

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
MISC. CIVIL APPLICATION NO.614 OF 2020  
IN THE MATTER OF PROBATE AND ADMINISTRATION CAUSE NO. 16 OF  
2006, HIGH COURT OF TANZANIA AT DAR ES SALAAM (ESTATE OF THE LATE  
ALHAJ AHMED MUTALEMWA  
AND  
IN THE MATTER OF ADMINISTRATION OF THE ESTATE OF THE LATE ALHAJ  
AHMED MUTALEMWA BY THE ADMINISTRATOR GENERAL  
AND  
IN THE MATTER OF APPLICATION FOR DIRECTION BY THE COURT TO  
DIRECT THE ADMINISTRATOR TO RESTRAIN FROM SELLING PART OF THE  
MATRIMONIAL PROPERTY IN HOUSE ON PLOT NO. 201 MLIMANI LOW  
DENSITY, DODOMA  
BY  
MARIAMU ISSA MAGINGI.....APPLICANT  
VERSUS  
THE ADMINISTRATOR GENERAL, REGISTRATION  
INSOLVENCY AND TRUSTEESHIP AGENCY (RITA).....RESPONDENT**

**RULING**

24/04/2022 & 06/05/2022

**MASABO, J.:-**

This ruling is on a matter that has arisen following a ruling of this court delivered on 23<sup>rd</sup> November 2021 and a consequential Order drawn shortly thereafter on 30<sup>th</sup> November 2021. Upon the copy of the ruling and the

drawn order being supplied to the parties, the Administrator General who was the respondent, came back to this court. By a letter dated 28/2/2022, she moved this court under section 96 of the Civil Procedure Code [Cap 33 R.E 2019] to correct the errors apparent on the drawn order. He averred that the ruling and the drawn order are at variance. Whereas the ruling dismissed the application, the drawn order shows the application passed and the applicant was granted a leave of 14 days within which to appeal.

After the matter being reassigned to me following the retirement of my learned sister, Hon. De Mello, J who was presiding over the matter, I found it pertinent to invite the parties to address me on the tenability of the prayer fronted through the above-mentioned letter. Both parties appeared with representation. The Administrator General was represented by Mr. Samwel Cosmas Mutabazi, learned State Attorney and Mariam Issa Magingi was represented by Mr. Adolf Francis, learned counsel.

Save for minor disagreements which I will not dwell on as they are inconsequential, both counsels were in agreement that the ruling and the drawn order are at variance hence the need for rectification. They, however

locked horns on the vehicle used. Mr, Francis ardently argued that the vehicle used by the Administrator General is misconceived as section 96 of the Civil Procedure Code deals exclusively with clerical errors which is not the case at point as the corrections sought involve deleting the entire content of the drawn order and substituting for it a new content drawn from the ruling so as to marry the two. When probed about the appropriate vehicle, he argued that the suitable vehicle is a review lodged under Order XLII of the Civil Procedure Code, Cap 33 RE 2019. On his party Mr. Mutabazi maintained that there is nothing wrong with the vehicle as section 96 through which he has moved the court is applicable.

On my part. I prefer to start with the provision of section 96 which is at the heart of the contestation. It provides that:

96. Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties.

The question which this court is to determine is whether the envisaged rectification falls within the scope of the above provision. The Court of Appeal of Tanzania while interrogating this provision in **Amani Mashaka (Applying as The Administrator of The Estate of Mwamvita Ahmed Deceased) v Mazoea Amani Mashaka and 2 Others**, Civil Application No 124 Of 2015, CAT at Dar es Salaam (unreported) it reproduced the above provision and proceeded to hold that:

Therefore, the scope of application of section 96 of the Civil Procedure Code is strictly limited to correction of arithmetic and clerical errors in any decision. A dismissal of a suit is not by any stretch of imagination a clerical or arithmetical error sufficing to be cured under section 96 of the Civil Procedure Code (Supra).

Guided by this solid interpretation, I find no justification to be detained by this point further because the alignment sought will involve overhauling all the substantive content of the drawn order. under no circumstances can this fall within the scope of a section 96 which exclusively deals with arithmetical and clerical errors.

In the foregoing the prayer fails. The parties have a liberty to invoke the appropriate vehicle which will take them to the intended destination. Parties to share the costs.

Dated at Dar es Salaam this 6<sup>th</sup> May 2022.

X



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Signed by: J.L.MASABO

**J.L. MASABO**

**JUDGE**