

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**(PC) CIVIL APPEAL No. 41 OF 2021**

*(Arising from the High Court (Musoma District Registry) in PC Probate Appeal No. 3 of 2021; the District Court of Musoma at Musoma in Probate Appeal No. 6 of 2020; & Originating from Musoma Urban Primary Court in Probate Cause No. 12 of 2019)*

**1. WAMBURA SAWA**  
**2. RUSOBYA SAID**  
**3. MAKUKA RUSOBYA** } ..... **APPELLANTS**

**Versus**

**1. KAGINA NOTI ZONGORI**  
**2. IBRAHIM ABEID KAGINA** } ..... **RESPONDENTS**  
[As Administrators of the Estates  
of the late Zainabu Kagina]

**RULING**

21.04.2022 & 21.04.2022

**Mtulya, F.H., J.:**

Today morning an appeal in **(PC) Probate Appeal No. 41 of 2021** filed in this court was scheduled for preliminary objection hearing to determine a point of law on time limitation. After a short presentation of facts by Mr. Kagina Noti Zongori (the first respondent), and a reply from Mr. Leonard Magwayega, learned counsel for the respondent, it came to the light that there is a confusion of dates in the decision of the **District Court of Musoma at Musoma** (the district court) in its two previous decisions in **Probate Appeal No. 6 of 2020**, namely, a judgment pronounced on 19<sup>th</sup> November 2020 and an order amending

the judgment which also displays to have been delivered on the same date, 19<sup>th</sup> December 2021, but signed by different learned magistrate. The order followed the directives of Hon. Judge Kisanya in **(PC) Probate Appeal No. 3 of 2021** filed in this court which was pronounced on 4<sup>th</sup> November 2021, but was not fully complied by the district court as the date in the amended judgment did not reflect the new date and words *amended judgment*.

Having noted the defects, this court, invited the parties to cherish the right to be heard on the subject as part of the constitutional right enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedent of **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44. It was fortunate that both parties conceded that there are defects on the record with regard to the dates on the both the judgment and order as the order was not reflecting the new changes as per order of Hon. Judge Kisanya. On his part, the second, respondent prayed this court to be specified on what is exactly supposed to be rectified so that when the matter is brought again in this court, such confusions may be easily avoided. Mr. Magwayega, on his part, called inferior court to abide with orders of the superior courts and rectify the record per requirement of the law to maintaining integrity of courts.

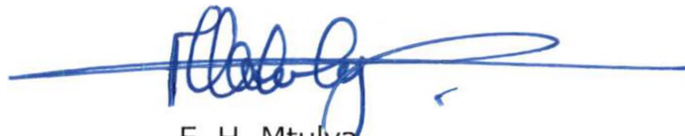
On my side, I think it is obvious that this appeal is before this court supported by defective record, and this court being custodian of proper application of laws, it will not close its eyes to let the appeal proceed with defective record. The available remedies as per established precedents of this court and Court of Appeal is to strike out the incompetent appeal for want of proper application of laws (see: **Puma Energy Tanzania Limited v. Ruby Roadways Market (T) Limited**, Civil Appeal No. 3 of 2018 and **Ghati Methusela v. Matiko Marwa Mariba**, Civil Application No. 6 of 2006).

The present appeal will follow the course of the cited precedents for want of certainty and predictability of decisions emanating from this court. I have therefore decided to strike out the appeal with an order for the district court to rectify the defects with regard to the following matters:

- i. Name of the parties;
- ii. Date of Amendment;
- iii. Display the title as *Amended Judgment*;
- iv. The assigned learned magistrate to put his/her name, title and signature; and
- v. All proceedings must be reflected on the record to avoid uncertainty of the record.

After all is done in accordance to the law at the district court, any party may wish to initiate fresh and proper appeal in this court within fourteen (14) days after such rectifications, without any further delay.

It is so ordered.



F. H. Mtulya

**Judge**

21.04.2022

This Ruling was pronounced in chambers under the seal of this court in the presence of the first and second appellants, Mr. Wambura Sawa and Rusobya Said enjoying legal representation of Mr. Leonard Magwayega and in the presence of the respondents, Mr. Kagina Noti Nzongori and Mr. Ibrahim Abeid Kagina, as administrators of the estates of the late Zainabu Kagina.



F. H. Mtulya

**Judge**

21.04.2022