

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

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**MISC. LAND APPEAL NO. 9 OF 2022**

(Arising from Land Appeal No. 65/2020 of the District Land and Housing Tribunal  
Kigoma Before Hon. F. Chinuku, Chairperson)

**SERIKALI YA KIJIZI CHA NYAKIMWE.....APPELLANT**

**VERSUS**

**1. MORIS KITULANYA.....1<sup>ST</sup> RESPONDENT**

**2. ASHERI BARUGIZE .....2<sup>ND</sup> RESPONDENT**

**RULING**

12/7/2022 & 12/7/2022

**F.K. MANYANDA, J**

In this appeal, the Appellant Is appealing against a judgement and decree of the District Land and Housing Tribunal for Kigoma (DLHT) dated 04/10/2021 in Land Appeal No. 65 of 2020. The DLHT overturned a decision of the trial Ward Tribunal for Mnanila Ward. On 15/06/2022 when this appeal came for hearing, it was reported that the 2<sup>nd</sup> Respondent passed away after the Appellant filing this appeal. However, there was no proof of death. Hence, this Court adjourned hearing to 12/07/2022 with an order to appellant to bring evidence in proof of the alleged death.

Today, the Counsel for the 1<sup>st</sup> Respondent, produced to this Court a burial permit which shows that a male person known as Asheri Barugize Gwahora, resident of Nyakimwe Village died on 31/01/2022 and was buried the same day. The said Asheri Barugize Gwahora was the 2<sup>nd</sup> Respondent. This fact was conceded to by Zena Yusuph Myaya, the Nyakimuwe Village Chairperson for the Appellant.

Given the circumstances, the Counsel for the 1<sup>st</sup> Respondent submitted that the appeal cannot be heard in the form it is now following death of the 2<sup>nd</sup> Respondent. He further submitted that the Appellant has delayed to bring the administrator of the estate of the 2<sup>nd</sup> Respondent, hence has caused delay of disposal of the appeal. In order to prevent further unnecessary delay, he prayed for the appeal to be struck out for failure to have an administrator of the estate of the 2<sup>nd</sup> Respondent joined in the appeal in the place of the demised 2<sup>nd</sup> Respondent.

On the other hand, the Appellant opposed the prayer for striking out the appeal, instead prayed for time to follow up the matter and join by impleading the administrator of the estate to be appointed.

This Court, upon hearing the parties and going through the burial permit got satisfied that in deed the 2<sup>nd</sup> Respondent, Asheri Barugize, is dead. He died on 31/01/2022 and was buried the same day. That this fact has

been known by evidence today 12/07/2022 upon presentation of the burial permit.

It is trite law that where a party passes away whose right to litigate survives, his legal representative is required to apply for been joined in the suit as a party in place of the demised party within 90 days. This is per the provisions of item 16 of Part III of the Schedule to the Law of Limitation Act (LMA), [Cap. 89 R. E. 2019] and Order XXII Rule 4(1) and (3) and 11 of the Civil Procedure Code (CPC), [Cap. 33 R. E. 2022]. Time is reckoned from the date of death when the appeal is court.

In the appeal at hand, the appeal was filed on 27/12/2021, the 2<sup>rd</sup> Respondent died on 31/01/2022 and his right to defend against the appeal survives, therefore, a legal representative of his estate ought to have applied to be joined as a party within 90 days. However, in this matter, record show that summonses issued on 14/01/2022 were returned unserved and the there is no any other proof of service to the 2<sup>nd</sup> Respondent.

This makes this Court to find that neither the 2<sup>nd</sup> Respondent himself during his life time nor any administrator of his estate, if any, was made aware of the existence of this appeal in Court.

In this circumstance, this Court finds it expedient to have the appeal adjourned to a date to be fixed hereunder in order to avail time to the appellant to bring the administrator of the estate of the 2<sup>nd</sup> Respondent if any or otherwise decided on the fate of the appeal. I say so because the Appellant has just learnt today about the death and that there is no proof of service to the 2<sup>nd</sup> Respondent himself during his life time or any administrator of his estate, if any to date.

In the circumstances I think adjournment of hearing for a period of 21 days suits. This is within the grace period of 90 days provided by the law for a party to apply to be joined as a party to an appeal as an administrator of the estate.

Consequently, I do hereby order that this appeal come for hearing on 5/8/2022.



  
**F.K. Manyanda**

**Judge**

**12/7/2022**