

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**LAND CASE NO. 68 OF 2015**

**ERICA MASWANYA.....PLAINTIFF**

**VERSUS**

**COMMERCIAL BANK OF AFRICA TANZANIA LTD.....1<sup>ST</sup> DEFENDANT**

**EUPHRACIE MATHEW RIMISHO**

**t/a EMAR PROVISION STORE.....2<sup>ND</sup> DEFENDANT**

**ANTHONY THOMAS MSANGYA.....3<sup>RD</sup> DEFENDANT**

**RULING**

*Date of last order 28/1/2019*

*Date of Ruling: 20/02/2020*

**NGWALA, J.**

When this matter came up for mention, Mr. Richard Madibi, learned counsel for the plaintiff , notified the court, at the outset, that the copy of the Letters of Appointment of the Administrator of Estate of late Erica Maswanya, the plaintiff and death certificate have been filed in court vide a letter dated on 5<sup>th</sup> November 2019. Mr. Madibi urged that since the letter of appointment was granted on 19/11/2019, he prayed for the court to join the administrator of estate in the present suit as a legal representative of the deceased.

Although Ms. Caroline Ngailo the learned counsel for the 1<sup>st</sup> defendant conceded that indeed the letter of Administration of Estate and death certificate have been filed in court but she was of the view that in accordance with the provisions of Order XXII Rule 3 of the Civil Procedure Code Cap 33 R. E. 2002] read together with item 16 of the Law of Limitation Act, the present suit is a bated as the time start to run from the date when the plaintiff died.

In the rejoinder Mr. Madibi maintained that the time starts to run from the date when a legal representative has been appointed. He thus retaliated his prayer for the legal representative to be joined in the present suit.

I have subjected the contending arguments of the trained minds for both parties to a proper scrutiny. Having so done, I think there is only one question which this Ruling must answer. The said million dollar question is whether in an application to join legal representative in a suit, the computation of time should be reckoned from the date of death or appointment of an administrator of estate.

In this case, Mr. Madibi, learned counsel for the plaintiff had urged that the computation of time is reckoned from the date when the administrator of estate is appointed. On her part Ms. Ngailo contended that the computation of time is reckoned from the date of death.

With respect, I do not think that this issue should delay me. From my reading and understanding of the provision of **Order XXII Rule 3 (1) (2) CPC** reading together with **Part III Schedule Item No 16 of the Law of Limitation Act**, it is plainly clear that the prescribed time of ninety

days in which to make the application for legal representative to join in a suit is to be reckoned from the date when the plaintiff dies. Suffice to say the long and short answer to it is that the computation of time should be reckoned from the date of death of plaintiff. It seems clear that Mr. Madibi's perception with regard to the computation of time is highly misconceived. Reference to the date of appointment of an administrator of estate is not borne out from neither the provisions of any law nor the precedents of the Higher Courts. The submission by Mr. Madibi that the computation of time start to run from the date of appointment of an administrator of estate has, with due respect, no bearing to the law.

In that situation, I do not accept Mr. Madibi's submission on this point. I am therefore in agreement with Ms. Ngailo that in computing the time within which the application for an order to join a legal representative in a suit, the period of time is to be reckoned from the date of the death of plaintiff. In this case the date of death of plaintiff as per Certificate of Death with Registration No C. No 1002955436 occurred on 10<sup>th</sup> May 2018. On 28 November 2019 Mr. Madibi by oral application prayed for an order that the administrator of estate of late Erica Maswanya be join in this suit as a legal representative of the deceased. . Therefore, it goes without saying that the said application is out of time in terms of **Order XXII Rule 3 (2)** read together with **Part III Schedule Item No 16 of the Law of Limitation Act Cap 89**. At the latest, the application should have been filed by 10 August, 2018.

Before I pen off, I wish to state that the law is still very friendly since the provisions of **Order XXII Rule 9 of the Civil Procedure Act Cap 33** allows for a party to revive the abated suit but subject to satisfying the court on sufficient cause that prevented him from continuing the suit. Though such route is not lax since the same is subject to the time limit prescribed by the Law of Limitation Act Cap 89 [R.E. 2002].

All said and done, as already intimated it is, accordingly, ordered that the present suit is marked as abated against the plaintiff.

  
**A. NGWALA**

**JUDGE**

**20/02/2020**

**Court:** Ruling delivered in the presence of Miss Fatuma Mngunya advocate for the 1<sup>st</sup> Defendant and in the absence of the plaintiff's counsel and the 2<sup>nd</sup> Defendants counsel.

**Court:** Right of Appeal to Court of Appeal of Tanzania explained.

  
**A. F. Ngwala**

**JUDGE**

**20/02/2020**