

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

**BUKOB A DISTRICT REGISTRY**

**AT BUKOB A**

**CIVIL APPEAL NO. 02 OF 2022**

*(Appeal originating from the Judgment in Probate and Administration  
cause No. 10 of 2020 at Kamachumu Primary Court and Civil appeal No. 18  
of 2021 Muleba District Court)*

**MACDONALD PUDENSIANA.....APPELLANT**

**VERSUS**

**CECILIA ALFRED MWOMB EKI.....RESPONDENT**

**RULING**

27/05/2022 & 08/07/2022

***E. L. NGIGWANA, J.***

This ruling is in respect of Preliminary objections on points of law. The appellant upon filing the petition of appeal has now encountered a stumbling block from the respondent's counsel Mr. Danstan Mutagahywa who filed the reply to petition of appeal together with a notice preliminary objections on point of law as follows:-

- 1. That the appeal is unmaintainable to the extent it challenges the judgment of the Primary Court of Kamachumu in Probate and Administration Cause No. 10 of 2020 which this honorable court has no jurisdiction to entertain.*
- 2. That this appeal is defective for being brought partly to challenge the judgment of the Primary Court of Kamachumu in Probate and*

*Administration Cause No. 10 of 2020 without identifying the specific judgment intended to be appealed against between the judgment delivered by Hon. A.K. Rugaibula on 10/11/2020 and the Judgment delivered by Hon. C.F. Ngonyani on 31/03/2021 both of which are part of the record of this appeal.*

- 3. That, the appeal is defective to the extent it contains ground four (4) of appeal which is vague for want of sufficient particulars of grievance to enable the respondent to prepare for and make her defence.*
- 4. That, the appeal is incompetent for being preferred by an Appellant who has no locus standi to prosecute this appeal for and in defence of the rights of the heirs of the estate of the late Alfred Mwombeki, including his own mother, as per grounds 1 & 2 of the grounds of appeal when he is not one of such heirs.*
- 5. That, the appeal is defective to the extent it contains ground three (3) which raises the issue of distribution of the estate of the late Alfred Mwombeki (deceased) prior to his death which (issue) is res-judicata, it having been finally and conclusively decided by the Primary Court of Kamachumu (Hon. A.K. Rugaibula in Probate and Administration Cause No. 10/11/2020.*

Wherefore, the respondent is praying that this appeal be struck out with costs.

When the matter came for hearing of the POs, Mr. Danstan Mutagahywa learned advocate appeared for the respondent while the appellant appeared in person, unrepresented. For the interest of justice, it was agreed that the Preliminary objections be argued by way of written submissions. I will consider and determine the 3<sup>rd</sup> limb of the PO because reading it carefully, together with the available record; I am convinced that it will suffice to dispose of the entire matter.

Arguing the 3<sup>rd</sup> P.O, Mutagahywa submitted that ground "4" is vague as it was drafted contrary to the dictates of section 4 of the Civil Procedure Appeal in Proceedings Originating in Primary Courts Rules) GN. No. 312 of 1964 which requires every petition to the High Court from the decision of a District Court in the exercise of its appellate or revisional jurisdiction to set out precisely the grounds of appeal. He added that the ground prejudices the respondent and constitutes a miscarriage of justice as it does not enable the respondent to know the basis of the complaint in order to prepare for the defence.

In reply submissions, the applicant conceded that the same is defective as the word which was intended was "establishing and not "stabling" and according to him, the error is curable under the Written Laws (Miscellaneous Amendments) Act No. 3 of 2018 which introduced overriding objective principle to cutter for minor error.

The 4<sup>th</sup> ground was set as follows;

*"That, the District Court Magistrate erred in law and fact for stabling new issues which were not before the court"*

It is trite that grounds of appeal need to be set out clearly and specifically in the petition of appeal. Where the grounds of appeal are vague, too general and embarrassing in extreme, they should be struck out, leaving only grounds of appeal which are clear and concise for determination by the court. In the case at hand, the 4<sup>th</sup> ground is defective as agreed by both parties. It is very possible to strike it out as the way of curing the error, and remain with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal.

However, I was prompted, for the interest of justice to read the petition of appeal as a whole in connection with what the appellant told this court when he entered appearance on 16/03/2022. On that date, the appellant stated that he is a lay person, and that the petition of appeal was drawn under the assistance of his relative who is not a lawyer by profession. In that premise, the reason as to why the petition of appeal was poorly drafted is not far to fetch. Since the same was poorly drafted, there is no way the same can be allowed to stand.

In the event, I uphold the PO for the reason shown above. I consequently find the appeal incompetent and I strike it out. This matter being a probate and Administration cause, and having considered the conduct of the parties, I enter no order as to costs. Considering the fact that the appellant is a lay person, unrepresented, I grant him an extension of 14 days from the date of this ruling within which to file a proper appeal, if still interested to do so.



E. L. NGIGWANA

JUDGE

08/07/2022

Ruling delivered this 8<sup>th</sup> day of July 2022 in the presence of the appellant in person but in the absence of the Respondent.



  
E. L. NGIGWANA

JUDGE

08/07/2022