

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

LAND CASE No. 26 OF 2022
NATHANIEL WALUSE NYABANGE PLAINTIFF

[As administrator of the Estates of the
late Johnson Nyabange Waluse]

Versus

1. **M/S J.C. IGOGO ENTERPRISES
(1992) T. LTD**
 2. **JOHANES CORNEL IGOGO**
 3. **TAGAYA NYABANGE WALUSE**
 4. **YUSUFU NYABANGE WALUSE**
 5. **GEORGE CORNER IGOGO**
 6. **CORNELIUS INVESTMENT 2020 (T) LTD**
 7. **RANGE BOAZ RANGE**
 8. **JURA TANZANIA LTD**
- } ... **DEFENDANTS**

RULING

30.05.2023 & 31.05.2023

Mtulya, J.:

In the present case, **Mr. Nathaniel Waluse Nyabange** (the plaintiff) had approached this court on 29th November 2022 and filed **Land Case No. 26** (the case) praying for a declaration on rightful ownership of the land located at **Plot No. 4 Block E Nyerere Road in Tarime District of Mara Region** (the land in dispute). However, yesterday afternoon, this court after consultations and conversations with the plaintiff and **Mr.**

Emmanuel Werema, learned counsel for the defendants save for the third defendant, it was vivid from the record of the case that there are two (2) distinct letters of administration granted to two (2) distinct persons from the same court regarding estates of the late **Johnson Waluse Nyabange** (the deceased). The two (2) letters of administration were granted to the plaintiff and **Mr. Yusufu Nyabange Waluse** (the fourth defendant) by **Tarime Urban Primary Court** (the primary court) in **Probate and Administration Causes No. 47 of 2016** and **54 of 2017** respectively.

It is unfortunate that the letters are still intact to date and no appropriate measures have been initiated by either the plaintiff or the fourth defendant to put the record right at the primary court. In the midst of the contests, record show further that there were other various applications for letter of administration of the deceased estates in three (3) different primary courts in Tarime, Nyaburongo and Kukirango and were granted to a multiple distinct persons, *viz*, first, **Tarime Urban Primary Court** in **Probate and Administration Cause No. 52 of 2010** which granted letters of administration to **Mr. Johanes Cornel Igogo**; second, **Nyaburongo Primary Court** in **Probate and Administration Cause No. 3 of 1999** which granted letters of

administration to **Mr. Josephat Okinyo Awour**; and finally, **Kukirango Primary Court** in **Probate and Administration Cause No. 2 of 1998** which granted letters of administration to Mr. **Thimon Saronge** and the plaintiff.

Following the indicated confusions brought by existence of a barrage of letters of administration originated from the same deceased person's estates, the **Resident Magistrates Court of Musoma** (the RMs court) in **Revision No. 1 of 2013** (the revision) was invited to resolve the confusions and at page 3 of the decision the RMs court had decided to quash all the proceedings, judgment and orders from the indicated cases for want proper record. Finally, the RMs court had directed for an application for letters of administration of the deceased's properties to be lodged within the jurisdiction where the properties located for avoidance of the confusions.

However, that was not the end of the matter. The record shows further that, after the directives of the RMs court in the revision, **Mr. Johanes Cornel Igogo** had approached the **Tarime Primary Court** and lodged **Probate and Administration Cause No. 73 of 2013** praying for the primary court to grant him letters of administration of the deceased's estates. After registration of all relevant materials, the primary court had granted him letters of

administration. The decision of the primary court to grant the letters of administration to **Mr. Johanes Cornel Igogo** aggrieved the plaintiff hence preferred **Objection Proceedings in Misc. Civil Application No. 1 of 2015** (the misc. application) at the primary court complaining that **Mr. Johanes Cornel Igogo** had forged necessary documents for letters of administration. The primary court after hearing of the parties in the contest, had resolved at page 5 of the decision that:

Hivyo mahakama hii inatamka kuwa kwa kuwa msimamizi alidanganya Mahakama kwa kuleta muhtasari wa uongo basi uteuzi wake unatenguliwa na kuelezwa kuwa kuanzia sasa msimamizi Bwana Johanes Cornel Igogo siyo msimamizi halali wa mirathi ya marehemu Johnson Waluse Nyabange.

The decision of the primary court in the misc. application was protested in the **District Court of Tarime at Tarime** (the district court) in **Misc. Civil Revision No. 2 of 2015** (the Revision), but the district court had declined the reasons of protest registered by **Mr. Johanes Cornel Igogo** in the Revision. Dissatisfied with the decision of the district court in the Revision, **Mr. Johanes Cornel Igogo**, had approached this court and filed **(PC) Civil Probate No. 15 of 2016** (the appeal). This court, after

perusing all relevant materials and considering interest of justice of the parties and circumstances surrounding the contest, it provided a better solution of ending the dispute. This court thought and directed appropriate steps to be followed at page 10 of the judgment, which indicates the following words:

*I am aware that this court can invoke its revisionary power to grant letter of administration to persons' heirs to administer the estate at hand as was authoritatively held in **Mwanahawa Muya v. Mwanaidi Maro** [1992] TLR 78. However, due to the circumstances of this particular case, especially the heirs in respect of the late Penina, I think it is just and convenient for the family, both that of **Johnson Nyabange Waluse** and that of **Penina Majiwa Awour** to convey the meeting and appoint administrator of the house and thereafter apply to the court with jurisdiction for letters of administration.*

The directives of this court were issued on 20th January 2017, and this court had explained the right of appeal to both parties to access the Court of Appeal (the Court), if they were uncomfortable with the decision in the appeal. The parties were mute in both preferring an appeal and compliance with the

directives of this court. The record of the case shows further that neither the ordered family meetings were held nor appeal to the Court was preferred by the parties.

I am aware that the family members of the two indicated families in the appeal had preferred other contests without merit and kept this court busy in three (3) occasions, both in civil and criminal matters, which they are very well aware that the contest would not be a finality solution of their differences.

The three (3) other contests which brought this court into trial are: first, **Land Appeal No. 9 of 2021** originated from the District Land and Housing tribunal for Mara at Tarime in Land Case No. 47 of 202 resolved on 12th August 2021; second, **Misc. Civil Probate No. 11 of 2022** originated from Tarime District Court at Tarime in Misc. Civil Revision No. 1 of 2015 determined on 5th June 2022 and finally, **(PC) Criminal Appeal No. 12 of 2022** arising from the District Court of Tarime at Tarime in Probate Appeal No. 4 of 2010, and originating from the Tarime Primary Court in Probate and Administration Cause No. 54 of 2017, resolved on 29th June 2022. Five (5) months later, the plaintiff had preferred the present case, which is the fifth case brought in this court involving the same family members

disputing on the letters of administration of the deceased's properties.

As it is indicted above, the order of this court in the appeal was not complied and in all cases the parties did not cite the order which led to multiple of complaints. The behaviors of the deceased's family members had kept this court busy in a multiple time. It can easily be interpreted the death of the deceased has changed this court to be the court of the plaintiff and his family members.

This court in the present case cannot declare proper administrator of the deceased's estates or declare ownership of the deceased's house located at **Plot No. 4 Block E Nyerere Road in Tarime Township of Mara Region** with Title No. 59277 LR Mwanza L.O. No. 366702, until when there are evidences that the order issued on 20th January 2017 in the appeal is complied.

I understand the plaintiff had submitted, during *suo moto* prompt of this court on subject, that the fourth respondent had forged necessary materials, including his name and signature in the minutes during application for letters of administration in the **Probate and Administration Cause No. 54 of 2017**. However, the plaintiff had declined to take the course he had previously

initiated in the misc. application at the primary court to protest the grant of the letters of administration to the fourth defendant.

On the other hand, Mr. Werema thinks that the plaintiff had filed the **Probate and Administration Cause No. 47 of 2016** prematurely before hearing and determination of the appeal in this court on 20th January 2017. According to Mr. Werema, the fourth respondent had filed the **Probate and Administration Cause 54 of 2017** after the decision of this court in the appeal 20th January 2020. I have perused the record and found that it is correct that the decision in **Probate and Administration Cause No. 47 of 2016**, was resolved on 5th September 2016, when the appeal was pending in this court. Even the record of appeal conducted on 20th January 2017, at page 4 of the typed proceedings shows that the parties were well aware of the new cause in **Probate and Administration Cause No. 47 of 2016** before the primary court.

On other hand the **Probate and Administration Cause 54 of 2017**, was determined on 26th January 2018, where the fourth defendant prayed the same letters of administration of the deceased's estates. However, the record of this appeal shows that the fourth respondent was well aware of the decision in **Probate and Administration Cause No. 47 of 2016**, but had

declined to register protest on the cause before preferring the **Probate and Administration Cause 54 of 2017** to have the matter resolved to the finality.

In the totality of the indicated cases and materials produced in the present case, it is vivid that the Swahili saying: *mchezo wa paka na panya* is displayed in the present case. The play now has knocked the doors of our courts. It is a play which is not cherished in our courts, and this court discourages the practice (see: **Tarime District Council v. Josina Company Limited**, Misc. Land Application No. 11 of 2023 and **Timoth Meja (Themos Meja) v. JC Gear Group (T) Limited**, Civil Revision No. 2 of 2023).

In the precedent of **Tarime District Council v. Josina Company Limited** (supra), this court stated that courts of law shall not be put into trials by litigants, but it is the parties who should be on trial, whereas in the precedent of **Timoth Meja (Themos Meja) v. JC Gear Group (T) Limited** (supra), this court stated that courts' premises are not coffee shops where parties in suits would prefer to have their drinks. This is true and correct. Court of law is not a place where litigants would have their barbeque and let magistrates and judges busy with their unusual case files. Courts of law are temples of justice for those

who really need trials in search of their rights and obligations (see: **Director General CDA c/o The Legal Division, Capital Development Authority v. Infobridge Consultants Ltd**, Misc. Civil Application No. 49 of 2004).

The display of the parties in the present case turns courts' proceedings to be a game of chances where litigants are finding leeway to succeed in their disputes by filing unwarrantable cases. This is purely abuse of courts' time, resources and processes (see: **Hector Sequiraa v. Serengeti Breweries Limited**, Civil Application No. 395/18 of 2019).

I am also aware during the proceedings of this case on 21st March 2023, 16th May 2023 and yesterday, Mr. Werema had registered a total of six (6) complaints resisting the jurisdiction of this court in the case, namely: the court lacks original jurisdiction to entertain the case; second, the case contravenes institution of civil suits as per **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code; third, the case is *res judicata*; fourth, the court is *functus officio*; fifth, the plaintiff lacks *locus standi* to prosecute the case; and finally, the case is time barred.

When Mr. Werema was called to explain the points, he decided to declined four (4) points of protest contending that

there are two points which go to the competence of the case which attracts struck out order rather than dismissal order as indicated in the precedent of the Court of Appeal (the Court) in **Ghati Methusela v. Matiko Marwa**, Civil Application No. 6 of 2006. In his opinion, incompetent case cannot be dismissed hence there is no need to argued the other four (4) points which attract dismissal order.

However, during explanations of the two (2) points, Mr. Werema had further declined another point and preferred only one (1) point of law contending that the plaintiff had declined to file plaint as per requirement of the law in sections 2 & 22, and Order VII Rule 1 of the Code, which require every suit to be instituted by presentation of plaint. According to Mr. Werema, the plaintiff has registered **Land Prescribed Form** (the Form) as per requirement of the enactment in Regulation 3 (2) & Second Schedule to the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** GN. No. 174 of 2003 (the Regulations).

In replying the point, the plaintiff submitted that the he had complied with the provisions of section 2 & 22 of the Code graced with new enactment in section 84A (1) (b) (2) and (3) of the **Interpretation of Laws Act [Cap.1 R.E 2019]** & **Government**

Notice No.18 of 2021. Regarding the Form and indicated provisions of the Regulations, the plaintiff contended that the respondents' learned counsel had declined to provide details of the complaint to be appreciated on the point.

I have glanced the present record and found that the plaintiff had registered the case and titled his complaint in the following words: *Maombi ya Ardhi Na. 26 ya 2022*. The title is followed by names of the parties, who are reflected as *Mleta Maombi* and *Mjibu Maombi Namba Moja-Nane*. The plaintiff has then provided addresses of the parties from the first to the ninth paragraphs of the *Maombi*, whereas the address of suit property is described in the tenth paragraph. The eleventh and twelfth paragraphs indicate the value of the suit property and a claim of house rent amounting to Tanzanian Shillings Four Hundred Eighty Million (480,000,000) Tanzanian Shillings due from 1995, respectively. Finally, the plaintiff had registered a total of eight (8) prayers, including declaration of rightful owner of the land and house rent of the indicated amount.

The filed document is a bit confusing, but considering the overriding objective enacted in section 3A(1) & (2) of the Code and interest of justice, that cannot be an issue. The irregularity may be cured by the principle by inviting the plaintiff to rectify,

even by a use of 0.5mm ball pen on the plaint. I have also scrutinized other complaints of Mr. Werema and registered materials in the case, I think, I do not need to be detained on the points. The reason is straight forward that there is an order of this court issued in the appeal on 20th January 2017, and to date the order is not complied by the parties and other family members.

In my considered opinion, this case must be struck out for want of exhaustion of the order of this court issued in the appeal on 20th January 2017 or the need of any other relevant available legal remedies. This court cannot proceed with uncertainty on the rightful owner of the letters of administration of the deceased's estates, which is the center of the present complaint.

Similarly, the plaintiff is suing the fourth defendant in person. And not as administrator of the deceased estates, which is contrary to the law in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021.

In the end, and having considered all circumstances surrounding the present case, I strike out the case without costs. I do so as the dispute involves lay persons from the same clan

and the wrongs were partly attributed by lower courts in the indicated contests. In mean time, the parties are advised either to follow the directives of this court in the appeal or lodging of protests in the two indicated probate and administration causes in accordance to the present law regulating probate and administration cases.

Ordered accordingly.

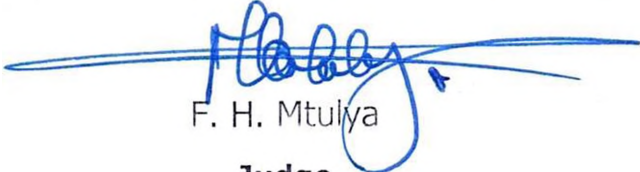



F.H. Mtulya

Judge

31.05.2023

This Ruling was pronounced in Chambers under the Seal of this court in the presence of the plaintiff, **Mr. Nathaniel Waluse Nyabange** and in the presence of the defendants' learned counsel, **Mr. Emmanuel Werema**.


F. H. Mtulya

Judge

31.05.2023