

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT - LAND DIVISION
(MUSOMA SUB REGISTRY)

AT MUSOMA

LAND CASE No. 1 OF 2022

1. SALEHE RAJABU UKWAJU

[Administrator of the Estates of the Late
Rajabu Abdallah Ukwaju]

2. HAJI RAJABU UKWAJU

[Administrator of the Estates of the Late
Rajabu Abdallah Ukwaju]

3. ABDALLAH RAJABU UKWAJU

[Administrator of the Estates of the Late
Rajabu Abdallah Ukwaju]

Versus

1. MARWA WAMBURA OGUNYA

2. KAMARA JUMANNE UKWAJU

..... **PLAINTIFFS**

..... **DEFENDANTS**

RULING

30.03.2023 & 04. 04.2023

Mtulya, J.:

Two weeks ago, specifically on 23rd March 2023, this court in the precedent of **Tarime District Council v. Josina Company Limited & Four Others**, Misc. Land Application No. 11 of 2023, at page 8 of the typed judgment had observed that:

...during the submissions of necessary materials for and against the points, the learned officers did not dispute that the present points invite other suits and laws which need further materials to dispose of the points. In that case, it is obvious that some facts must be added to resolve the dispute. The moment other suits and interpretation of section 123 of the Evidence Act is put in the protest, it will place this court into exercising its discretionary powers in resolving the matter.

Finally, the court, at page 11 of the decision, thought that:

This court cannot move into other registries of this court in Mwanza or District Land and Housing Tribunals in Tarime searching for facts and evidences to determine points of law raised in the present application. Having said so, I hold that the two protests as registered by the respondents in the present application are contrary to the requirements of the law regulating points of preliminary objection. They were raised prematurely and hereby overruled with costs.

In arriving at the indicated thinking, this court had invited and perused a bunch of precedents from this court, multiple

decisions of the Court of Appeal and the commonly cited precedent of the Court of Appeal for Eastern Africa on the subject, *viz*, **Mukisa Biscuits Manufacturing Company Ltd v. West End Distributors Ltd** [1969] E.A. 696. The Court of Appeal for Eastern Africa in the indicated precedent had resolved, at page 700 of its decision, that:

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

In echoing and approving the statement in our jurisdiction, the Court of Appeal (the Court), in the precedent of **Karata Ernest & Others v. The Attorney General**, Civil Revision No. 10 of 2010, at page 2 of the Ruling, had the following to say:

This has been the position of the law since then, which we unreservedly subscribe to.

This court, in abiding with the directives of superior courts in Tanzania and East African States in the indicated precedent, in the decision **Agripa Fares Nyakutonya v. Baraka Phares Nyakutonya**, (PC) Civil Appeal No. 64 of 2022, had added two

other decisions of the Court in **Alphonse Buhatwa v. Julieth Rhoda Alphonse**, Civil Reference No. 9/01 of 2016, and **Tanzania Telecommunications Co. Ltd v. Vedasto Ngashwa & Four Others**, Civil Application No. 60 of 2009 and resolved, at page 11 of the Ruling, that:

*...an objection must be on a pure point of law and on face of record which does not require close examination or scrutiny of the document in systems or visiting District Court Registry...The action of [tracing] the original document disqualifies the preliminary objection as was argued in the case of **Aphonse Buhatwa v. Juliet Roda Alphonse** (supra).*

In the instant case, a point of preliminary objection was raised by learned counsel for the first defendant, **Mr. Wambura Marwa Kisika**, questioning the jurisdiction of this court in a situation where the plaintiffs are administrators of the estates of the late **Rajabu Abdallah Ukwaju**, but have not completed and registered a final statement of account for a total of eleven (11) years. In his opinion, the law in section 107 of the **Probate and Administration of Estates Act [Cap. 352 R.E. 2002]** (the Probate Act) and Rule 109 of the **Probate Rules, GN. No. 369 of 1963** (the Probate Rules) require registration of inventory within six (6)

months and final accountability in the administration of the deceased's estates in twelve (12) months, but the plaintiff have stayed with the letters of administration of the deceased for eleven (11) years, without seeking enlargement of time as per requirement of the Rules. According to Mr. Kisika, as of current, the plaintiffs have no *locus standi* to sue or being sued in this court.

In making his point understood by this court, Mr. Kisika cited the authority of the Court of Appeal in **Elieza Macharia Mtemi v. The Attorney General**, Civil Appeal No. 177 of 2018, at page 10, where it was held that plaintiffs must not only show that the court has jurisdiction, but also display *locus standi* to have their cases determined in this court. According to him, this court has already interpreted section 107 of the Probate Act to require inventory of the deceased's estates to be registered within six (6) months and final account of the same in twelve (12) months from the date of the order granting the letters of administration.

In order to substantiate his submission Mr. Kisika cited the decision in **Probate and Administration Cause No 5 of 2021** (Letters of Administration of the Estates of the Late Yusuph Mashaka Sumbya by Emmanuel Malago Sumbya), Mwanza Registry resolved on 29th June 2021. In his opinion, there is no

life-time administrators of deceased persons' estates as it was said by this court in the decision of **Ruth Makune** (Administratrix of the Estates of the Late Yohana Makune Shilatu) **v. John Festo Makune** (The Administrator of the Late Mabonesho Makune, Land Case No. 22 of 2015.

According to Mr. Kisika, the first plaintiff had previously filed land dispute in this court at Mwanza registered as **Land Case No. 20 of 2011** and was struck out in 2014 for want of leave from his co-administrators, and since then he remained silent to date. Regarding, the silence of the plaintiffs for either seven (7) years as from 2014 when the case ended or eleven (11) as from granting of the letters of administration, Mr. Kisika thinks that the plaintiffs have lacked *locus standi* after two (2) years of the grant of the letters hence they are barred by the words of the Court of Appeal on limitation of time. According to him, the complaint of time limitation takes precedent over other issues as it touches jurisdiction of the court.

In persuading this court to appreciate his submission, Mr. Kisika cited the authorities of the Court of Appeal in **May Mgaya v. Salimu Saidi (Administrator of the Estates of the Late Saidi Salehe) & Another**, Civil Appeal No. 264 of 2017 and **Siemens Limited & Another v. Mtibwa Sugar Estates Limited**, Civil

Application No. 106 of 2016. Finally, Mr. Kisika contended that there are two (2) issues to be resolved by this court, namely: first, whether the plaintiffs are out of statutory time to furnish this court with the final account of the deceased estates; and second, whether the plaintiffs have *locus standi* in the present case.

In replying long and detailed submission of Mr. Kisika, the plaintiffs had invited Mr. Kweka to respond to all the materials and raised issues. However, Mr. Feran Kweka had no much details rather than stating that he concedes all submissions of Mr. Kisika save for the powers of this court. In his opinion, the plaintiffs were appointed by this court based in Mwanza in **Probate and Administration Cause No. 4 of 2008** on 6th August 2009, and their powers have not been disputed or revoked by this court in Mwanza Registry. According to Mr. Kweka, the plaintiffs had filed the inventory within time and still following all necessary procedures in searching the deceased's estates and that there is nothing wrong in following up the deceased's estates. Finally, Mr. Kweka submitted that learned counsels are not mandated to revoke letters of administration of deceased estates as prayed by Mr. Kisika, but probate courts do.

The submission of Mr. Kweka was well received by Mr. Kisika but complained that Mr. Kweka has declined to reply as to

where the plaintiffs were since 6th August 2009 and requirement of twelve (12) months period in filing the final account. According to Mr. Kisika, the plaintiffs are silent on record regarding enlargement of time to have their powers legally recognized under the Probate Act hence cannot be termed as administrators of the deceased's estates.

I have perused the record of the present appeal, and I am well aware of the record and relevant materials registered by learned counsels of the parties. It is true and certain that, this court is invited to resolve probate issues in land case. I have indicated the precedent of this court in **Tarime District Council v. Josina Company Limited & Four Others** (supra) where a bunch of quoted precedents of this court and Court of Appeal are in support of the move that a point of law must be pure point of law which does not need further scrutiny or invite courts to exercise their discretionary mandates in resolving the points or sail to other registries of courts searching for other necessary materials.

This confusion of mixing up case files and points of determination without there being relevant materials to assist courts in resolving matters brought before them, had prompted the Court, on 26th January 2016, to say a word in a situation where a probate cause file had resolved matrimonial dispute. The

Court in the precedent of **Mariam Juma v. Tabea Robert Makange**, Civil Appeal No. 38 of 2009, at page 9 to 10 of the judgment, observed that:

In fact, the trial court was supposed to determine one crucial issue, that is, to appoint an administrator who will diligently and faithfully administer the estate of the late Robert Makange. This was to be done after making a decision on the caveat opposing the application. It is unfortunate that the High Court faltered and incorporated other issues and went ahead to adjudicate upon them.

The Court then asked itself at page 11 of the decision on the rights of the parties and appropriate forum in the case, that:

This was the right party to be appointed as Administrator. Instead of directing itself on that, the entire proceedings were based on who was the legal wife of the deceased; and whose children were entitled to inherit from the deceased's estate. The proceedings were focused on the appellant's and respondent's status of marriages under the LMA. Was this the right forum?

The Court finally replied at page 13 of the judgment in the following statement, that:

The High Court Judge meandered around the status of marriage of the appellant, digressing and drifting from the central task before him. The High Court Judge did not have any mandate to determine who should be a beneficiary from the deceased's estate. This role was to be played by the Administrator of the deceased's estate. Given the circumstances we are of the considered view that the decision of the judge was not proper. In the result we find that the proceedings of the High Court are a nullity.

Last week, specifically on 22nd March 2023, the Court in the decision of **Stephen Maliyatabu & Another v. Consolata Kahulananga**, Civil Appeal No. 337 of 2020, had echoed its previous thinking on the subject and observed, at page 13 of the judgment, that:

We are inclined to point out that what is contained in the impugned judgment really taxed our mind because while the matter subject of this appeal is a Probate and Administration Cause, when one looks at the evidence martialled and the impugned judgment

the impression is that what was before the High Court is a matrimonial dispute governed by the Law of Marriage Act. This is what made us earlier on, to pose a question as to what was the subject of adjudication before the High Court? It is without dispute that the subject of this appeal was a probate and administration cause. Thus, as earlier intimated, probate and administration matters are regulated by among others, the Probate and Administration of Estates Act. Thus, as correctly submitted by the learned counsel for the parties, these are matters regulated by the Law of Marriage Act when resolving a petition for divorce or separation which is between the spouses and not between so to say co-wives. In the premises; the probate and administration of estates matter was not a proper forum to address issues relating to matrimonial disputes.

Finally, quoting the decision in **Mariam Juma v. Tabea Robert Makange** (supra), at page 17 of the judgment, the Court stated:

it is our considered view that the impugned judgment was not proper as the learned High Court Judge who

went beyond the scope exceeding his jurisdiction embarked on a nullify. In other words, since the jurisdiction of courts is a creature of statute, a matrimonial dispute cannot be adjudicated in a probate and administration cause as it transpired in the case at hand. Thus, we agree with the parties that the proceedings and judgment of the High Court are vitiated and they cannot be spared.

The thinking of the Court has been supported by further decisions of the same Court without any protests (see: **Mr. Anjum Vicar Saleem Abdi v. Mrs. Naseem Akhtar Zangie**, Civil Appeal No. 73 of 2003 & **Leticia Mtani Ihonde v. Adventina Valentina Masonyi**, Civil Appeal No.521 of 2021). This court too has been following the move without reservations whatsoever (see: **Abdul A. Milanzi v. Asha Makeo**, (PC) Civil Appeal No. 10 of 2021 & **Jacqueline Ntuyabaliwe Mengi & Two Others v. Abdiel Reginald Mengi and Benjamin Abraham Mengi & Another**, Civil Revision No. 1 of 2022).

In **Abdul A. Milanzi v. Asha Makeo**, (supra), this court at page 40, stated that: *the trial magistrate erred on trying a normal civil case by applying the Law of Marriage Act*, whereas in **Jacqueline Ntuyabaliwe Mengi & Two Others v. Abdiel**

Reginald Mengi and Benjamin Abraham Mengi & Another (supra), this court, at page 20 of the decision, clarified that: *the law is that when a party to a matrimonial cause pass on, the family court loses jurisdiction. Jurisdiction over properties of the deceased shift to the probate court for administration.*

In the present case, Mr. Kisika is asking land court to determine probate cause without there being case file or materials necessary for resolving, and move forward to nullify the plaintiffs' letter of administration and finally declare them to have no necessary standing. This is an unfortunate prayer in this Registry for land dispute to resolve a probate cause file based in Mwanza Registry.

According to expert on the subject of Probate and Administration of Estates Causes, **Hon. Mr. Justice Lameck Mlacha** of this court, in one of his on-line training series for Judges, titled: *Probate and Administration of Estates: Practice and Procedure in the High Court*, held last week, 30th March 2023, when replying questions like the present one, had discoursed for want of special enactment on the subject. I join his school of thought. The reasoning of Judge Mlacha is obvious that the Probate Act is silent on the subject and this court cannot

travel to Mwanza in search of the **Probate and Administration Cause No. 4 of 2008**, which appointed the plaintiffs and see whether statement of final account was registered or the mandate of the plaintiffs was enlarged. I am aware that the Probate Act prohibits life-time administrators. However, the complaint may be registered in an appropriate cause and court which had settled the matter. Land court cannot revoke letters of administration granted in probate court.

Before I pen down, I must take this opportunity to remind parties and learned counsels who appear in our courts to take note of the newly enacted principle of overriding objective inserted in section 3A & 3B in the **Civil Procedure Code [Cap. 33 R.E. 2019]** (the Code). This principle was inserted following several statements of complaints on technicalities of our courts to deny peoples' rights in our jurisdiction. Our superior court, in one of the complained instances in the decision of **VIP Engineer & Marketing Ltd. v. Said Salim Bakhresa**, Civil Application No. 47 of 1996, had stated that:

*While the importance of litigants complying with the rules of procedure cannot be over emphasized, **it must not be forgotten that there is a danger of consumers of justice losing confidence in the courts if judicial***

*officers are obsessed more with strict compliance with procedural rules than what the merits of the disputes before them are **to stray into that error is to aid the judicature's grave diggers.***

(Emphasis added).

It may be noted that the constitutional mandate of this court is measured by the service it renders to our societies by providing justice to the parties. The consumers of justice are unaware of the technicalities of the law, but want to see their justice is delivered and appreciated. The wording depicted in the precedent of **Samwel Kimaro v. Hidayat Didas**, Civil Application No. 20 of 2012, in that case may be quoted inhere:

*...in dispensing justice, **the courts are no doubt, rendering or giving valuable service to the society at large and to the consumers of our justice system in particular. If so, the society or consumers must continue to have trust and faith in our system...***

(Emphasis supplied).

All said and done. In fine words, this court cannot be put into trial, as **Hon. Justice Midha, JR** of Delhi High Court in India was quoted in his Farewell Speech, on 7th July 2021, titled:

Demitting Office with Fullest Satisfaction of Having Discharged My Responsibilities as per Constitution: *a judge's job is to impart justice...in the court of justice, both parties know the truth. It is the judge who is on trial.* The point which was raised by Mr. Kisika is truly putting this court into trial hence cannot be upheld by this court. His point in resisting necessary standing of the plaintiffs is hereby overruled with costs. The dispute is ordered to proceed on merit to resolve issues that shall be raised in this dispute. It is the parties who shall be on trial and this court shall resolve the issues.

It so ordered.




F. H. Mtulya

Judge

04.04.2023

This Ruling was delivered in Chambers under the Seal of this court in in the presence of **Mr. Wambura Marwa Kisika** for the first defendant and in the absence of plaintiffs and defendants.


F. H. Mtulya

Judge

04.04.2023