

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

LAND APPEAL NO. 31 OF 2023

*(Originating from the Judgment and Decree of the District Land and Housing Tribunal
for Morogoro, at Morogoro in Land Application No. 20 of 2019).*

ROGATI MPEKA.....APPELLANT

VERSUS

RAMADHANI OMARI MILIKI.....RESPONDENT

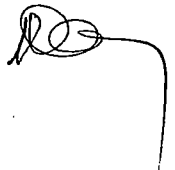
RULING

11th August, 2023

CHABA, J.:

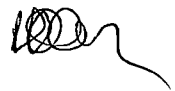
This ruling of the court emanates from the preliminary objection (P.O) raised by the respondent against the appellant's memorandum of appeal that, the appeal lodged in this Court on the 20th day of February, 2023 and its subsequent amendments that were filed in Court on 16th day of March, 2023 is unmaintainable in law as *it is against a wrong person*.

Based on the above point of law, the respondent is now inviting this Court to dismiss the appeal with costs. At the hearing of the P.O., by consensus, parties agreed to dispose of the same by way of written submissions. Both parties complied with the Court's scheduled orders as



follows; the respondent was supposed to file his written submission on or before 12th July, 2023 and appellant's reply to written submission in chief had to be filed on or before 19th July, 2023. No rejoinder was filed by the respondent.

Submitting in support of the raised P.O, Mr. Derick Vicent, Learned Advocate for the respondent, submitted that the appeal before this Court is against the respondent herein Ramadhani Omari Maliki who has been sued in his personal capacity, contrary to the records and pleadings of the trial District Land and Housing Tribunal for Morogoro, at Morogoro in Land Application No. 20 of 2019. Mr. Vicent amplified his stance by arguing that any decision against the respondent in his personal capacity at this appellate stage cannot affect the respondent in proceedings where he was standing as an administrator of the estate of the late Salum Miliki. Mr. Derick cited the decision of this Court delivered at Tabora in the case of **Selestine Mlekwa Vs. Juma Gidion**, Land Appeal No. 21 of 2020 (unreported) wherein this Court (Bahati, J.) emphasized that any interest over the estate of deceased person should be instituted against the administrator or executor and not against an individual's personal capacity.



Mr. Vicent quickly pointed out that, going through the trial tribunal's pleadings, it is clear that the respondent instituted the suit against the appellant as a legal representative of the late Salum Miliki. He finally concluded to submit by referring this Court to the decision of **Respicius Emilian Mwajige Vs. The Municipal Director, Ilala Municipal Council and Two Others**, Land Case No. 27 of 2021 HCT - Dar Es Salaam (unreported), where this Court (Msafiri, J.) pointed out that the remedies for a defective pleading is to struck out the application. On the strength of the above precedent, Mr. Vicent prayed the Court to dismiss the appeal with costs.

In reply, Mr. Giray, also the Learned Advocate for the appellant vehemently opposed the P.O., raised by the respondent's advocate. In his submission, Mr. Giray averred that, the appellant's appeal before this Court is proper and maintainable. He further submitted that, the said impugned Judgement and Decree of the trial DLHT in Land Application No. 20 of 2019 shows that both the appellant and respondent stood on their personal capacity. He argued that, nothing on the heads of the two documents shows that the respondent was sued as an administrator of the estates of Salum Miliki.

Finally, Mr. Giray argued that the respondent had a chance and an opportunity to apply for any changes or rectification in respect of the names appearing in the Judgment and Decree or else could appeal against the decision that does not mention him as an administrator of the deceased's estates rather than waiting to challenge the same at this stage of appeal. Having so submitted, Mr. Giray invited this Court to dismiss the point of preliminary objection raised by the respondent with costs.

Having summarized the parties' submissions in support and opposition of the P.O raised by the respondent's advocate, I have managed to venture through the parties' submissions, memorandum of appeal filed in this Court by the appellant and the impugned decision (Judgment and Decree) of the trial DLHT for Morogoro dated on 6th January, 2023. Having so done, the following are my observations.

On reviewing the Judgment and Decree issued by the trial DLHT, I have seen the names of the parties written on the typed copies of Judgment and Decree to this effect; **RAMADHANI OMARI MILIKI** and **ROGATI MPEKA** but in their personal capacities. The alleged impugned Judgment and Decree reads as follows: -

"BARAZA LA ARDHI NA NYUMBA WILAYA YA MOROGORO

LILILOPO MOROGORO

MAOMBI NO. 20 YA 2019

RAMADHANI OMARI MILIKIMLETA MAOMBI

DHIDI YA

ROGATI MPEKAMJIBU MAOMBI

HUKUMU

.....

....."

"BARAZA LA ARDHI NA NYUMBA WILAYA YA MOROGORO

LILILOPO MOROGORO

MAOMBI NO. 20 YA 2019

RAMADHANI OMARI MILIKIMLETA MAOMBI

DHIDI YA

ROGATI MPEKAMJIBU MAOMBI

TUZO

(DECREE)

.....

....."



Having gone through the above two documents and upon a thoroughly examination of the same, which are subject of the present preliminary objection, to be frank, I have found nowhere neither in the Judgment of the trial DLHT nor in its Decree indicating and suggesting that the respondent herein (applicant at trial) sued the appellant herein (respondent at trial) while acting as an administrator of the estates of the late Salum Miliki. The learned Counsel for the appellant, Mr. Giray submitted that, if at all the respondent's Counsel noticed some errors that were apparent on the face of the impugned Judgment and Decree, he was supposed to notify the trial DLHT so that the purported rectification could be done.

On my part, I subscribe to the argument advanced by the Counsel for the appellant suggesting the appropriate remedy to have be taken. In my considered opinion, this Court cannot jump and ignore to revisit the trial tribunal's proceedings and the parties' pleadings which are the basis of the impugned Judgment and Decree and further deliberately disregard what is apparent (openly seen) on the face of the Judgement and Decree, subject of this appeal and the raised P.O., on the other hand.

Besides, I am also of the view that, amending the names of the parties at this appellate stage while the Judgement and Decree appealed against

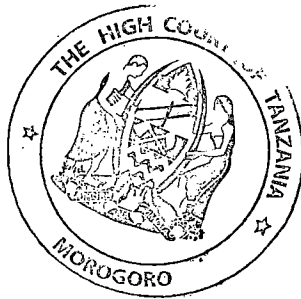


shows different names of the parties is, in my opinion, abuse of Court process and it might result into serious chaos and endless litigation. I say so because, at this stage, the act of stepping deep into the shoes of the trial tribunal's pleadings and proceedings as well, and examining parties' capacities before hearing of the merits of appeal, might pre-empt the appellant's appeal.

Since, the names of the respondent appears correctly on the pleadings lodged before this Court, exactly as it appears in the impugned Judgement and Decree issued by the District Land and Housing Tribunal for Morogoro, at Morogoro, I am compelled to overrule the P.O., raised by the Counsel for the respondent for a reason that, the instant appeal is proper before me. Further, I must confess that, though the respondent's authorities cited in support of the point of preliminary objection are useful, but the same are unresourceful as far as the matter at and is concerned.

That said and done, consequently I proceed to dismiss the respondent's preliminary objection with costs. Order accordingly.

DATED at **MOROGORO** this 11th day of August, 2023.




M. J. CHABA

JUDGE

11/08/2023

Court:

Ruling delivered under my hand and Seal of this Court in Chamber's this 11th day of August, 2023 in the presence of Mr. Derick Vicent, learned counsel for the respondent, also holding brief for Mr. Richard Giray, learned advocate for the appellant.


A.W. MIMBANDO

DEPUTY REGISTRAR

11/08/2023

Court:

Rights of Appeal to the parties fully explained.




A.W. MIMBANDO

DEPUTY REGISTRAR

11/08/2023