

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB REGISTRY)**

AT MOROGORO

PC CIVIL APPEAL NO. 12 OF 2023

(Arising from Civil Appeal No.08 of 2022 of Kilosa District court and originating from
Probate Cause No.25 of 2021 of Kilosa Urban Primary Court)

OMARI DAUDI KILUMBI 1ST APPELLANT

HURUKA SHABANI 2ND APPELLANT

VESRSU

SWALEHE ABDALLAH KILUMBI (ADMINISTRATOR OF

ESTATE OF ABDALLAH HASSAN KILUMBI) RESPONDENT

Date of Last Order:09.04.2024

Date of Judgement: 17.05.2024

JUDGEMENT

MAGOIGA, J.

The appellants, **OMARI DAUDI KILUMBI** (by special power of attorney granted by Daudi Kilumbi) and **HURUKA SHABANI** in 2021 unsuccessfully objected the appointment of the respondent who had petitioned for grant of letters of administration of the late Abdallah Hassan Kilumbi who died interstate in Kilosa Urban Primary Court.

Aggrieved by the decision of the Primary Court, the appellants unsuccessfully appealed to the District Court (1st appellate court) vide Appeal No.08 of 2022 which found the appeal unmerited. Still daunted, the appellants preferred this appeal armed with two grounds of appeal all boils down to the validity of the family meeting and minutes dated



04/05/2021 but which for reasons to be apparent in this judgement will not consider their merits.

When this appeal was called on for hearing, the appellants and respondent appeared in person and unrepresented.

The 1st appellant argued the grounds of appeal which arguments were subscribed by the 2nd appellant. In essence, their argument was the participation of the **Daudi Abdallah Kilumbi** (now deceased since late 2021) to that meeting which proposed the respondent to petition for grant of letters of administration of estate of late Abdallah Hassan Kilumbi. However, the respondent, before arguing the appeal told the court that the 1st respondent has no legs to stand to prosecute this appeal because the donor of the power of attorney to the 1st appellant is no more since 11th November, 2021 while in this appeal the 1st appellant is posing as holder of power of attorney of the deceased. According to the respondent, much as the 1st appellant has no letter of administration of the late Daudi Abdallah Kilumbi, he cannot continue prosecuting this appeal whereby his legal standi ceased when the late Daudi Abdallah Kilumbi died.

Both appellants conceded that, in fact, **Daudi Abdallah Kilumbi** is dead and as such the 1st appellant has no legal legs to stand to prosecute this appeal under power of attorney.

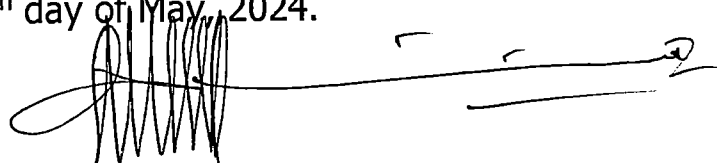


It is for the above reason, I found no need of considering the merits of grounds of appeal because without much ado, the 1st appellant's legal legs to prosecute this appeal are wanting since the demise of Daudi Abdallah Kilumbi. As to the 2nd appellant her concern is that the respondent intends to include properties not the subject of the estate of the late Abdallah Hassan Kilumbi, which issue can be dealt when the inventory is filed and not now.

That said and done, this appeal is found incompetent on the part of the 1st appellant and misconceived on the part of the 2nd appellant, and as such without much ado, same must be and is hereby for the reasons stated above, struck out with no order as to costs because this is a probate matter. The appellants, if they wish to pursue their rights, must follow laid down procedure.

Order accordingly.

Dated at Morogoro this 17th day of May, 2024.

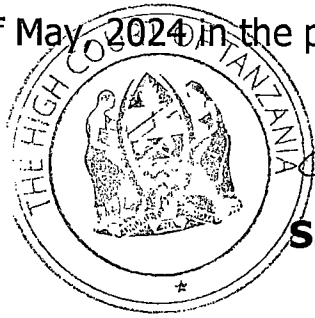
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S.M. MAGOIGA

JUDGE

17/05/2024

Court: Judgement delivered in my Hand and Seal of this court on this 17th day of May, 2024 in the presence of both parties.

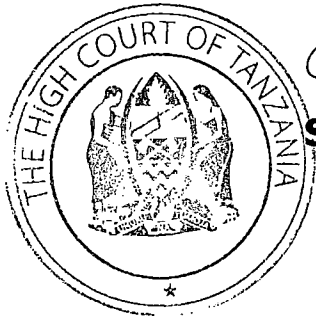


S.M. MAGOIGA

JUDGE

17/05/2024

Court: Right of appeal fully explained.



S.M. MAGOIGA

JUDGE

17/05/2024