

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPEAL. NO. 25 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal in Mwanza at Mwanza before
Hon. Masao on 31st day of July, 2019 and Mahina Ward Tribunal)*

ZENA KAPILYA.....APPELLANT

VERSUS

DAUD MADUHU.....RESPONDENT

JUDGMENT

30th September, 2022

DYANSOBERA, J:.

The appellant Zena Kapilya appealed to this court against the decision of the District Land and Housing Tribunal for Mwanza at Mwanza. The appeal was registered on 12.9.2019 in Misc. Land Appeal No. 25 of 2021. The appellant was being represented by this Scholastica Teffe, learned Advocate. From 4.11.2021 the matter underwent several adjournments.

On 8th June, 2022 learned Counsel for the appellant informed the court that the appellant was no more. She argued that the probate and administration of the deceased's estate was in process and prayed for an adjournment. The prayer was granted and the matter was adjourned as requested.

Since the appeal had been pending in court for along time hence a back long case, this necessitated it to be listed in a clean up session of back log cases.

Today i.e 30.9.2022 when the appeal came up for hearing Ms. Scholastica Teffe, learned Counsel for the appellant expressed that the appeal was coming for hearing but that the appellant is dead. According to her, the appellant met her on 2.2.2022 and that an administrator of the deceased's estate has been appointed and granted letters of administration. The court wanted to know the position of the Advocate representing a dead person and if the law has been complied with.

The learned Counsel replied that the deceased died on 2.2.2022 and the administrator was appointed on 21.7.2022 and that after the appointment the administrator fell sick and she failed to get copies that she took necessary steps. She prayed to be permitted to represent the administrator and make appropriate application.

I have considered the submission of learned counsel in response to my concern. There is no dispute that the appellant is dead and that she died on 2nd day of February, 2022.

Equally not disputed is the fact that no permission of the court has been sought and obtained to have the appointed administrator installed as a party to the appeal in the place of the deceased appellant.

In other words, the legal representative of the deceased who is claimed to have been appointed has not, to date file an application to be joined as a party in this appeal.

O.XXII Rules 3(2) of the Civil Procedure Code [Cap. 33 R.E. 2019] provides that:-

“Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned and, on the application of the defendant the court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased”

I think, although the law talks on the plaintiff and defendant, the principle equally applies to appeals where the appellant and respondent are concerned. The Court of Appeal in the case of **Simon Nchagwa V. Majaliwa Bande and John Nyakibari**, Civil Appeal No. 293 of 2017 observed:-

"... in the wake of the death of either the appellant or the respondent, the survival of any appeal is dependent upon a successful application by an interested person for the joinder in the appeal of the legal representative in the place of the deceased"

In the appeal under consideration, it is clear that the law, O.XXII Rules 3 sub-rules (1) and (2) of the said Code read together with item 16 of the schedule to and section 3 of the Law of Limitation Act [Cap. 89 R.E. 2019] were not complied with and since the survival of this appeal depended on the successful application by the interested person for the joinder in the appeal of the legal representative in the place of the deceased appellant, this appeal has no log on which to stand.

Furthermore, according to the record, the deceased appellant has been enjoying the legal services of the learned Advocate, Ms. Scholastica Teffe. The issue is whether the said Advocate has authority to represent a dead person. Like any other contract, the authority of an advocate to represent a party may cease due to various reasons.

Death is one of the reasons. It is the law that advocates have authority to represent living persons only and not dead persons. This view was held by this court in the case of **Mugaya Buso Barongo V. NBC & Another**, HC. Civil Application No. 27 of 27 of 2017 at Mwanza

(unreported). In view of the foregoing, I order that Misc. Land Appeal No. 25 of 2021 abates.



Each party to bear their own costs.


W.P. Dyansobera
Judge
30/09/2022

This judgment is delivered at Mwanza under my hand and the seal of this Court on this 30th day of September, 2022 in the presence of Sunday George Kapilya but in the absent.


W.P. Dyansobera
Judge