

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 308 OF 2023**

*(Arising from the Execution No 25 of 2023)*

**IRENE RICHARD SUMA ... ..... APPLICANT**

**VERSUS**

**DPI SIMBA LIMITED .....1<sup>ST</sup> RESPONDENT**

**EXCESS CONSTRUCTION COMPANY LIMITED..2<sup>ND</sup> RESPONDENT**

**ERIC RICHARD SUMA .....3<sup>RD</sup> RESPONDENT**

**RICHARD SUMA .....4<sup>TH</sup> RESPONDENT**

**MS JESCA W. L. MASSAWE T/A J.J**

**AUCTION MART LTD ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

*3<sup>rd</sup> & 4<sup>th</sup> July 2023*

**MKWIZU, J:**

This is an application for temporary injunction pending the objection proceedings brought against the deceased persons, 4<sup>th</sup> respondent among other respondents.

When the matter came for mention on 30<sup>th</sup> June 2023 the applicant's counsel prayed for time to find out how to proceed against the 4<sup>th</sup> respondent. On 3/7/2023, Mr. Walter Shayo counsel for the Applicant insisted on maintaining the application against the 4<sup>th</sup> respondent on the main reason that the 4<sup>th</sup> respondent is a necessary party positioned as the

3<sup>rd</sup> judgment debtor in the execution of the decree subject to this application and that his property was attached to that effect even after the abatement of the suit against him. And when probed as to why he should not join the legal representative, Mr. Walter's answer was that there is no legal representative in place to be joined or served with the application.

Mr. Shukuranu Mzikala advocate for the 1<sup>st</sup> respondent was of the view that the law as it is requires the legal representative to be made a party for the application to proceed. The 3<sup>rd</sup> Respondent who also stood in court on behalf of the 2<sup>nd</sup> respondent was of a different view. He urged the court to allow the application.

I have considered the issue and the position taken by the parties. The crucial issue is the maintainability of the application filed against a dead person, without joining his legal representative. It is a settled principle that any claim filed in court against a dead person is a nullity. See for instance the case of **Exim Bank (Tanzania) Limited vs Yahaya Hamisi**, Civil Appeal No. 275 of 2019, and **Mwanaisha Ally Mbalika vs Juma Ally Mbalika and 4 others**, Misc. Land Application No. 11 of 2021 (All unreported)

I have carefully read Order XXI of the CPC instructing on the steps to be taken after the death of parties in a suit. I should admit that that order does not specifically talk of applications but, it provides for a mandatory requirement for the legal representative of a person who, if alive, would be a necessary party (as the respondent) to be made a party to the subsequent proceedings to allow him/her to make a defence appropriate to his character as legal representative of the dead respondent. The

rationale behind this principle is, in my opinion, not far to find, a dead person cannot speak, so to maintain a matter against him/her is to allow the determination of a matter without effectively affording both parties a right to be heard rendering whatever result therefrom a nullity. That is the law.

As aforesaid, this application is brought against the dead 4<sup>th</sup> respondent. Instead of claiming a remedy against the deceased persons, the applicant was in this application required to bring on board the 4<sup>th</sup> respondent's legal representative. This wasn't done rendering the entire application a nullity. And since the court cannot act on a nullity the only obtainable remedy is to strike out the matter as I hereby do.

Considering the nature of the proceedings, each party is ordered to bear its own costs. Order accordingly.



**E. Y Mkwizu**  
**Judge**  
4/7/2023