

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE SUB-REGISTRY OF DAR ES SALAAM)**

**AT DAR ES SALAAM.**

**MISCELLANEOUS CIVIL APPLICATION NO. 391 OF 2023**

*(Arising from Probate and Administration Cause no. 73 of 2019)*

**PERPETUA MAJUTO PAMBI.....APPLICANT**

**VERSUS**

**SUZANA STEPHENE PAMBI (As Administratrix  
of the late PILEO STEPHENPAMBI).....RESPONDENT**

**RULING**

*Date of last order: 28/02/2024*

*Date of Ruling: 15/03/2024*

**A.A. MBAGWA, J.**

This ruling is in respect of preliminary objection raised by the respondent.

The applicant, Perpetua Majuto Pambi lodged the present application against the respondent praying for the following orders:

- A. That, this Honourable Court be pleased to direct the Administratrix of the estate of the late PILEO STEPHEN PAMBI to remove the landed property Plot No. 1256, Block J, which is located at Buswelu, within Ilemela District in Mwanza Region from the list of the deceased's properties.



B. That, any other relief this Honourable Court may deem fit and just to grant.

Upon service, the respondent filed a counter affidavit along with a notice of preliminary objection on the following point of law:

**'The Court is not properly moved as it is *functus officio*'.**

As the practice requires, this Court was enjoined to dispose of the preliminary objections before going into the merits of the main application.

Thus, on 15<sup>th</sup> November, 2023, this Court ordered the preliminary objection to be argued by way of written submissions. Both parties complied with the filing schedule set by the Court.

Submitting in support of the preliminary objection, Ms. Pendo Charles learned Counsel for the respondent had it that, the respondent has discharged her obligations as the administratrix of the estate of the late **Pileo Stephen Pambi** because the properties in respect of the said estate were already distributed and the probate proceedings were closed. As such, the respondent's counsel opined that the Court is *functus officio*. To bolster her arguments, the learned counsel referred the Court to the decision of the Court of Appeal in **Ahmed Mohamed Al Laamar vs Fatuma Bakari & Another**, Civil Appeal 71 of 2012 CAT at Tanga. She



clarified that the Court of Appeal observed that after closing the probate proceedings, the court was *functus officio*.

In reply, Ms. Yasmine Charles Makanya, learned counsel for the applicant had a contrary view. She candidly submitted that, the Court is properly moved and it is not *functus officio* as contended by the Counsel for the respondent. She expounded that, this Honourable Court only appointed administratrix but did not make orders finally disposing of the case as the issue of ownership was never discussed anywhere in the Probate and Administration Cause No. 73 of 2019. In strengthening her submissions, she referred to me the decision of **Kamundi v. R (1973) EA 540** whereby the issue of *functus officio* was discussed at length.

In a brief rejoinder, Ms. Pendo Charles, learned advocate reiterated her submission in chief and stated further that, the proceedings of this Honourable Court in respect of Probate and Administration Cause No. 73 of 2019 were finalized.

I have dispassionately gone through submissions advanced by counsel for both parties. I also had an occasion to appraise each document annexed to the affidavit in support of the chamber summons, counter affidavit and the court file relating to Probate and Administration Cause No. 73 of 2019.



In the course of disposing the objection raised, I find it apposite to narrate the background obtaining in this matter albeit in brief. It goes as follows; On 24<sup>th</sup> February, 2019, one Pileo Stephen Pambi (the deceased) died intestate at Sekou Toure Hospital, Nyamagana within the Region of Mwanza leaving behind several properties. Upon his demise, the respondent herein petitioned for and was appointed by this court as an administratrix of the estate of the deceased on the 5<sup>th</sup> March, 2020 and later on issued with the letters of administration on the 16<sup>th</sup> March, 2020 in Probate and Administration Cause No. 73 of 2019.

In the course of administering the deceased's estate, the respondent included the landed property which the applicant claims to be her property. The applicant further avers that, the said property was surveyed and registered in her name as Plot No. 1256, Block "J" located at Ilemela Municipality within Mwanza Region duly described under Certificate No. 83541 LR Mwanza (the property).

The applicant who claims interests over the property was not amused by the acts of the respondent, thus, she preferred the present application under Section 65 of the Probate and Administration of Estates Act, [Cap. 352 R.E 2002] and Rule 105 of Probate Rules, 1963 praying for the orders earlier stated.





Now based on the facts narrated hereinabove, the core issue for determination is whether the preliminary objection raised is meritorious.

In the case of **CRDB Bank PLC vs The Registered Trustees of Kagera Farmers Trust Fund & Others**, Civil Appeal No. 496 of 2021, CAT at Dar es Salaam (Unreported) at page 9-10, the Court of Appeal had the following to say;

"As we understand the law, a court becomes functus officio after having finally and conclusively determined an issue before it. Once that happens, it is settled law, the same court cannot, whether by the same judicial officer or a successor judicial officer, entertain the issue. It has been said so in a number of decisions. For instance, in *Bibi Kisoko Medard v. Minister for Land, Housing and Urban Development* [1983] T.L.R. 250, it was observed: "In matters of judicial proceedings once a decision has been reached and made known to the parties, the adjudicating tribunal thereby becomes functus officio".



The applicant submitted that where there is a dispute over the deceased's estate, it is the probate court which has powers to determine the said dispute. To fathom the argument, the applicant's counsel cited the case of **Mgeni Seif vs Mohamed Yahaya Khalfani**, Civil Application No. 1 of 2009, CAT at Dar es Salaam.

From the foregoing, it is common cause that this Court can entertain the present application if the probate proceedings are ongoing. Ms. Pendo Charles learned counsel for the respondent contended that, the respondent has discharged her obligations as the administratrix of the estate of the late **Pileo Stephen Pambi** as the properties in respect of the said estate were distributed and file closed. On the other hand, counsel for the applicant has contended that the dispute over ownership of the property has not been determined by this court in respect of ownership of the property and therefore it is not functus officio.

I had an opportunity to peruse the court file *viz* Probate and Administration Cause No. 73 of 2019. The record tells it all that the respondent/petitioner filed an account which is dated 18/11/2020. The account shows very clearly how the estates were distributed to the heirs. It is further on record that on 2/02/2021, the respondent informed the court that she had distributed the estates as per the final account except the money which was in the judiciary's account.



On 09/02/2021, the respondent finally distributed a sum of TZS 16,413,995.40 to Suzana Stephen Pambi, Mkuyu Stephen Pambi and Yombo Stephen Pambi. This final distribution is supported by the final payments. It is on record that on 3<sup>rd</sup> day of March, 2021 this court issued exchequer receipt namely ERV NO. 24679069. Subsequently, the heirs were paid the money into their respective bank accounts as exhibited via payment receipts to wit; PV No. 00400000V2105082, PV No. 00400000V2105083, and PV No. 00400000V2105083. In the case of **Ahmed Mohamed Al Laamar vs Fatuma Bakari and Another**, Civil Appeal No. 71 of 2012, CAT at Tanga, it was held that issuance of exchequer receipts is evidence that in law the probate proceedings are closed.

The applicant's main contention is that the Court is not *functus officio* because Probate and Administration Cause No. 73 of 2019 was about appointment of the administrator of the estates whereas the present application is all about ownership of the landed property. With due respect to the applicant's counsel, this argument is misconceived. It is noteworthy that the applicant has brought this application under section 65 of the Probate and Administration of the Estate Act and Rule 105 of the Rules. These provisions enjoin the Court to issue the requested directions to the executor when the Court is still seized of probate proceedings. Thus, since



the probate proceedings were in law closed on 03/03/2021 as herein above elaborated, it goes without saying that the present application is misconceived. See also **Andrew Mfuko vs George Mfuko (An Administrator of the Estate of Clement N. Mfuko)**, Civil Appeal No. 320 of 2021, CAT at Dar es Salaam. The argument that the present application is about ownership of property does not confer on the court the powers to preside over the already closed probate proceedings. The applicant should therefore pursue his rights through other legal means. All said and done, I sustain the preliminary objection and consequently strike out the application. Each party should bear its own costs.

It is so ordered.

Right of appeal is explained.

Dated at Dar es Salaam this 15<sup>th</sup> day of March, 2024.



  
**A.A. Mbagwa**

**JUDGE**

**15/03/2024**