

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 615 OF 2021

**IN THE MATTER OF PETITION FOR APPOINTMENT OF THE MANAGER OF
ESTATE OF SWEETBERTA MOHAMED, A PERSON OF UNSOUND MIND**

AND

**IN THE MATTER OF AN APPLICATION FOR BEING APPOINTED AS
MANAGER BY MARIA GORETH EVARIST**

RULING

10th and 10th February, 2022

KISANYA, J.:

The applicant, Maria Goreth Evarist has moved this Court seeking an order for the management and administration of estate and affairs of Sweetberta Mohamed, who is a person of unsound mind. The application which was predicated under “sections 24 and 23(c) of Mental Disease Act [Cap. 89 (sic), R.E. 2002]” is also supported by an affidavit sworn by the applicant.

When this application came up for orders today, the applicant was represented by Mr. Noel Sanga, learned advocate holding brief for Mr. Dickson Sanga, with instruction to proceed.

Having observed that the application is preferred under the Mental Diseases Act (supra) which was repealed by the Mental Health Act, 2008, I implored the learned counsel for the applicant to address me on whether the Court has been properly moved.

Mr. Noel conceded that the Court was not properly moved as the chamber summons is made under repealed law. He then prayed for leave to amend the chamber summons.

This issue should not detain this Court. There is no gainsaying that the Court has not been properly moved to determine the matter at hand. As indicated earlier, and admitted by Mr. Noel, the chamber summons is made under “the Mental Disease Act, Cap. 89, R.E 2002)”. We have no such law in our legislations. This is so because the Mental Diseases Act was repealed by section 41 of the Mental Health Act, 2008. In that respect, this application is based on a clear misapprehension of the law governing the matter.

On the fate of this matter, there is a chain of authorities to the effect that, wrong citation or non-citation of the law renders the application incompetent. See for instance, the cases of **Chama cha Walimu**

Tanzania vs. Attorney General, Civil Application No. 151 of 2008, CAT at Dar es Salaam, **Anthony J. Tesha Vs Anita Tesha**, Civil Application No.10 of 2003, **N. B. C (1997) LTD vs Thomask Chacha T/A Ibora Timber Supply (T)**, MZA Civil Application No. 3 of 2000, **N. B. C vs Sadrudin Meghj**, Civil Application No. 20 Of 1997, **Bahadir Sharif Rashid and 2 Others v. Mansour Sharif Rashid and Another**, Civil Application No. 127 of 2006, CAT at Dar es Salaam **China Henan International Co-Operation Group vs Salvand K. A. Rwegasira**, Civil Reference No. 22 of 2005 and **Hussein Mgonja vs The Trustees Tanzania Episcopal Conference**, Civil Revision No. 2 of 2002, CAT at Arusha, (all unreported). In the latter case of **Hussein Mgonga** (supra), the Court of Appeal held:

"If a party cites the wrong provisions of the law the matter becomes incompetent as the Court will not have been properly moved."

In view of the above settled law, the instant application is incompetent before this Court. I am mindful of the principle of overriding objective which require the courts to consider and uphold substantive justice. However, considering that the Mental Health Act, 2008 provides for the provisions on management and administration of the estate of a person with mental

disorder, which were not provided for in the repealed legislation, I am of the view this matter cannot be salvaged by the principle of overriding objective.

I have then considered Mr. Noel's prayer for leave to amend the chamber summons. The Court of Appeal has repeatedly held in several cases that, an incompetent application or appeal amounts to no application or appeal and that it cannot be withdrawn, amended or adjourned. See the case of **Ghati Methusela vs Matiko w/o Marwa Mariba**, CAT, Civil Application No. 6 of 2006 (unreported) in which the, Court of Appeal held as follows:

"It is now established that an incompetent proceeding, be it an appeal, application, etc., is incapable of adjournment, for the court cannot adjourn or allow to withdraw what is incompetently before it."

In another case of **Edward Bawacha & Three Others vs The Attorney General**, Civil Application No.128 of 2006, the Court of Appeal cited with approval the case of **Leons Silayo Ngalai vs Hon. Justine Alfred Salakana**, Civil Appeal No. 38 of 1996 where it was held that:

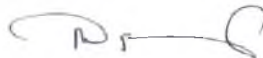
"An incompetent appeal amounts to no appeal... Under such circumstances what the court does is to strike out the purported appeal off the register."

Guided by that position, the applicant's prayer for leave to amend the chamber summons cannot be granted.

For the reasons stated, this application is hereby struck out for being incompetent. Given the nature of this matter, I make no order as to costs.

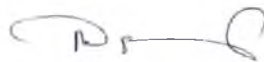
It is so ordered.

DATED at DAR ES SALAAM this 10th day of February, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 10th February, 2022 in the presence of Mr. Noel Sanga, learned advocate for the applicant. B/C Bahati present.



S.E. Kisanya
JUDGE
10/02/2022

