

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(IN THE DISTRICT REGISTRY OF MUSOMA)
AT MUSOMA
(PC) CIVIL APPEAL No. 26 OF 2022

*(Arising from the District Court of Tarime at Tarime in Civil
Appeal No. 22 of 2021, originating from Tarime Urban Primary
Court in Civil Case No. 350 of 2020)*

MWITA NYABARE APPELLANT

Versus

JULIUS NGENDO MKILIA RESPONDENT

JUDGMENT

30.01.2023 & 30.01.2023
Mtulya, J.:

On the 14th day of December 2020, **Mr. Mwita Nyabare** [KNY. KIKUNDI CHA MARA GROUP] (the appellant) approached **Tarime Urban Primary Court located at Tarime** (the primary court) and lodged **Civil Case No. 350 of 2020** (the case) against **Mr. Werema Ghati** (the deceased) for loss of Tanzanian Shillings One Million Seven Hundred Seventy Thousand (1,770,000/=Tshs.) allegedly belonged to KIKUNDI CHA MARA GROUP.

After full hearing of the case, the primary court decided in favour of the appellant and ordered the deceased to pay 1,770,000/=Tshs and compensation of 230,000/=Tshs. The

decision of the primary court was delivered on 13th January 2021. Three (3) months later, the deceased had expired, specifically on 23rd April 2021. Six (6) days after expiry of the deceased, the appellant preferred application for execution in the case, dated 29th April 2021. The application was protested by **Mr. Julius Ngendo Mkilia** (the respondent) contending that the deceased had expired and the case could not take its course until when **Probate and Administration Cause No. 6 of 2021** (the probate cause) at Nyamwigula Primary Court (nyamwigula court) is determined to its finality to appoint an administrator of the deceased's estates.

In his complaint before the primary court, the appellant submitted that the farmland that was intended for execution is not part of the deceased's properties, but his father, **Mr. Ghati Nyendo**. The protest was declined and the primary court decided in favour of the appellant and reasoned that the respondent had no *locus standi* to protest the application.

The decision of the primary court was protested by the respondent in **Civil Appeal No. 22 of 2021** (the civil appeal) at the **District Court of Tarime at Tarime** (the district court). The district court, after full hearing of parties, it decided to

overturn the decision of the primary court and at page 5 of the decision it reasoned that:

...looking in the case at hand, the property which was attached is land which seems to be in serious dispute between the decree holder and one Julius Ngendo Mkilia. It is also stated that the judgment debtor died before the execution was made. There is nowhere on record where it was shown that an administrator of judgment debtor was appointed to administer the deceased's estates.

This thinking dissatisfied the appellant hence preferred **(PC) Civil Appeal Case No. 26 for 2022** (the appeal) in this court complaining that the district court erred in law and fact in halting the execution as respondent had ***no locus standi*** in the dispute. When the appeal was scheduled today for hearing, the appellant briefly stated that the respondent had no ***locus standi*** to protest the application for execution and that he had filed application for execution within a month before expiry of the deceased. The respondent on his side submitted that he had prayed before the primary court to halt proceedings until when the probate cause is determined to its finality, but the

primary court had declined the prayer, and that the appellant had applied for execution after expiry of the deceased.


I have perused the record of present appeal and considered submissions of the parties, and found that the record is vivid that the application for execution was filed on 29th April 2021, six (6) days after expiry of the deceased. In that situation, I moved to quash proceedings and decision of the primary court in application for execution for want of proper record of the court and precedent of the Court of Appeal in **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021.

Following this decision, the proceedings of the primary court in the case from 29th April 2021, which shows that the deceased was absent, to 2nd August 2021, when proceedings were completed, are set aside for want of proper application of the law and indicated precedent. If the appellant is so wish to file execution proceedings, he must do so by abiding with the laws regulating filing of applications against deceased persons. I award no costs in the present appeal as the wrong was caused by the appellant, who is a lay person and

appeared himself without any legal representation. Each party shall bear its costs.

Ordered accordingly.




F. H. Mtulya

Judge

30.01.2023

This judgment was delivered in Chambers under the seal of this court in the presence of the appellant, **Mr. Mwita Nyabare** and in the presence of the respondent, **Mr. Julius Ngendo Mkilia**.


F. H. Mtulya

Judge

30.01.2023