

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAM SUB REGISTRY)
AT DAR ES SALAAM
PC CIVIL APPEAL NO. 3 OF 2021**

**SHIDA SALUM NKATIMIGOI.....APPELLANT
VERSUS
SALUM ALLY NKATIMIGOI.....RESPONDENT**

RULING

Last order: 12/8/2022
Date of Ruling: 19/8/2022

MASABO, J.:-

The ruling is in respect of a legal issue raised *suo motto* by this court. The appellant who is lay and self-represented has come to this court challenging the decision of the district court of Rufiji at Rufiji which confirmed her revocation from her office as administratrix of the estate of the late Salum Ally Nkantimigoi. The background of the appeal as discernible from the lower court records placed before me is that following the interstate demise of Salum Ally Nkatimigoi, the appellant successfully petitioned for letters of administration in Probate No. 12 of 2013 before the Primary Court of Ikwiriri. Her application ended successful as she was appointed the administratrix on 13th June 2013.

In the course of administration, a dispute ensued between her and the beneficiaries of the estate who went back to the primary court and successfully moved it to revoke the letters of administration. Disgruntled, the appellant moved the district court of Rufiji at Utete in Probate Appeal No. 1 of 2021 to reverse the revocation and reinstate her in office. The appeal ended barren. In further pursuit of her prayers for reinstatement, she has come to this court by way of appeal.

Upon perusal of the record, I found it to have an anomaly which need be corrected before the appeal can make any headways. The anomaly is in the names of the parties appearing in the title of the first appellate court's proceedings and judgment and in the memorandum of appeal. Starting with the anomaly in records of the first appellate court, its proceedings and judgment bears the following title:

IN THE REPUBLIC OF TANZANIA
JUDICIARY
IN THE DISTRICT COURT OF UJIJI AT UTETE
PROBATE APPEAL NO. 1 OF 2021
SHIDASALUMNKATIMIGOI.....APPELLANT
FAMILIA YA MAREHEMU SALUM ALLY NKATIMIGOI....RESPONDENT

Inversely, in the memorandum of appeal instituting the present appeal, the names of the parties, are **Shida Salum Nkatimigoi v Salum Ally Nkatimigoi**. This prompted me to invite the appellant to address the court on the competence of the appeal.

In her address to the court, she narrated that after she was appointed as administratrix, his siblings were discontented and moved the court to revoke her appointment. She proceeded that, in the revocation proceedings and in the appeal before the district court she was contending with the entire family which has ganged against her hence, the name of 'Familia ya Marehemu **Salum Ally Nkatimigoi**' in the title. Interrogated further she divulged that much as all family members were against her, the one who led the motion for revocation was his brother, one Amir Salum Nkatimigoi who also spoke on behalf of other family members in the district court. As for the names of the parties in the memorandum of the instant appeal, she conceded that there is an anomaly because, Salum Ally Nkatimigoi, is the deceased. Thus, it was wrong to designate him as respondent.

From this explanation, two anomalies are obvious. The first is the designation of the 'Family of Salum Ally Nkatimigoi' and the deceased 'Salum Ally Nkatimigoi' 'as respondent whereas none of these two has a locus standi. Defined as the right to institute a court proceeding (**Lujuna Shubi Balonsi Snr vs Registered Trustees of CCM** [1996] TLR, 203), *locus standi* vests in natural and corporate bodies duly incorporated under the law. A family unit being neither a natural being nor corporate body, is devoid of *locus standi* and cannot sue or be sued in its same. Thus, it was a fatal anomaly to designate the 'Family of Salum Ally Nkatimigoi' as respondent. It was correspondingly wrong for the appellant to designate the late 'Salum Ally Nkatimigoi' as respondent as his right to sue or be sued in his name abated immediately after his demise as per Order XXII rule 1 of the Civil Procedure Code [Cap 33 RE 2019]. An action for or against the deceased can only be preferred through the administrator of his estate or other legal representatives.

The two anomalies above, are coupled with the incoherence in the names of the parties as appearing in first appellate courts' record and the memorandum of appeal. The incoherence had rendered the appeal

incompetent as it is trite that only the parties to a suit or application can challenge it on appeal. In the foregoing, the appeal is found incompetent and is struck out.

For purposes of the rectification of the anomaly appearing in the first appellate court's proceedings and judgment, I invoke the provision of section 44(1) (a) of the Magistrate Court Act [Cap 33 RE 2019], and direct that the case file be remitted to the first appellate court for purposes of rectification of the anomaly. Upon being furnished with rectified copies the appellant may re-institute the appeal if she still wishes to pursue her rights further. There will no orders as to costs.

DATED at DAR ES SALAAM this 19th day of August 2022

X



Signed by: J.L.MASABO

J. L. MASABO
JUDGE

