

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 19 OF 2020

(Arising from Miscellaneous Application No.110 of 2017)

MTAWA AKIDA (*As Administrator of the Estate*

of the late Waziri Mgeni).....**APPLICANT**

-VERSUS-

MWAJUMA RASHID.....**1st RESPONDENT**

AISHA SHAFII.....**2nd RESPONDENT**

KITWANA MBARUKU.....**3rd RESPONDENT**

NURU MBARUKU.....**4th RESPONDENT**

RULING

Date of Last Order: 11/08/2021

Date of Ruling: 03/09/2021

AGATHO, J.:

The present ruling emanates from the Applicant's application for an order to join persons staying or intermeddling with the estate of the late Mbaruku Kitwana as respondents in Misc. Application No. 110 of 2017 that is pending before this Court.

Looking at the Chamber Summons, affidavit and Counter Affidavit the parties filed, a key issue is whether the heirs to Mbaruku

Kitwana estate have appointed the administrator of the estate? If not whether the Applicant can apply to join any person intermeddling with the said estate.

Paragraph 5 of the Applicant's affidavit avers that despite the respondent being in occupation of the estate/property of the deceased they have not appointed an administrator of the estate of the late Mbaruku Kitwana. The affidavit is silent as to whether these Respondents are legal representatives. Besides if they would have been legal representatives, clause 16 of part II of the schedule to the Law of Limitation Act provides for the time within which a legal representatives of the deceased estate may be joined in a matter/suit. A question therefore is whether if the Respondents are indeed legal representatives was the application to join them in matter made timely?

What reliefs are the parties entitled to? The Applicant seeks an order to join the spouses, and children of the late Mbaruku Kitwana who are in occupancy of the estate/property of the late Mbaruku Kitwana as Respondents for they have failed to apply for letters of administration of the estate of the late Mbaruku Kitwana.

Before proceeding further, I noted that there was a Preliminary Objection (PO) raised by the Respondents that the application is bad in law for it contravened the mandatory provisions of Order XLIII Rule 2 of the Civil Procedure Code [Cap. 33 R.E. 2019] that the prayer mentioned in the Chambers Summons differ with what is prayed for in the affidavit. The said PO ought to be determined first before proceeding with the application at hand. The same was held in **Shadida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 CAT (unreported) where the **CAT held** that where a Preliminary Objection is raised, it should be heard first before the disposal of the matter on merits. But in the present application I have noted that the Respondents did not say anything about their PO. They have either abandoned it or failed to prosecute it. Having said so, we proceed to determine the application at hand. Moreover, regarding the application both parties file their written submissions.

Since the Applicant filed his written submission, I will examine the application, affidavit in support, written submission, and Counter Affidavits. Let us start by asking whether the Law of Limitation Act was observed. The Respondent (Mbaruku Kitwana) passed on in

May 2019. Under clause 16 Part III of the schedule to the Law of Limitation Act the limitation for joining legal representative of a deceased estate is 90 days. We ask who are the legal representatives in the case at hand? Where there is a deceased estate, a legal representative is the administrator of the estate. The time thus cannot start to run from the date the deceased died. Rather it runs from the date the legal representative is or was appointed? If the days were counted from the day the deceased died then the application is time barred because the deceased died in May 2019 and the application at hand was filed on 24/03/2020 almost a year later while the law requires the same to be filed 90 days after the death of the deceased.

But the correct interpretation of the law is that the days are to be counted from the day a legal representative (administrator of the estate) is appointed. In that case the application is not time barred because until 24/03/2020 the heirs to the estate of the late Mbaruku Kitwana were yet to appoint the administrator of the said estate.

Another crucial question central to the present application is whether there are other heirs who did not apply to be joined as Respondents. According to the Respondents' Counter Affidavit, there are 11 heirs who have not been impleaded. Yet another issue is whether the property in dispute is the house in which the Respondents reside. From the affidavit and submissions of the Respondents that is not the case. It is therefore not clear as to why the Applicant is seeking to join them in the pending matter. Again, is there evidence to show that the Respondents are not residing in the late Mbaruku Kitwana's property? I have gone through the Respondents' Counter Affidavit there no such evidence.

Therefore, the application at hand is granted because as per Section 3 of the Civil Procedure Code [Cap 33 R.E. 2019] the Respondents are not only the heirs but are also intermeddling with the deceased Respondent's properties. Moreover, they have neither appointed any administrator of the estate of the deceased nor have they applied to the Court for letters of administration. Although the disputed property is different from the one the Respondents are residing, they are still the heirs, and beneficiary of the deceased

Respondent's estate. The fact that there are other heirs who could be joined as they are potential Respondents and they are left out of the present application, I am of the view that it is up to the Applicant to so decide whether to join them or not.

In the premises, the application is granted. And due to the nature of the case at hand and the parties being unrepresented by Advocates, each party to bear its own costs.

It is so ordered.

DATED at TANGA this 3rd Day of September 2021.




U. J. AGATHO
JUDGE
03/09/2021

Date: 03/09/2021

Coram: Hon. Agatho, J

Applicant:

Respondents:

B/C: Zayumba

JA: Ms. Husna Mwiula

Court: Ruling delivered by on this 3rd day of September, 2021 in the presence of Applicant and the 1st and 2nd Respondents.



U. J. AGATHO
JUDGE
03/09/2021

Court: Right of Appeal explained.



U. J. AGATHO
JUDGE
03/09/2021