

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DISTRICT REGISTRY
AT SHINYANGA

PROBATE APPEAL NO. 1 OF 2022

*(Arising from probate Appeal No. 6 of 2021 from Bariadi District court and
probate and Administration cause No. 3 of 2021 from somanda primary court)*

LUGEMBE PHARES.....APPELLANT

(Administrator of Estate of the late Phares Salyungu)

VERSUS

TABITHA PHARES..... RESPONDENT

RULING

Today, 19/4/2022 the Applicant has been asked to address the court on the competence of his Appeal. The reason behind was that the record in the 1st appellate court, Probate Appeal No. 6 of 2021 Bariadi District Court transpires that the said appeal was still on going at that said court, prior to the filing of this appeal at High Court.

Addressing this court on that, the Appellant stated that he was aggrieved with the decision of the District Court in denial to reject the Respondent's (Tabitha Phares') written submission of which he alleged to have been filed out of time.

Upon going through the lower courts records, particularly that of District Court, I have noticed that the appeal before me is against the interlocutory order issued by the District Court Magistrate on 22/7/2021.

Whether the said submission by Tabitha Phares at the District Court was filed out of time or not, the fact that nature of the order/ruling that had been made is interlocutory, that is an order which does not determine the matter to the finality, it is not appealable.

If the Appellant is aggrieved with the decision, he has to reserve it until the end of the case there at the District Court whereby he can then use it as among the grounds of appeal, if he will be aggrieved with the final decision of the District Court. Otherwise, the appeal before me is incompetent for arising from the interlocutory order.

This appeal is therefore dismissed. The parties are ordered to go back to the District Court for continuation of hearing the 1st appeal in the Probate Appeal No. 6 Of 2021

As the appeal involves family matter, I grant no order as to costs.

(sgd)

S.M. KULITA
JUDGE
19/04/2022

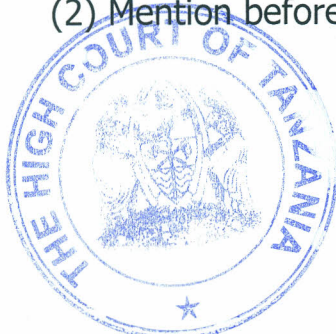
DATED at SHINYANGA this 19th day of April, 2022

(sgd)

S.M. KULITA
JUDGE
19/04/2022

ORDER (1) The lower court case files to be remitted back at Bariadi District Court for continuation of hearing from a stage where it had ended up

(2) Mention before the District Court on 27/4/2022 at 10:00 hrs




S. M. KULITA
JUDGE
19/04/2022