive consideration by the court of law worth of its meaning.

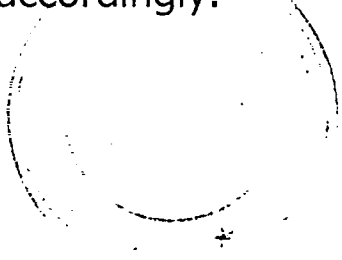
If the beneficiaries will be aggrieved with the decision of the Probate Administrator, they will have to undergo a proper legal remedy. It is not the employee to challenge the consent agreement without even consulting the alleged employer (beneficiaries).

In the circumstances, the objection by Counsel Haider Mwinyimvua is dismissed for lack of merits. In terms of *Order XXIII Rule 3 of the Civil Procedure Code Cap 33 [R.E. 2019]*, the consent agreement dated 23<sup>rd</sup> March, 2020 and filed on 24<sup>th</sup> March, 2020

is hereby adopted as the consent judgement of the court with the following final orders:

- 1) This Civil Appeal No. 257 of 2019 is hereby marked settled.
- 2) The respondent shall be compensated TZs 1,200,000/= by the appellant.
- 3) The respondent shall have no any further claim whatsoever to the appellant on this case and the same shall apply to the appellant of whom shall not have any claim against the party to the consent agreement.
- 4) Costs be shared.

Order accordingly.



**Y. J. MLYAMBINA**  
**JUDGE**

**15/7/2020**

Consent Judgement pronounced and dated 15<sup>th</sup> July, 2020 in the presence of counsel George Mhanga for the appellant and Agness Kayombo for the respondent.

**Y. J. MLYAMBINA**  
**JUDGE**

**15/7/2020**