

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF SONGEA
AT SONGEA**

MISCELLANEOUS LAND CASE APPLICATION NO. 19 OF 2023

**RAMADHANI OMARY MTIULA (As the administrator
of the Estate of the Late Omary Petro Mtiula) APPLICANT**

VERSUS

ATTORNEY GENERAL..... 1ST RESPONDENT

SONGEA MUNICIPAL COUNCIL2ND RESPONDENT

SLIMU MOHAMED3RD RESPONDENT

MOSES DOMINIC NOMBO4TH RESPONDENT

RULING

Dated: 1st November, 2023

KARAYEMAHA, J.

In this application, the applicant seeks to move this Court to join Ahmad Mohamed Hamad as a legal representative of Slimu Mohamed, (deceased) the 3rd respondent in Land Case No. 4 of 2022 which is pending before this Court.

The application is preferred under the provisions of Order XXII rule 4 (1) CPC [Cap 33 RE 2019] and it is supported by the applicant's own affidavit, setting out grounds on which the prayer is sought. The supporting affidavit sets out details on the reasons for which the prayers

are made. The most relevant part of the affidavit is that midway before the 1st PTC could be conducted, the deceased died on 1/6/2023. Thereafter the Ahmad Mohamed Hamad applied and was granted letters of administration of the deceased's estate as exhibited by the document 'HATI YA USIMAMIZI WA MIRATHI' issued by the Mfaranyaki Primary Court dated 6/9/2023.

I have considered the application, the submission by Mr. Denis Lazaro, learned Counsel for the applicant, and the fact that Mr. Egid Mkolwe, Learned State Attorney and Mr. Nestory Nyoni, learned advocate for the 4th defendant are supporting the application. I have also considered the guidance in the case of **Salma Salum Said (Adminitratrix of the deceased Salum Mohamed Said) v. Dar es Salaam Water Sewerage Authority (DAWASA)**, Civil Appeal No. 188 of 2020 CAT-DSM cited by Mr. Lazaro that a failure to join the legal representative in place of the 3rd defendant is harmful to the proceedings.

The law requires that where one or more defendants dies and the right to defend the suit does not survive the remaining defendants but it survives to relatives or legal representatives, on application made on that

behalf, the court shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

In this case I am guided by the provisions of Order XXII Rule 4(1) of the CPC that the right to sue has survived to the legal representative. Therefore, this court hereby orders that Ahmad Mohamed Hamad, a legal representative of the deceased, is made a party to Land Case No. 4 of 2023 and shall proceed with the suit.

It is so ordered.



J.M. KARAYEMAHA

JUDGE

01/11/2023

Court:

1. Ruling pronounced this 1st day of November, 2023 in the presence of all parties.



J.M. KARAYEMAHA

JUDGE

01/11/2023