

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**ARUSHA DISTRICT REGISTRY**  
**AT ARUSHA**

**MISC. LAND APPEAL NO. 16 OF 2021**

*(C/F Land Appeal No. 94 of 2010 District Land and Housing Tribunal of Babati, Original Land Application  
No. 2 of 2010 Kiru Ward Tribunal)*

**MATHIAS KODI HHAWU ..... APPELLANT**

**VERSUS**

**HITLI TLUWAY TLAGESI ..... RESPONDENT**

**RULING**

06<sup>th</sup> December, 2022 & 10<sup>th</sup> February, 2023

**TIGANGA, J.**

This appeal originates from Kiru Ward Tribunal (trial tribunal) in Application No. 2 of 2010 where the respondent herein (now deceased) successfully sued the appellant for trespassing into his piece of land measuring 6 acres located at Kiru, in Kiru Ward within Babati District in Manyara Region hereinafter (the suit land).

A brief historical background of the dispute as ascertained from the record shows that, the respondent lost his eyesight and asked his nephew, the appellant, to help him build the house and use his farm for agricultural activities as he went for medical check-ups. When he returned, he found the

house built but the appellant refused to vacate the suit land. The matter was taken to the Village government authority where the appellant was ordered to return the farm and vacate the suit land within 30 days. He did not comply with the order; hence, the matter was taken to the trial tribunal which decided in favour of the respondent as the appellant was ordered to vacate the suit land. The appellant disputed to trespass into the suit land, he claimed the same to be sold to him by the respondent and the sale agreement was reduced in writing.

The trial Ward decided in favour of the respondent herein, consequently, the appellant appealed to the District Land and Housing Tribunal of Babati (the DLHT) which upheld the trial tribunal's decision. Still aggrieved, he is now appealing to this court advancing 6 detailed grounds of appeal which I will not reproduce in verbatim but will discuss them in the course of my analysis.

Before the appeal was heard on merit, the appellant raised the two points of preliminary objections as follows;

1. That, reply to the grounds of appeal are attached with the improper copy of the Power of Attorney.

2. That, reply to the grounds of appeal are not correct due to the fact that appellant's thumb print in the Power of Attorney is forged as it was prepared after his death.

On 6/12/2022 before the above points of objections were heard and determined, respondent's counsel notified this court that, the administrator of the estate of the late Hiiti Tluway has been appointed and he prayed that this court allow him to be joined and be part of this appeal.

The appellant objected such prayer on the ground that, it is out of time as it has been seven months since respondent's demise whereas according to the law such application was supposed to be filed within 90 days after the death of the deceased.

Rejoining briefly, respondent's counsel passionately argued that, it was the appellant's duty to join all the necessary party to this appeal. More so, under section 35 of the **Law of Limitation Act, [Cap 89 R.E. 2019]**, the law waives counting of days from when the deceased died to when the administrator is appointed. He also pointed out that the administrator was injured after being appointed hence that also amounted to the delay.

Having gone through parties' rival brief submissions, the question now is whether the respondent's Power of Attorney is still valid after appointment of the administrator of the respondent's estate. The law is clear and the Court of Appeal's decisions are at one that, when a person dies, an administrator has to be appointed to administer the deceased's estate. In the appeal at hand, when the appellant filed this appeal on 15/12/2021 the respondent was still alive. But he passed away during the period between the filing date and when the matter was first mentioned before the court.

According to the record, one Gabriel Kodi filed reply to the grounds of appeal as a person with Power of Attorney to stand on behalf of the deceased. I am aware of the principle that, when a person passes away the Power of Attorney becomes ineffective. **See; General Manager Pamba Engineering Ltd Vs. The Managing Director and Proprietor of Nyanza Sterilization and General Service**, Civil Appeal No. 51 of 1995 (unreported). In that regard, the Power of Attorney to Mr. Gabriel Kodi ceased on 11/05/2022 when the respondent returned to his maker. That is to say, the Power of Attorney terminates upon the death of the donor or principal. This court believing on the cessation of the allegedly conferred Power of Attorney after the death of the deceased respondent, it ordered

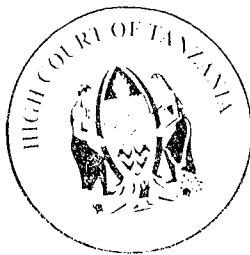
the respondent to seek for letters of administration of the respondent's estate and apply to be joined as part of this appeal and not as a Power of Attorney holder. Such application was never made until 06/12/2022 when respondent's counsel submitted to the court that, one Daniel Enda Hilba had been appointed but since his appointment he was injured hence the delay to file such application to be joined on behalf of the respondent.

Since the respondent's administrator has yet filed his application proving that, he has indeed been appointed as administrator, I hereby order him to do so within 14 days from the day of this ruling so that hearing of the appeal can proceed with proper parties. I order so because basing on the provisions of section 35 of the Law of Limitation Act (supra), the computation of time in cases related to recovery of the land, the administrator of the estate of the deceased person is taken to claim as if there is no interval of time between the death of the deceased person and the grant of the letters of administration. This, in my view, entitles him to the exclusion of the period from the death of the deceased to the appointment of the administrator of the estate. The appellant has told the court that, the application for joining the administrator of the estate is time barred, but has unfortunately not given the details as required of him under section 110 of the **Evidence Act**,

**Cap 6 [R.E. 2019].** That said, the preliminary objections raised are overruled. The administrator of the estate of the respondent is hereby given 14 days to apply to be joined as party in this appeal.

It is so ordered.

**DATED** and delivered at **ARUSHA** this 10<sup>th</sup> day of February, 2023



  
**J.C. TIGANGA**  
**JUDGE**