

**IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)**

AT MWANZA

PC CIVIL APPEAL NO. 22 OF 2022

(Arising from the judgment of Sengerema District Court in Probate Appeal No. 6 of 2021 delivered on 26th day of October, 2021. Original Probate and Admin. Cause No. 1 of 2021 of Sengerema Urban Primary Court dated 27th April, 2021)

JOHN SIMON..... APPELLANT

VERSUS

SIYA SIMON.....RESPONDENT

RULING

2nd June, 2022

DYANSOBERA, J.:

This is a ruling on whether or not the adjournment prayed by the appellant and resisted by learned advocate for the respondent Mr. Joseph Mange should be granted. In this appeal, the appellant John Simon is challenging the judgment of Sengerema District Court in Probate Appeal No. 6 of 2021 delivered on 26th day of October, 2021. In resisting the appeal, the respondent had, through Mr. Joseph J. Mange, apart from filing a reply to petition of appeal, filed a notice of preliminary objection challenging the competence of this appeal. The matter was set for hearing on 2nd day of June, 2022. When the matter was called for hearing, the appellant appeared in person while the

respondent was represented by Mr. Joseph Mange. The learned Counsel informed this court that they were ready for hearing. On the preliminary objection they had raised earlier on, Counsel for the respondent Mr. Joseph Mange prayed to withdraw the preliminary hearing without costs so that the main appeal is heard. This court granted the prayer and marked the preliminary objection withdrawn. The appellant then informed the court that his advocate was absent and prayed for adjournment. Mr. Joseph Mange raised an objection and argued that no notice or information was given by the Advocate for the appellant and the advocate knows the procedure and in view of the fact that he is representing the appellant, the prayer for adjournment should be refused. He urged this court to proceed with hearing of the appeal as the appellant was present. In the alternative, Counsel for the respondent prayed the appellant to be condemned costs for this adjournment if at all the court will adjourn the matter.

The appellant, in his rejoinder, reiterated his prayer for adjourning this case so that his advocate attends.

I have considered the appellant's prayer and the submissions of both the appellant and Mr. Joseph Mange, learned Counsel for the respondent.

To adjourn is to put the matter for another time or date. In my view, an adjournment must be a last resort of the court and should only be granted where only specified and logical reasons have been advanced and which are essential to ensure justice. It has been the practice that our courts discourage unnecessary adjournments. For instance, this court in discouraging delays observed in the case of **Ezekiel E. Chenge v. Adam Kaita**, High Court Civil Case No. 40 OF 1998 at Mwanza (unreported) that litigations like life must have an end, prolonged litigations waste time, money, moral energy etc. This Court in the just cited decision borrowed the prudence in **Amratlal Damodar v. Att. Jariwalla** (1980) TLR. 31.

The court has also to consider the importance of time. This court in the case of **Moses Obed v. Jitenden Nkuba**, (PC) HC Civil Appeal No. 1 of 2002 at Tabora (unreported) citing with approval an English decision in **Revici v. Prentice Hall Incorporated & Others** (1969) 1 ALL. ER. 772 (quoting Lord Denning) observed that "nowadays we regard time very differently from what they did in the 19th century, time must now days be observed."

In dealing with adjournments, apart from observing the law of the land, this court is duty bound to take into consideration the guidance of

the Court of Appeal on courts' discouragement of adjournments which decision is binding on this court. In the case of **Ibrahim Said Msabaha v. Lutter Symphorian Nelson and the Attorney General**, Civil Appeal No. 4 of 1997, the Court, at pp. 3 and 4 of the typed judgment observed:

"we think the approach of this court which seeks to discourage adjournments of cases on flimsy or no grounds at all should be followed by all courts in this country, not only because delay amounts to a denial of justice, but also because it is common knowledge that there is a widespread outcry by the people of this country against unnecessary and rampant adjournments of cases by the courts. We do emphasize the point that the discretion of a court to adjourn a case which is scheduled for hearing must always be exercised judicially, that is, for good cause which must be recorded."

Scheduling the case for hearing is one of the case management which is the mandate of a judge and parties to the case must abide by such orders. In **Ally Hussein Masunga v. Msingwa Abdallah Kibuzi**: High Court Civil Appeal No. 12 of 1986 at Tabora, this court observed that court orders in scheduling the hearing of matters in courts

must be observed by parties otherwise court process will be rendered
ridicule. I adopt that standing.

For the reasons stated, I decline to grant the adjournment prayed
for by the appellant.

Since the appellant is unable to proceed with his appeal, the same is
dismissed for want of prosecution. The appellant is condemned costs.

Order accordingly.




W.P. Dyansobera
Judge

Delivered this 2nd day of June 2022 in the presence of the appellant and
Mr. Joseph Mange, learned Counsel for the respondent.




W.P. Dyansobera
Judge