

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL APPLICATION NO. 33 OF 2021

(An intended Appeal arising from the Judgment and Decree of the Resident Magistrate's Court of Dar es Salaam at Kisutu, by Hon. Simba PRM dated 26th October, 2018 in respect of Civil Case No. 242 of 2013)

STANDARD CHARTERED BANK TANZANIA LIMITED APPLICANT

VERSUS

BASIL A. SEPRAPASEN.....RESPONDENT

PROCEEDINGS

30.3.2022

For Applicant : Absent

For the Respondent : William Yohana Fungo and Pastory Mnyehe

William

Mr. William Yohana Fungo:

My Lord, You ordered us to address you on the status of the case following the Respondent's death. We are ready to address you.

Court:

Mr William is invited to address the court.

Mr. William :

My Lord, it is our submissions that this situation is well stated u/o XXII Rule 4(1) of the CPC, that this court should have been moved by application to have the legal representative of the deceased to be joined as party in this application. The Application ought to have been made within 90 days as prescribed by item 16 of part of the schedule to the Law of Limitation Act.

As per death certificate the Respondent died on 7.10.2021. It is now over five (5) months and no application has been filed. The applicant is now out of time. In view of the above submissions Rule 4(3) of Order XXIII comes into play and the suit has abated. It is our humble prayer that this application be dismissed with costs as it has abated.

RULING

In view of a copy of death certificate of Basil Antony Sarprapassen, he passed away on 7/10/2021. To date no application has been filed to form his legal representative. In terms of Rule 4(3) of order XXII of the CPC, the application has abated and it is accordingly dismissed on that ground only. The estate of the late & Basil Antony Sarprapassen is awarded costs. Costs will not include instruction fees payable to the

advocate for addressing court on this issue because he cannot have instruction of the late Basil Antony Sarprapassen after his demise. He did so as an officer of the court.

Order accordingly.



A. R. Mruma

Judge

30/3/2022